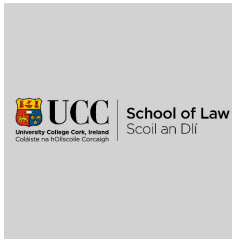




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Centre for European Integration
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Call for papers:

The legal reasoning of the Court of Justice of the European Union: a normative assessment

Organisers: Dr Luigi Lonardo, Acting Director, Centre for European Integration – University College Cork

Dr Alezini Loxa, Postdoctoral Researcher, Faculty of Law, Lund University,

Place: Lund University, Faculty of Law

Dates: 17-18 April 2024

Concept

Of the many general works dedicated specifically to the legal reasoning of the Court of Justice of the European Union, most take a descriptive approach (Bengoetxea, 1993; Lecourt, 2008; Sankari, 2013; Beck, 2013; Bengoetxea, 2015; Cotter, 2022), while explicitly normative ones are a minority (Rasmussen, 1986; Conway, 2012). Even the processes of mutual influence of the legal reasoning of the CJEU and national courts (the latter decide, in fact, nearly all disputes involving EU law), is not usually studied with a normative agenda, but rather from an analytical/explanatory viewpoint (Davies, 2012; but see Tridimas, 2008 for an assessment of how general principles are borrowed from national law and transformed into EU law).

Granted, there are many explicit criticisms of the reasoning of the Court. In addition to the seminal criticism of the Court's posture by Rasmussen (Rasmussen, 1986), which flared up a debate over the Court's judicial activism, criticisms have focused on single areas of EU competence (some examples in the areas of the common agricultural policy, citizenship, and foreign policy are Snyder, 1987; Everson, 1995; Koutrakos, 2018), or on a line of cases (as it sometimes happens in Opinions of Advocates General) or on individual cases (Among many, see Nic Shuibhne, 2011; Craig, 2013). These criticisms are widespread but often entail disagreement on the conclusion reached by the Court rather than on the reasoning per se. Important exceptions, that is books focusing on a criticism of the reasoning of the Court, are Nic Shuibhne, 2013 and Velyvyte, 2022.

Justifications (even when implicit (Lenaerts and Gutiérrez-Fons, 2010; Lenaerts, 2015; Lenaerts et al., 2021)) or praise for the reasoning

(Pollicino, 2004), as well as calls for academics to suggest how the reasoning could be improved (Sarmiento, 2018) are few and far between.

The aim of this event is to contribute to a general normative appraisal of the legal reasoning of the Court.

By general, we mean that we seek contributions that either individually or collectively address as wide areas of EU law as possible. It is one aim of this workshop to explore and define points of connections and separation between a normative discussion of legal reasoning from the normative discussion on the telos of EU law.

By normative, we mean scholarly contributions that express an opinion on the Court's reasoning. We are not merely interested in how the Court reaches its conclusion, but in how well (or how poorly) it does so, and in the criteria (and meta-criteria) that academics should use for such assessment. More analytically, contributions may focus 'internally' on the choice of arguments; 'externally' on the discovery or on the justification (For the distinction between internal and external, see Cotter, 2022; for the distinction between discovery and justification, see Bengoetxea, 1993, p. 115). Discovery is 'the actual process or influences producing a judicial decision, which may be a complex of various background political, social and psychological factors never articulated in the judgment itself' and justification is 'the reasoning actually provided in the public record of the judgment' (Conway, 2012, p. 70).

By appraisal we mean either criticism or justification. Criticism, in turn, can be expressed either in negative (what the Court should not do) or in positive (by suggesting, for example, ways for the Court to improve certain aspects of its activity).

Examples of possible questions to be addressed:

We are looking for comprehensive contributions on various fields of EU law (e.g. migration law, competition law, trade and investment and so on), as well as 'horizontal' analyses (cutting across several areas of EU law). Both kinds of contributions may, but by no means must, address one or more of the following questions:

- What explicit hierarchy, if any, should the Court introduce (or recognise) between literal, systematic, and teleological interpretation?
- Should there be criteria to decide when a method of interpretation ought to be applied?
- To what extent should a literal interpretation yield to a vision or philosophy of European integration?
- How explicit should members of the Court be, during their tenure, when they write extrajudicially on the case law?
- How can the Court protect the essential characteristics of the EU legal order without compromising the attainment of other constitutional commitments (such as complying with international law; or joining the ECHR)
- Does the presence of an opinion by Advocate General affect the clarity of the justification found in judgments?

- What should be the relationship between the reasoning of the ECJ and the reasoning of various national courts, and how should they affect each other?
- What lessons, if any, should we draw from psychology, cognitive science, or behavioural economics about the process of ‘discovery’ as defined by Bengoetxea?

Confirmed participants:

Prof. Joxerramon Bengoetxea, University of the Basque Country

Prof. Sara Iglesias Sanchez, Universidad Complutense Madrid

Prof. Niamh NicShuibhne, University of Edinburgh

Prof. Takis Tridimas, King’s College London

Dr Gian Marco Galletti, Court of Justice of the European Union

Dr Menelaos Markakis, Erasmus University Rotterdam

Dr. Luke Dimitrios Spieker, Max Planck Institute for Comparative Public Law and International Law

The workshop is organised with the kind support of the Lund University Centre for European Studies

Practical information

Please email an abstract of approximately one page of length to lleonardo@ucc.ie and alezini.loxa@jur.lu.se by **16 February 2024**. Selected speakers will be informed speakers will be informed one week after the deadline.

Authors will circulate a draft paper or very detailed outline of their presentation by 5 April 2024. It is expected that contributions will be available for publication in an edited volume.

Accommodation will be provided but we cannot guarantee that we will be able to reimburse travel costs.

Initial bibliography

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Bengoetxea, J. (2015) ‘Text and Telos in the European Court of Justice. Gunnar Beck, *The Legal Reasoning of the Court of Justice of the EU* (Hart Publishing 2012) 486 p., ISBN 9781849463232 Gerard Conway, *The Limits of Legal Reasoning and the European Court of Justice* (Cambridge University Press 2012) 344 p., ISBN 9781107001398 Elina Paunio, *Legal Certainty in Multilingual EU Law* (Ashgate 2013) 234 p., ISBN 9781409438618 Suvi Sankari, *European Court of Justice Legal*

- Reasoning in Context (Europa Law Publishing 2013) 275 p., ISBN 9789089521170. *European Constitutional Law Review*, Vol. 11, No. 01, pp. 184–216.
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- Rasmussen, H. (1986) *On Law and Policy in the European Court of Justice: A Comparative Study in Judicial Policymaking* (Dordrecht ; Boston : Hingham, MA, USA: M. Nijhoff; Distributors, for the U.S. and Canada, Kluwer Academic Publishers).
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