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Institute for the Study of European Law (ISEL) Seminar

The Legal Reasoning of the Court of Justice of the EU

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Abstract

In *The Legal Reasoning of the Court of Justice of the EU* (2013) Beck argues that the problem of legal uncertainty is ultimately incapable of judicial or even doctrinal resolution. At the primary level of legal rules Beck identifies three basic sources of legal uncertainty: linguistic vagueness, value pluralism and norm conflict, and precedent instability. Primary legal uncertainty gives rise to the need for judicial interpretation. Judges do not openly decide in accordance with political or personal preference; they are expected to justify their decision by reference to interpretative "topoi" or arguments, which fall into three main categories: linguistic, systemic and purposive, in addition to precedents. There is no overarching rule or formula governing the application of these topoi, e.g. which type of argument prevails in which circumstances. Judges, in consequence, enjoy considerable discretion in the application of the available topoi and over which topoi should enjoy primacy in which sets of circumstances. The lack of any methodological certainty in the application of the interpretative criteria ultimately means the problem of legal uncertainty is incapable of resolution. As there is no agreed method of judicial reasoning, legal reasoning cannot be scientific but must remain heuristic.

Against the background of his general analysis of the nature and limits of legal reasoning Beck demonstrates that vagueness, norm conflict and precedent instability are pervasive features of European Union law. The whole second part of Beck's book is devoted to an extensive review of the Court of Justice's case law. Beck concludes that the Court resolves the high degree of legal uncertainty in a broadly communitaire or integrationist direction. The key to the Court of Justice's restrained integrationism, according to Beck, is its cumulative interpretative approach by which it approaches interpretative problem from the combined perspective, and justifies its decisions in terms of the cumulative weight, of literal, systemic and purposive criteria.

Purposive considerations assume greater weight in the Court of Justice's legal reasoning than in the decisions of most higher national courts. The added weight given to teleology generally favours a more rather than less integrationist judicial response to most interpretative questions. In that sense the Court of Justice has been an important motor of EU integration, although Beck qualifies his conclusion in several respects:

- i. the EU treaties and secondary legislation are characterised by a high degree of vagueness and value pluralism which embody political compromises between member states whereby they effectively delegated key questions to the Court of Justice
- ii. in areas of political and budgetary sensitivity the Court of Justice often shows limited or specific deference to member states on the very specific issues in the case, whilst endorsing a broadly integrationist general principle of law which



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affords for flexible application especially through the dummy standard of the proportionality principle

- iii. national constitutional courts often follow a similarly textually 'creative' and politically deferential interpretative approach in politically charged cases involving issues of EU integration or budgetary and social policy issues in which the political executive has invested considerable political capital. Legal reasoning, Beck concludes, is ordinary legal reasoning in extraordinary language, and judicial decision-making is subject not to rules, but to regularities – political as well as psychological, rhetorical no less than methodological regularities. Elsewhere, Beck has argued that for these reasons the rule of law always remains a 'fair weather phenomenon'.

Biography

Dr. Gunnar G.H. Beck is a German legal philosopher, EU constitutional lawyer and political theorist. He was born in Düsseldorf and passed his Abitur at the Theodor-Schwann-Gymnasium in Neuss am Rhein in 1985. Gunnar Beck read law, politics, philosophy, economics and business economics in Oxford, Münster, Heidelberg and the Inner Temple, London and completed his doctorate in political and legal philosophy under the supervision of Professor Sir Isaiah Berlin in 1996 at Nuffield College, Oxford. He taught political, legal and moral philosophy at Oxford University while completing his doctorate. He subsequently worked for the international law firm Herbert Smith and as Deputy Legal Adviser (EU law) at the House of Commons. In 2003 Gunnar Beck was appointed visiting lecturer in EU law at the London School of Economics. He is Reader in EU law and Legal Theory at SOAS, University of London. In parallel to his academic work Gunnar Beck practises as a barrister and Rechtsanwalt.