2.4. ANALYSING CASE-LAW
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2.4.1 Introduction

Analysing case-law as case studies relies on the following premises:

- uses a case-law to exemplify principles of law;
- employs "hub-and-spoke" discussion between professor and student (Socratic method);
- analyses the dilemma after it has been resolved by the court.

STEPS TO PREPARE THE CASE-LAW AS CASE STUDIES

LEARNING OBJECTIVES → CHOOSING CASES → ASSIGNING QUESTIONS → MODERATING DISCUSSION → FINALISING

2.4.2 Set learning objectives

A law professor should clearly set the learning objectives of the case study in advance. The case that will be analysed by the students should be chosen precisely in line with those objectives.

2.4.3 Choose the case

The selected case should be an important one, preferably already decided on by a higher court instance or by international courts (depending on the situation). It would be the best to choose a case that shows a trend in interpretative methods and outcomes. However, the selected case could also demonstrate an innovative interpretative method developed by the court. Judges are often flexible and welcome more appropriate methods for reaching their decisions. Therefore, the selected case could demonstrate methods that move beyond case precedent, or case comparison.

For the comparative analysis several cases could be chosen, however, the number of cases given to the students should be reasonable, otherwise, there is a risk that students will chose to read only some of the given cases. In case there is a need to analyse a bigger number of cases, it is suggested to assign each case to a group of students.

Some examples of the choice of cases depending on the learning objectives (examples provided from the case-law of the international courts):

- analysis of the development of the position of the court (for instance, the changing position of the European Court of Human Rights in the cases regarding Roma evictions: *Buckley v. UK* (20348/92), *Chapman v. UK* (24884/94), *Yordanova v. Bulgaria* (25446/06), *Winterstein v. France* (27013/07)).
- comparison of the decisions and argumentation of different courts (for instance, different interpretation of the concept "home" by the European Court of Human Rights and the Court of Justice of the European Union: *Niemietz v. Germany* (13710/88) and C-46/87 - *Hoechst v. Commission*).
- comparison of the decisions and argumentation of different instances of the courts (for instance, different interpretation of the right to monitor employees by the Chamber and Grand Chamber of the European Court of Human Rights: *Bărbulescu v. Romania* (61496/08)).
- assessing if national courts follow the case-law of the international courts and apply similar standards.

2.4.4 Assign questions

A law professor should prepare a set of questions to be responded by the students as a preparatory work before the class. The questions should not be only theoretical ones but should also require the students to understand the case facts and identify the parties. Understanding the case facts also includes understanding the case's procedural history. A student should be able to trace the path the case followed from the initial lawsuit through the court system to end up before the court that issued the decision he/she is analysing. Ones the facts are understood, the assigned questions should require the students to identify the legal rules used by the court, and to develop arguments in favour of claimant and respondent.

2.4.5 Direct a flow of discussion

A law professor should direct the flow of class discussions. He/she should identify participants who hold opposing views and ask questions to stimulate debate. He/she should assign participants to stakeholder groups with different points of view of the situation. He/she should encourage input from all sides until the participants uncover most or all of the learning objectives.

2.4.6 Finalise

A law professor should direct the students into identifying the key takeaways of the case at hand. However, he/she should also require the students to consider how the rule would apply to different facts. The students should imagine different (but similar) factual scenarios, and apply the rules to those facts to see what the result would be. This would imply combining the analysis of the (existing) case law with analysing the hypothetical cases.

2.4.7 Further Materials/Readings

Smits, Jan M., The Use of Case Law in the Legal Curriculum: Why and How? (2022). The Use of Case Law in the Legal Curriculum: Why and How?, in: A.W. Heringa, S. Hardt et al (eds.), Legal Education in the 21st Century: Indonesian and International Perspectives, The Hague [Eleven] 2022, pp. 117-125, Available at SSRN: https://ssrn.com/abstract=4134260 or http://dx.doi.org/10.2139/ssrn.4134260

The Case Study Teaching Method. Harvard Law School. http://casestudies.law.harvard.edu/the-case-study-teaching-method/

Legal Interpreting Skill Development: Case Study Analysis. https://www.unco.edu/project-climb/toolkit/skill-development/legal-case-study.aspx

Arrifin, Adlina. The Reading of Legal Cases Among Law Students. Available at: https://www.academia.edu/5690883/The_Reading_of_Legal_Cases_Among_Law_Students

Level of difficulty: ★★★★★

Duration: ★★★★☆

Main teaching objectives: Transfer and application of theoretical knowledge to practical situations, learning about formal requirements, preparation for professional life by gaining practical experience