To Centre members, newsletter subscribers and members of CORA’s Advisory Board.

CORA Newsletter 4/2015

This newsletter contains a briefing on the activities of the centre this fall. In addition, future seminars and conferences in 2016 will be mentioned. However, the main news is – as in the previous newsletter – a follow up on the centre’s reapplication for extension and the positive international review of the centre activities, which was also mentioned in the previous newsletter. This positive review has now led to the dean’s final approval of the centre’s extension by 5 more years. CORA (2) will be elaborated directly below this section.

CORA (2)

The Faculty Dean, Jacob Graff Nielsen, has the 9th of December 2015 informed that he endorses the recommendation of the Associate Dean for research, Henrik Palmer Olsen that CORA will be extended for 5 more years. The extension will enter into force from the 1st of February 2016, and is conditioned by an early designation of Trine Baumbach as new leader of CORA. In relation to this the Associate Dean’s recommendation regarding the reconstruction of the Advisory Board of the Centre, is also endorsed.

Furthermore, the dean endorses, in accordance with the recommendation of the Associate Dean, the initiation of a process, which should result in a strengthening of the collective identity of the Centre in relation to research, funding, internationalization and communication. This process should in particular aim for a concretization of the manner, in which the Centre will actualize the planned research tracks as collective projects, achieve research grants, implement the desired international profile and secure a systematic mediation of the Centre’s research results.

Personalia

Professor Steen Rønsholdt resigns his position and will hereafter have status as professor emeritus (with the same office)

Professor Michael Gøtze has been elected as VIP-representative in The Academic Council, Faculty of Law, at the KU election in October.

Lector Lin Adrian has become a member of the steering Committee for the project Voluntary mediation in social housing organizations, which has been developed by the housing organization FSB and is funded by Trygfonden.

Articles

Peter Blume: Transfer of personal data, UfR 46/2015.417-420

With point of departure in the judgment C-362/14 of the Court of Justice of the European Union (CJEU)
regarding transfer of personal data to the USA by use of Facebook, the legal view of the CJEU is discussed, including, in particular, the problematic consequences of the judgment for data transfer in general. The author sees in this and other judgments of the CJEU – the repudiation of the Data Retention Directive as invalid, and the recognition of the individual’s right to data protection – a risk of that the CJEU is creating a disequilibrium of the rule of law in relation to the safeguarding of the societal concern, which is necessary for the acceptance of the personal data protection law, in the long term.

Niels Fenger: Preliminary requests for The European Court of Justice and the right to a fair trial in ECHR article 6, UfR 2015 B, p. 329. (Co-author: Morten Broberg)

It follows from the TFEU article 267, that the courts of the member states can – and sometimes must – refer questions regarding the interpretation and validity of the EU law in order for the Court of Justice of the European Union to give a binding answer. This article examines the European Court of Human Right’s treatment of the question of whether obligations for the courts of the EU member states, when taking position on a request to do a preliminary submission, can be deduced from ECHR article 6 on the right to a fair trial. The article points towards that the practice of the European Court of Human Rights regarding the requirements for the reasoning of a rejection to refer a preliminary request, presumably extent beyond several rulings on the subject of the Danish courts.

Niels Fenger: When does the Charter of Fundamental Rights of the European Union apply in cases at the Danish courts? Juristen 2015, s. 168.

The article analyses the scope of the Charter of Fundamental Rights of the European Union. It examines partly when the Charter is applicable in cases that affect directives and regulations, partly when the Charter should be observed in the application of Danish law, which is not compatible with directives and regulations. Finally, it discusses to which extent the Charter can be invoked in cases between private parties. The article points towards that the CJEU has given the Charter quite a wide scope, but that it continuously only will be a relatively small amount of all cases at the Danish Courts, where the Charter is relevant.

Niels Fenger: Preliminary requests from the Swedish courts: Are the Swedish courts significantly less likely to request preliminary rulings than courts in other Member States? Europarättslig Tidsskrift 2015, p. (in press). (Co-author: Morten Broberg)

The article disproves the often-stated thesis that Swedish courts relatively speaking are particularly withholding with referring preliminary questions. Simultaneously it, by means of statistical calculations, analyses the extent to which the number of preliminary requests is related to the inclination of the judges, and the extent to which the amount of preliminary submissions only reflect that there are not as many pending cases at the national courts, and therefore not as many occasions for preliminary requests.

Michael Gøtze: The importance of the person functioning as ombudsman for the ombudsman control in a danish context, Juridiska Föreningens Tidsskrift, 4/2015, s. 318-337.

The article cultivates a new approach to the presentation of the ombudsman. The analysis sheds light over the person functioning as ombudsman, including the person functioning as ombudsman’s influence on the regulatory control that is exercised by the ombudsman as an institution. Even though the total amount of ombudsman statements already because of its volume impossibly can be referred to the ombudsman himself, the analysis shows that the ombudsman can have an important personal influence on, among other things, the case selection of the institution and its general style of interpretation. Furthermore, the analysis
discusses the term of office of the ombudsman and contains arguments for and in particular against the time unlimited term of office, which was previously a part of the ombudsman construction in Denmark. The article contains a series of comparative studies.

Michael Gøtze: *Are the courts too system friendly?* Advokaten 8/2015 p. 31-34.

As a part of a series of articles in Advokaten on the basis of the Danish Bar and Law Society’s focus on the rule of law in public administration, the article sheds light on the courts traditionally cautious control of discretion, including the municipalities’ decisions in social cases. It is only a small proportion of the total amount of public administration practice that finds its way to the courts. Should a case arise, it often ends with the authority being exonerated, because the courts choose to avoid testing the discretion of the public administration. The article questions the appropriateness in a much ritualized approach to discretion. If actively border seeking and economically pressured authorities know in advance, that the courts will dodge the discreitional aspect, there is a risk that the courts role as a guarantor for the rule of law is weakened.


The article analyses a selection of current and fundamental challenges within the field of public law in Denmark, including, among other things, the increasing effect on regulating and practice by EU-law. The article applies an interdisciplinary perspective. Furthermore, the review contains the challenge that Danish courts are facing when being confronted with cases, which have character of being political in some form. Finally the article elucidates the new Danish Public Information Act, and it demonstrates that the law in several areas is a step back for the openness and there by possibility for control, that is traditionally being highlighted as a fundamental characteristic of the Danish authority system.

Peter Pagh: *Can the buffer zone law be enforced? – After the acquittal of two farmers for breach of the buffer zone law*, TfL3/2015.247-254.

Comment to a judgment by a district court, where to farmers where exonerated for the violation of prohibition of the buffer zone law not to cultivate nearby open streams. The judgment’s result was reasoned with the vague scope of application. This led to the prosecution authority taking no further action in 300 similar cases. Meanwhile the case also raised principle questions regarding compensation scheme, expropriation and EU-law, questions not regarded by the judgment. It is, among other things, these unanswered questions that are discussed in this article.


The article sheds light on the principle constitutional and EU-law questions that are raised in relation to the governments’ suggestion to the repeal of the Danish EU-justice opt-out, and is finished with a discussion of the possibility to maintain asylum and immigration as a national Danish competence in alignment with the remarks of the law.

Peter Pagh: *The direct effect of the EU Water Framework Directive – regarding a new CJEU-judgment in C-461/13 and the rulings of the Environmental Board of Appeal on complaints regarding the hydrological planning.*

The article sheds light on the scope of the direct effect of the EU Water Framework Directive that has been ascertained by the CJEU in case C-461/13. It compares the judgments’ interpretation of the Water Frame-
work Directive with the principle decisions from June 2015 of the Environmental Board of Appeal regarding the adopted hydrological plans, drawing attention to that no consideration regarding the legal effect has been taken by the Board, following from classification of the water areas as done in C-461/13.


Abstract: The Internet has made it easier for child sex offenders to get into direct contact with their victims, including the exchanging and distributing of “child pornography”. On a European level, child sexual exploitation is one of the three main priorities of EC3, Europol's Cybercrime Centre. Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children further prescribes that the EU Member States shall ensure that sexual offences against children are effectively investigated. However, when it comes to investigative measures such as undercover policing, national police forces are bound by national rules. This article concludes that undercover policing is a necessary investigative tool in order to detect and infiltrate the networks of these sexual offenders. Departing from a legal dogmatic method this article first examines relevant EU legal instruments. It then takes a comparative approach describing national differences in investigating sexual offences against children. Finally, it discusses whether common rules in the area are foreseeable within the existing frameworks of European law.

Trine Thygesen Vendius: *Europol's Cybercrime Centre (EC3), Its Agreements with Third Parties and the Growing Role of Law Enforcement on the European Security Scene*, European Journal of Policing Studies, 3(2), December 2015, 151-161

Abstract: The European Cyber Crime Centre, EC3, established under the umbrella of Europol, started operations on January 1 2013. It is to act as the focal point in the fight against cybercrime in the European Union. Using a “shared, cross-community approach” the EC3 is concluding partnerships with member states, European agencies, international partners and the private sector. This article describes the coming about of EC3 and its efforts to address cybercrime. Furthermore, the article is an attempt to assess the growing role of the European law enforcement community on the European security scene, this not least in view of the EC3’s mandate to conclude strategic agreements with a fairly high degree of autonomy.


/ Andersen, Martin Marchman; Landes, Xavier; Xiang, Wen; Anyshchenko, Artem; Falhof, Janus; Østerberg, Jeppe Thulin; Olsen, Lene Irene; Edenbrandt, Anna Kristina; Vedel, Suzanne Elizabeth; Thorsen, Bo Jellesmark; Sandøe, Peter; Gamborg, Christian; Kappel, Klemens; Palmgren, Michael Broberg.

Abstract: Organic farming is based on the concept of working ‘with nature’ instead of against it; however, compared with conventional farming, organic farming reportedly has lower productivity. Ideally, the goal should be to narrow this yield gap. In this review, we specifically discuss the feasibility of new breeding techniques (NBTs) for rewilding, a process involving the reintroduction of properties from the wild relatives of crops, as a method to close the productivity gap. The most efficient methods of rewilding are based on modern biotechnology techniques, which have yet to be embraced by the organic farming movement. Thus, the question arises of whether the adoption of such methods is feasible, not only from a technological perspective, but also from conceptual, socioeconomic, ethical, and regulatory perspectives.

Wen Xiang: *Integrating Public Participation into China’s Environmental Governance on Biotechnology:*

The research will be focused on the role of public participation in governance of biotechnology in China, and the implication of EU’s environmental policy in this specific area. Against the background of the role of public participation in international environmental governance of biotechnology, the paper will provide an overview on the EU’s public participation policy in terms of environmental governance on biotechnology, followed by discussion on China’s current trend on environmental governance regime on biotechnology. It is expected to address the following concerns: in the context of bilateral collaboration between the EU and China, what will be the implications of EU’s environmental policies on China’s environmental governance in terms of public participation in regulation of biotechnology, how to engage lay public into regulation of biotechnology to legitimate the environmental governance regime on biotechnology?

**Appropriations**

Ass. Professor Lin Adrian, CORA, in collaboration with colleagues in Norway and Finland, has been awarded 368.000 kr. for the project: Mediation Research in Scandinavia – where are we now and where are we going?, By the Joint Committee for Nordic Research Councils for the Humanities and the Social Sciences (NOS-HS) and the Swedish Research Council.

The project aims at developing and promoting Nordic mediation research and positioning it internationally by bringing Scandinavian researchers together in three explorative workshops. The primary purposes of the workshops are to create a strong multi-disciplinary network of Nordic researchers studying different forms and aspects of mediation, to consolidate mediation as an independent, coherent field of research in the Nordic countries, and to develop ambitious future research projects, including proposals for the Horizon 2020 funding scheme.

**Conferences**

Development trends in public law. On the occasion of entering CORA’s second approval period, the Centre will host a seminar on the 7th of January from 14 -15.30 with presentations by former ombudsman Hans Gammeltoft-Hansen, Head of Division at The Danish Parliamentary Ombudsman Lisbeth Adserballe, and professor Carsten Henrichsen, CORA.

After the seminar a reception will be held in meeting room 02-0-16, Studiegården, Studiestræde 6. Sign up here: http://jura.ku.dk/cora/kalender/udviklingstendenser-den-offentlige-ret/.

Evaluation seminar for Kristian Bruhn, the 17th of March. Evaluation by: Senior scientist, dr. phil. Karl Peder Pedersen, The Danish National Archives.

Police scientists meeting with Kai Vittrup in February. Preliminary title: Danish police and peace-keeping missions.

Kind Regard

Carsten Henrichsen
Head of Centre