ISSA Proceedings 2002 – The Rational Reconstruction Of Pragmatic Argumentation In A Legal Context: The Analysis And Evaluation Of Teleological Argumentation

1. Introduction

In law, pragmatic arguments referring to the consequences of applying a legal rule play an important role. When a judge wants to show that the application of a legal rule in a concrete situation is justified from the perspective of the goals the rule is intended to realize, he is using a specific form of pragmatic argumentation. He argues that the favorable consequences of applying the rule in the concrete case consist of realizing a goal the law is supposed to promote. From an instrumental perspective of the application of law, pragmatic arguments are an important way of defending the desirability of a decision, because they clarify how the decision contributes to the realization of the goals of the law by specifying the consequences of the decision in the concrete case in relation to these goals**(i)**.

A form of pragmatic argumentation often used by judges in the justification of a decision is teleological argumentation, argumentation referring to the goal of the rule. Judges use *teleological* argumentation in the context of the justification of the interpretation of a legal rule in a concrete case and argue that this interpretation can be justified from the perspective of the goal the rule is intended to realize. In legal theory, authors consider teleological interpretation as one of the methods of interpreting a legal rule, and teleological argumentation is therefore considered as an adequate way of justifying the application of a legal rule in a concrete situation.

Although teleological arguments are considered as an adequate way of justifying a legal interpretation, no instrument is offered for the analysis and evaluation of

teleological arguments in concrete decisions. To be able to establish whether a teleological argument is acceptable in a concrete case, it is important to determine whether the argument is a suitable argument for defending that particular decision and whether the argument itself is acceptable. In the legal literature, no comprehensive and systematic instrument for a rational reconstruction consisting of an analysis and evaluation of the argument with respect to is rationality, is offered.

The aim of this paper is to develop an instrument for a rational reconstruction of teleological argumentation as a specific form of pragmatic argumentation in a legal context. I will do this by integrating ideas taken from legal theory in a pragma-dialectical framework for analyzing and evaluating pragmatic argumentation, thus providing a more systematic and elaborate instrument for assessing the quality of teleological arguments in a legal context. In 2 I will characterize teleological argumentation as a specific form of pragmatic argumentation and I will describe how a systematic instrument for a rational reconstruction of teleological argumentation can be developed from a pragma-dialectical perspective. In 3 I will explain the function of teleological argumentation in a legal context. In 4 I will discuss the various forms of teleogical argumentation distinguished in legal theory and reconstruct these forms in as a specific legal implementation of the argumentation scheme for pragmatic argumentation. From a pragma-dialectical perspective, I will clarify the structure of simple and complex forms of teleological argumentation and I will describe the elements of the various forms of teleological argumentation and the function of these elements. In 5 I will proceed by describing the norms which, from the perspective of legal theory, are relevant for the evaluation of legal argumentation and rephrase these norms from a pragma-dialectical perspective as critical questions relevant for the evaluation of the various forms of teleological argumentation.

2. The rational reconstruction of teleological argumentation as a specific form of pragmatic argumentation

Teleological argumentation can be considered as a specific form of pragmatic argumentation. Therefore, to develop an instrument for the analysis and evaluation of teleological argumentation it is important first to determine the general characteristics of pragmatic argumentation.

In argumentation theory, pragmatic argumentation is considered as an

argumentation scheme based on a specific form of a causal relation**(ii)**. It is argued that a particular action X is desirable or undesirable because it 'causes' certain desirable or undesirable effects. From a pragma-dialectical perspective, the basic form of this argumentation scheme can be represented as follows:

(1) Basic form of pragmatic argumentation

1 Action X is desirable

1.1a Action X leads to Y

1.1b Y is desirable

Underlying this scheme is also the following implicit premise: 'if action X leads to Y and Y is desirable, then action X is desirable'.

In pragmatic argumentation, the standpoint refers to a particular act X (which can be a decision, a proposal, a certain policy). In the most simple case where the consequences are not specified, the argumentation consists of a normative statement stating that consequence Y is desirable and an empirical statement stating that act X leads to consequence Y. A similar scheme can be formulated for the negative variant in which it is argued that action X is undesirable, and combinations exist of elements of the positive and negative variant**(iii)**.

Pragmatic argumentation is a general term for argumentation in which a course of action is defended by referring to its consequences. Depending on the way the consequences are implemented, it can be considered as teleological or goal argumentation if the consequences are presented as the attainment of a particular goal, or as policy argumentation if the consequences are presented as the implementation of a particular policy**(iv)**.

Often, pragmatic argumentation is part of a more complex argumentation. The (un)desirability of the consequences may be examined in the light of the desirability of certain goals. Those goals, in turn, can be defended by referring to certain values and principles. In such cases, pragmatic argumentation is supported by other arguments. Pragmatic argumentation can also be supplemented by other arguments. It can be the case that pragmatic argumentation is, from the perspective of the arguer, a relevant and necessary reason for defending the desirability of a certain course of action, but that pragmatic argumentation is not sufficient and needs to be supplemented by other forms of argumentation such as ethical argumentation referring to the desirability of the course of action from an ethical perspective**(v)**.

From a pragma-dialectical perspective, for each type of argumentation which is

based on an argumentation scheme, in the evaluation specific critical questions are relevant. There are questions with respect to the adequacy of the argumentation scheme for defending a particular type of standpoint in a particular context, and there are questions with respect to the correct application of the argumentation scheme in the concrete situation.

For pragmatic argumentation, with respect to the adequacy of the use of the argumentation scheme the following question is relevant:
1. Is pragmatic argumentation an adequate way of defending this standpoint in this context?

For example, pragmatic argumentation is not adequate for defending a standpoint consisting of an empirical statement. Deriving an empirical conclusion from a normative statement would amount to committing the fallacy of argumentum ad consequentiam**(vi)**.

With respect to the correct application of the argumentation scheme in the concrete case the following questions are relevant:
2. Is consequence Y desirable?
3. Does action X lead to consequence Y?

The answers to these critical questions may constitute supporting or additional arguments. As I noted above, for example, pragmatic argumentation may be supported by arguments defending the desirability of Y (an answer to question 2) etc. With respect to these supporting arguments subsequent critical questions are relevant. Depending on whether the support also consists of pragmatic argumentation or another type of argumentation, the critical questions for pragmatic or other types of argumentation are relevant.
For various forms of pragmatic argumentation and for the implementation of these forms in various contexts it must be investigated which norms are relevant for the evaluation and how these norms can be translated as critical questions for the evaluation.
For our purposes the perspective sketched above implies that it must be investigated what teleological argumentation in a legal context exactly consists of, how it constitutes a specific implementation of general pragmatic argumentation and which critical questions are relevant for the evaluation. This implies that it must be established what the exact function of teleological argumentation is in a legal context, which forms can be distinguished, what the

elements of teleological argumentation are, which norms for the evaluation apply, and how these norms can be formulated as various forms of critical questions.

3. The justification of legal decisions and teleological argumentation

Teleological arguments are often used in the justification of a decision in which a judge gives an interpretation of a particular legal rule**(vii)**. When a judge gives a decision, he must establish the meaning of the relevant legal rule(s) for the case at hand. In many situations, the meaning of the rule is clear in the context of the concrete situation, and the rule can be applied to the case without further interpretation. But there are also situations in which various interpretations of the rule for the concrete situation are possible. This makes it necessary for the judge to justify the chosen interpretation of the rule.

One of the methods a judge can use to interpret a legal rule is the method of teleological interpretation which implies that the judge establishes the meaning of the rule on the basis of the goal the rule is intended to realize. Teleological interpretation is often used when an interpretation based on the literal meaning of the rule (linguistic interpretation) or an interpretation based on the place of the rule within the legal system (systematic interpretation) does not offer an acceptable solution. Because legal rules are supposed to secure certain legal and social goals, teleological interpretation is an acceptable way of establishing the meaning of a rule.

In their international research project on the use of various forms of argument used in justifying a legal interpretation MacCormick and Summers (1991,518 ff.) use the term *teleological-evaluative* argumentation for arguments that refer to the *goals* and values which must be realized by applying a legal rule. When giving a teleological-evaluative interpretation, a judge asks himself the question what the aim of the rule is, how he can avoid giving an interpretation which would impede realizing a goal presupposed by the rule and the legal system as a whole. The goal of a rule can be considered as an evaluative ground on the basis of which possible interpretations can be considered as desirable or undesirable to attain the postulated goal.

Teleological argumentation constitutes a specific legal implementation of pragmatic argumentation. Starting from the general scheme (1) for the basic form of pragmatic argumentation given above, this implementation can be represented as follows:

(2a) Basic form of teleological argumentation

1 Interpretation R’ of rule R is desirable
1.1a Interpretation R’ leads to realizing goal G
1.1b Goal G is desirable

In legal theory, various authors discuss the different aspects of the structure of teleological argumentation and the norms for teleological argumentation. In what follows, I will first describe the various forms of teleological argumentation. Then I will go into the norms for the evaluation.

4. Two forms of teleological argumentation
In legal theory, various authors such as Alexy (1989), Golding (1984) and MacCormick (1978) discuss the use of teleological argumentation in the context of the interpretation of a legal rule. They use different names for this form of argumentation such as practical argumentation, policy argumentation, goal argumentation, teleological argumentation. The common aspect is that an interpretation is defended by referring to the goal of a legal rule.

Using a pragma-dialectical perspective for representing an argumentation scheme, the general argumentation scheme underlying a teleological interpretation can be represented as follows:
(3a) Basic form of teleological argumentation
Standpoint: Rule R must be interpreted as R’**(viii)**
Because: R’ is a means to attain goal G
and: Goal G is a goal the law ought to promote

The standpoint is a normative statement that rule R must be interpreted as R’, the argumentation consists of an empirical statement that interpretation R’ is a means to attain goal G and a normative statement that goal G is a goal the law ought to promote.
In legal theory, two distinct forms of teleological argumentation are distinguished: *subjective-teleological* argumentation and *objective-teleological* argumentation**(ix)**.
The difference between the two forms of argumentation concerns the second argument that rule R is a means for attaining goal G. When a judge uses subjective-teleological argumentation he argues that the legislator has formulated rule R or has intented rule R as a means for attaining goal G, and when a judge uses objective-teleological argumentation he argues that goal G ought to be promoted by the law, that goal G is a rational goal objectively prescribed by the

valid legal order**(x)**.
Alexy (1991,93) locates the distinction between these two forms of teleological argumentation in the context of a general priority among the canons of interpretation. In the German literature on legal interpretation he distinguishes a *subjective* approach of legal interpretation saying that the aim of interpretation consists in finding out the historical legislator's actual intention, and an *objective* approach saying that the aim is to find the law's reasonable meaning. The subjective approach involves giving priority to semiotic and genetic arguments, that is to the wording of the statute and the intention of the historical legislator. The objective approach keeps open the possibility that a judge gives priority to objective-teleological arguments and to other arguments based on rationality in general**(xi)**.

The two forms of teleological argumentation can be reconstructed as two variants of the general form of teleological argumentation:
(3b) Subjective-teleological argumentation
1. Rule R must be interpreted as R'
1.1a R' is a means to attain goal G
1.1b Rule R is intended by the historical legislator as a means to realize goal G

(3c) Objective-teleological argumentation
1. Rule R must be interpreted as R'
1.1a R'is a means to attain goal G
1.1b Goal G is a rational goal objectively prescribed by the valid legal order

Using the pragma-dialectical perspective it can be clarified that the two forms of teleological argumentation have a common structure and can be reconstructed as implementations of the general basic form of teleological argumentation. They only differ with respect to the argument 1.1b in which it is specified from which perspective realization of the goal is desirable.
The argumentation schemes are basic forms of subjective and objective teleological argumentation. In practice, there are various kinds of variations and extensions of these argument schemes. Extensions can be considered as subordinate arguments supporting the arguments of these basic forms which constitute an answer to a (possible) critique of this argument. As I have described in 2, the various forms of critique can be considered as critical questions with respect to the various parts of an argumentation scheme. In the following section, I will discuss the various norms for the use of teleological argumentation

described in legal theory, and I will explain how these norms can be formulated as relevant critical questions for assessing the quality of teleological argumentation.

5. Norms for the use of teleological argumentation

From a pragma-dialectical perspective, two kinds of critical questions are relevant for the evaluation. The first type of question asks whether the argumentation is an adequate way of defending a certain type of standpoint in a particular context and the second type of question asks whether the argumentation is applied correctly in the concrete case. To get a systematic view of the norms relevant for the evaluation of teleological argumentation in law, I will discuss the various ideas of the legal authors with respect to the correctness of teleological argumentation from the perspective of these two kinds of questions.

5.1 Is teleological argumentation an adequate way of defending a legal interpretation?

The question whether pragmatic argumentation in general is an adequate way of defending a legal standpoint is addressed by various authors in legal philosophy. As I have explained elsewhere, most authors in modern legal philosophy representing an *ethical-pluralist approach* such as Bell (1983), MacCormick (1978) and Summers (1978) are of the opinion that in the justification of legal decisions two kinds of arguments play a role**(xii)**. Deontological or moral arguments are important to justify that the decision is coherent and consistent with relevant legal and moral rules and principles. Consequentialist, pragmatic or teleological arguments are important to justify that the proposed decision has no undesirable consequences**(xiii)**.

In legal theory, the question whether teleological argumentation is an adequate way of defending a legal interpretation is approached from the perspective of the hierarchy of the various interpretation methods. In their international research project on the methods of legal interpretation, MacCormick and Summers (1991) describe the preferred order for the use of various forms of interpretative arguments. First, judges are supposed to look for *linguistic* arguments, referring to the meaning of the expressions used in the rule because this argument is the most close to the intention of the legislator. If such an argument offers no acceptable solution, a judge can look for *systematic* arguments referring to the position of the rule in the legal system and the relation with other rules because this argument still refers to the explicit words and intentions of the legislator. If also systematic arguments do not offer an acceptable solution, a judge can look

for *teleological-evaluative* arguments which refer to the goals of the rule.

On the basis of this hierarchy, teleological arguments are only acceptable if the other arguments do not offer an acceptable solution. When a judge uses teleological argumentation, according to MacCormick and Summers (1991,531) and Alexy (1989,248), a judge is obliged to justify why the other two forms of argumentation do not offer an acceptable solution. So, the relevant critical question for a correct choice of teleological argumentation is:
1. Does the judge explain why a linguistic and a systematic interpretation do not offer an acceptable interpretation of rule R?
If the justification consists of only a teleological argument the critical question 1 is relevant. If the teleological argument is presented as a supplement to other arguments such as for example a systematic argument, it is not necessary to answer question 1, because the decision does not only rest on the teleological argument.

Related to this point is the distinction made by Alexy between subjective and objective approaches of legal interpretation discussed in section 4. With respect to the adequacy of teleological argumentation, these approaches result in different answers to the critical questions. If a judge uses objective-teleological argumentation the question can be asked whether it is allowed to take into account considerations based on the reasonable purposes of the law. If a critic adopts a subjective position, this question may be answered negatively if there are no other arguments supporting the interpretation. If a critic adopts a objective position, this question may be answered positively.

5.2 Has the teleological argumentation been applied correctly in the concrete case?
From a pragma-dialectical perspective, various critical questions can be answered with respect to the various elements of the basic form of a teleological argument. These questions are:
2. Is goal G desirable?
3. Does interpretation R' lead to realizing goal G?

MacCormick (1978,262-263) adds another question:
4. Is R' desirable as a means for realizing goal G?
In what follows, I will address these three kinds of questions.

Questions concerning the normative argument: is goal G desirable?
The general question is:
2a Is goal G desirable?

In the two forms of teleological argumentation the desirability of the goal depends on different considerations.

For subjective-teleological argumentation, the desirability of the goal depends on whether this goal is to be found in the explicit formulation of the intention of the historical legislator in which he states that rule R is intended to attain goal G. With respect to this intention, Alexy (1989,238-239) and MacCormick and Summers (1991,518ff) note that it can sometimes be difficult to establish who is the subject of the 'will of the legislator' and what exactly is the 'will of the legislator'. Is the subject the totality of elected representatives in parliament?
For objective-teleological argumentation, the desirability of the goal depends on whether goal G can be considered as a rational goal in the valid legal order. Alexy (1989,242-243) and MacCormick (1978,263) are of the opinion that for teleological argumentation an extra justification is required if for the description of the situation in which goal G can be considered as realized, further general norms or principles are required. They note that teleological argumentation always refers to a certain goal or desired state of affairs, but that that goal or state of affairs is never *ad hoc* but related to a general principle. Therefore, for a complete justification, in the ideal situation it is necessary to indicate on which general principles or values a goal is based. In this way, teleological argumentation becomes argumentation on the basis of principles.
With respect to the justification of teleological argumentation in general, Alexy (1989,246,284ff) remarks that forms of teleological argument open up the field to general practical reasoning, because various elements of legal arguments may require further justification with arguments referring to considerations outside the legal context. The normative argument may be justified by using general practical considerations, and the choice between different interpretations leading to different results may require justification.

In relation to these considerations the following critical questions are relevant:
For subjective-teleological argumentation:
2aS Is goal G indeed intended by the historical legislator?

For objective-teleological argumentation:

2aO Is goal G indeed a rational goal objectively prescribed by the valid legal order and is goal G based on general legal principles and/or values underlying the legal order?

Various authors such as Alexy, Golding and MacCormick remark that goal G can be desirable in itself, but that there can be circumstances in which goal G is incompatible with other goals of the legal system. A consequence could be that another interpretation which is consistent with these goals must be looked for, that an exception must be made, or that the rule must not be applied at all. In such situations the following critical question can be relevant**(xiv)**:

2b Is attaining goal G not inconsistent with other goals G', G" etc.?

According to Alexy, in such situations rules of preference are necessary to indicate a hierarchy among the various goals. In such cases, there is also a critical question relevant about these rules of preference. As an answer, supporting argumentation is necessary which justifies why goal G is to be preferred above other goals G' or G".

Questions concerning the empirical argument: questions concerning the relation between interpretation R' and goal G

The general formulation of the question relevant in relation to this argument is:
3a Does interpretation R' lead to realizing goal G?

Depending on whether R' is presented as a necessary, a sufficient or a necessary and sufficient condition, this question can be formulated in various ways.

Interpretation R' is a necessary means for realizing goal G

Golding (1984,59) argues that often a particular goal G can be attained in various ways, so that neither R' nor R" is a necessary means to realize G. In that case a judge can decide that both interpretation R' and R" are acceptable, or he can establish an order of preference based on further considerations, like the principles and values mentioned above, which requires further justification of this preference.

The relevant critical question with respect to the empirical argument in which R' is presented as a necessary means for realizing goal G is:
3aNC Is R' the only means for realizing goal G? Are there other interpretations

(R” or R”’) to realize goal G?

If there is an order of preference among the various interpretations to realize goal G, a following critical question is why the proposed interpretation offers a better way of realizing goal G.

Interpretation R’ is a sufficient means for realizing goal G

Alexy (1989,242) argues that often goal G is not justified by one rule or norm, but by a group of rules and norms. In such cases, interpretation R’ is not a sufficient condition for realizing goal G, there are more arguments necessary specifying the additional requirements for G. It is only sufficient to present one single rule as an argument for realizing G if the norm explicitly states the desirability of the goal. In this context the question is relevant whether R’ is a sufficient condition for realizing goal G or whether other conditions must also be fulfilled:
3aSC Are there any other factors which must be present together with R’ to realize goal G through R’?

If R’ is presented as both a necessary and sufficient condition for realizing goal G, both questions 3aNC and 3aSC are relevant.

3. Questions concerning the desirability of R’ as a means for realizing goal G
MacCormick (1978,263) indicates that a third type of question is relevant with respect to the desirability of goal arguments. Regardless of the efficacity of R’ as a means to realize G, on other grounds it can be undesirable to choose for interpretation R’ or to choose R’ as a means to realize G. A relevant critical question in this context can be:
4a Does interpretation R’ have any undesirable side-effects?

Furthermore, MacCormick and Summers (1991,523) are of the opinion that the proposed interpretation must be coherent and consistent with relevant legal values and principles:
4b Is R’ coherent and consistent with relevant legal values and principles?

6. Conclusion
In this paper I have described the role of teleological argumentation in a legal context and the way in which this specific form of pragmatic argumentation can be analyzed and evaluated in an adequate way.
Teleological argumentation has a function in the justification of a legal decision

when a judge wants to show that the preferred interpretation of a legal rule in a concrete case contributes to attaining a particular goal which is desirable. The specific legal aspect is that it is argued and defended that the goal is desirable from a legal perspective.

By using a pragma-dialectic perspective I have clarified the function that the various arguments, the normative argument and the empirical argument, have in the justification of the interpretation and which kinds of arguments can be relevant in supporting the two kinds of argument as an answer to (possible) critical questions.

The *normative argument* in which a judge refers to the desirability of the goal links the argumentation to the legal system by stating that the goal is desirable from a legal perspective. In subjective-teleological argumentation the desirability is based on the exact words and on the intention of the historical legislator, and the question is relevant where this intention can be found. In objective-teleological argumentation the desirability is based on values and principles underlying (part of) the legal system, and the question is relevant which legal principles and values underlying the legal system justify the claim that this goal is underlying this particular rule.

The *empirical argument* can take on different forms, depending on whether the interpretation is presented as a necessary, sufficient or necessary and sufficient condition. If R' is presented as a necessary condition, it is relevant to ask whether the proposed interpretation is the only way to realize a particular goal. If R' is presented as a sufficient condition, it is relevant to ask whether there are other factors which must be present to realize this goal through R'.

Furthermore there are two questions with respect to the desirability of R', regardless of the efficacity of R' for realizing goal G. The first question is whether interpretation R' has undesirable side-effects when considered from a different perspective. The second question is whether interpretation R' is coherent and consistent with relevant legal values and principles.

We have seen that teleological argumentation is used in the context of the justification of the interpretation of a legal rule, and that in legal theory two forms of teleological argumentation, subjective and objective teleological argumentation are distinguished. Therefore, in evaluating the justification of a legal interpretation for the different forms different critical questions can be relevant. With respect to the desirability of the goal different critical questions are relevant with respect to the reasons why the judge thinks that a particular goal is

desirable. From the perspective of subjective-teleological argumentation, the questions asks whether the goal is intended by the historical legislator. From the perspective of objective-teleological argumentation, the question asks whether the goal is a rational goal prescribed by the valid legal order. In the context of objective-teleological argumentation, a further question can be relevant whether this goal is based on general legal principles and/or values.

The integration of the pragma-dialectical and legal-theoretical perspective proves to be fruitful in two directions. For legal theory, the pragma-dialectical perspective allows for a distinction between various types of norms for the use of teleological argumentation. It has been demonstrated which norms can be considered as relevant for critical questions relating to the adequacy of teleological argumentation as an argumentation scheme and which norms can be considered as relevant for critical questions relating to the correct application of the argumentation scheme. The description of the function of the various elements of the argumentation scheme clarifies why for the normative argument different forms of critique are relevant than for the empirical argument.

For pragma-dialectics the integration allows for a better understanding of the ways in which the various evaluation questions can be implemented. It can be explained that certain questions relating to a correct choice or the correct application of an argumentation scheme can be related to the specific conception of reasonableness underlying the norms applied in assessing the quality of the argumentation. From the perspective of legal philosophy, the adequacy of teleological argumentation depends on whether a critic adopts a purely teleological, a purely deontological, or an ethical-pluralist approach. From the perspective of legal theory, the adequacy of the subjective vs. the objective variant of teleological argumentation depends on whether a critic represents a subjective or an objective approach of legal interpretation. Furthermore, value hierarchies underlying the preference for one particular goal above another goal and value hierarchies underlying the application of general principles and values in assessing the desirability of a goal are based on conceptions about the function of law in society.

Integration of the two perspective makes it possible to give a rational reconstruction of the various arguments which must be put forward in support of the various parts of teleological argumentation. Further research must show how these considerations are taken into account in the analysis and evaluation of actual examples of justifications of judicial decisions.

NOTES

[i] For a discussion of the legal-philosophical views with respect to the function of pragmatic argumentation see Feteris (2002a).

[ii] See van Eemeren and Grootendorst (1992).

[iii] For a description of the various forms of pragmatic argumentation see Feteris (2002b).

[iv] As has been argued by various authors such as Garssen (1997) and Schellens (1985) it is not necessary to distinguish a specific argumentation scheme for these forms of argumentation because the types of critical questions relevant for the evaluation are similar.

[v] For a more extensive discussion of the function of pragmatic argumentation in complex forms of legal argumentation see Feteris (2002a).

[vi] See Van Eemeren and Grootendorst (1992) and Walton (1999)

[vii] I concentrate here on the use of pragmatic argumentation in the context of the justification of a legal interpretation. Pragmatic argumentation is also used in other contexts in law. The negative form of pragmatic argumentation is often used when a judge wants to defend the decision not to apply a legal rule in a concrete case by referring to the negative consequences of applying the rule. See for such arguments on the basis of negative consequences Alexy's (1989, 283-284) and Goldings (1984, 59 ff.) discussion of the argument from negative consequences or argumentum ad absurdum.

[viii] The formulation of the standpoint as 'Rule R must be interpreted as R" is based on Alexy's formulation. Depending on whether the standpoint expresses a 'must' or 'ougt' position, the standpoint can be formulated in various ways.

[ix] Other terms used are genetic argumentation for subjective-teleological argumentation. Alexy (1989,236) distinguishes two forms of genetic argumentation: the first occurs when it is said that the proposed interpretation is what the legistlator directly intended, the second arises when it is claimed that the legislator adopted R as a means for advancing the goals Z1 etc and that R' is necessary in order to bring about Z. Alexy remarks that this second form is af form of teleological argumentation. Following Larenz, Alexy (1989, 240 ff.) calls our second form of teleological argumentation also objective-teleological argumentation.

[x] Alexy (1991, 88) considers subjective-teleological argumentation as a variation of what he calls in Alexy (1989, 241) genetic argumentation which is used when a judge defends the interpretation by referring to the intention of the legislator and shows that the interpretation is a means to reach the end intended

by the legislator.

[xi] Alexy (1991,88) observes that in Germany the formula with which a judge refers to the goal of a legal rule, which is often used in legal practice, is highly controversial in the literature. Critics argue that it gives too much freedom to the interpreter to read his own beliefs about right and reason into the norm. MacCormick and Summers (1991, 524) observe that argument from intention is highly variable in content, indeterminate in itself and has a weight to be determined in the light of highly contentious issues in legal and linguistic theory, political philosophy and the philosophy of mind.

[xii] See Feteris (2002a).

[xiii] In Feteris (2002a) I have explained that teleological argumentation can be used as only argument, but also as part of a more complex argumentation. Often judges use teleological argumentation as a reinforcement or addition to other arguments such as systematic arguments.

Drawing on these ideas, for the use of teleological argumentation in a legal context, a distinction must be made between situations in which the teleological argumentation offers the only positive support for the interpretation and situations in which teleological argumentation functions as a reinforcement of other arguments. Given this distinction, there are different critical questions relevant.

[xiv] In these cases Golding (1984) proposes to reformulate the standpoint by including a reservation in the standpoint 'if there are no countervailing considerations, R' ought to be recognized by the law'

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