

Index

(Article) 255 Panel, 45-53 amicus curiae candidates for renewal of a term of at the ECJ, 121-129 office, 97 at the ECtHR, 123 at the United States Supreme Court, 125 composition, 49 European Ombudsman, 112 definition, 122 functions, 124-127 exchange with Parliament, 115 interviews, 107, 112 archives (ECJ), 8 member nominated by Parliament, 115 Article 47 Charter of Fundamental Rights, 10 Article 6 ECHR, 11, 139 national pre-selection, 50-51 opinions, 45-46, 112 process, 49-51 Bay Larsen, Lars, 91 productivity of ECJ members, 97 Borg Barthet, Anthony, 87, 92 reception, 47 selection criteria, 51-53, 106-107 case assignment to judge-rapporteur, transparency, 49, 111, 113 84-97 at the GC, 147 unfavourable opinions, 46, 49 access to documents effects on reappointment, 96 administrative documents (ECJ), 8 equality of judges, 146 institutional independence, 96 as a research strategy, 8 opinions by 255 Panel, 112-113 integration of new judges, 94 submissions in ECJ proceedings, 135 language skills, 96 administrative committee, 55 power of the president, 146 principle of legal judge, 148 Advocate General attending the deliberations, 138-141 specialisation of judges, 95, 148 autonomy vis-à-vis judges, 137 case assignment to judicial formation, 97-101 case assignment, 137 collaboration with judge-rapporteur, at the ECtHR, 98, 101 136 at the GC, 146 comparative law, 77 reassignment of cases, 101 criteria for selection, 53, 116 case management, 83 decisions without Opinion, 141 Catalano, Nicola, 33 democratic role, 136 chamber system, 81-84, 141-145 at the GC, 146 First Advocate General, 137 gender diversity, 108 chamber of five judges, 143, 144 chamber of three judges, 141 number, 142 permanent and rotating, 142 development, 82 preliminary report, 136 election of chamber presidents, 88 rapporteur public, 133, 139 gender diversity, 108 right to a fair trial, 138 plenary, 81 role of Opinion in deliberations, 137 representation of Member States, 82

176



INDEX 177

Commission. See legal service, intervention Franco-German parity, 31 French as working language in direct actions, observations in preliminary reference proceedings, High advantages, 149 bilingual deliberations, 153 Authority comparative law notes, 77-79 equality of judges, 150 methodology, 78 law clerks, 151 publication, 78 proficiency of judges, 150 use of other languages by Advocates subjects, 78 comparative procedural law, 3 General, 153 functions of courts, 11-12 Copenhagen Declaration, 66 Costa v. ENEL, 43, 61 Court of the Coal and Steel Community, gender diversity 27 - 38at the ECJ, 108 at the GC, 110 action for annulment, 28 adversarial principle, 34, 35 general meeting, 98 Advocate General, 31 administrative decisions, 55 chamber system, 37 case assignment to judicial formations, Conseil d'État as inspiration, 26 100-101 deliberations, 38 comparative law notes, 78 effects of decisions, 28 German Federal Constitutional Court, 49 hearings, 36 Grand Chamber ICJ as inspiration, 29, 35 composition, 82, 88, 144 intervention, 34-35 judge-rapporteur, 86 judge-rapporteur, 37 presidents of chambers of five judges, 88 judicial independence, 33 representation of Member States, 82 legal qualification of judges, 31 request for referral, 67 number of judges, 30 role, 145 selection of judges, 29-32 size, 144 working language, 38 Guide traitement des affaires, 8, 79, 98, crisis of European integration, 42 99, 136 democratic principles (of the TEU), 103 Häberle, Peter, 23 Habermas, Jürgen, 20-24 Habermas' discourse theory accountability, 134 application to ECJ, 103 civil society, 121 conditions for successful deliberation, 23 deliberation, 135 constructive interpretation, 22 participatory democracy, 121 functions of courts, 21 principle of openness, 129 judges as representatives, 22 representative democracy, 118 judicial deliberations, 22 underlying democratic theory, 104 publicness of courts, 22, 23 role of the parties, 21, 23 diaries of former judges, 7 direct effect of EU law, 43 High Authority, 27 Donner, Andreas, 32 competences, 27 Due, Ole, 85 control, 27 legal instruments, 27 European Economic Community, 42 European Parliament ideal models, 12 committee on legal affairs, 119 Ilešič, Marko, 91 independence (of ECJ members) decision to intervene or submit observations, 119 as a selection criterion, 33, 51 drafting of ECJ submissions, 119 case assignment, 96 role in selecting ECJ members, 114 Code of Conduct, 53 strategy in ECJ proceedings, 120 effect of 255 Panel, 47 European Political Community, 42 Poland, 49 expert opinion, 36, 74 reappointment, 96



178 INDEX

international courts, 16, 26 Martinie v. France, 140 intervention in direct actions measures of organisation, 74-77 EII institutions 60 methods of interpretation, 3 Member States, 60 Möllers, Christoph, 13-16 natural or legal persons, 72 interviews observations in preliminary reference as a research strategy, 9 proceedings Commission, 60 judge (ECJ). See also (Article) 255 Panel European Parliament, 70, 118 Member States, 60, 61-63 as state representative, 30 Code of Conduct, 53 natural or legal persons, 73 gender diversity, 111 gowns, 29 participation (ECJ). See also amicus curiae, hierarchy between judges, 94 observations in preliminary reference regulation of outside activities, 54 proceedings, intervention in direct renewable term, 33 actions access to submissions, 134 selection by common accord, 30, 31, 45, 109 anticipating importance of case, 69 selection criteria, 32, 51-53 comparison ECtHR, 63 third-country nationals, 30 democratic perspective, 116-135 judge-rapporteur, 84-97, see also case differences between Member States, 62 dissemination of ECJ case law, 67-69 assignment to judge-rapporteur case management, 83 drafting of submission, 70 collaboration with Advocate effects of participation, 70 General, 136 language, 67 politicisation, 69 power, 83 time pressure, 83 requesting Commission to join, 76 Juhász, Endre, 93 requesting Member States to join, 75 time limits, 68 Kress v. France, 139 Prechal, Sacha, 91 preliminary reference procedure, 43, see Latour, Bruno, 7 also observations in preliminary referlaw clerks ence proceedings influence, 151 preliminary report, 98-100 nationality, 151 agenda setting, 99 regulation of outside activities, 55 case assignment, 99 screening of preliminary report, 100 comparative law notes, 78 Lecourt, Robert, 85 decision by general meeting, 100 legal service discussion in general meeting, 100 Commission, 65, 69 functions, 99 European Parliament, 119 length, 99 Lenaerts, Koen, 47, 87, 91, 96 screening by chambers, 100 Luhmann, Niklas, 20 president (ECJ). See also case assignment to Luhmann's systems theory judge-rapporteur acceptance of court decisions, 18 as judge-rapporteur, 87 as member of the administrative comconcept of legitimacy, 18 consistency of case law, 20 mittee, 55 function of the legal system, 16 as member of the committee of eldest, 54 functions of courts, 17-18 as member of the Grand Chamber, hard cases, 17 88, 144 hierarchical court organisation, 20 authority among judges, 146 liberal critique, 18 case assignment to Advocate neutrality of the judge, 18 General, 137 normative dimension of the theory, 17 case management, 83

election, 32

proposing members of 255 Panel, 47

publicness of courts, 19

role of the parties, 19-20



INDEX 179

press department, 56–58 drafting of press releases, 57 information policy, 58 interviews, 58 primacy of EU law, 43

Rasmussen, Hjalte, 3 research and documentation department, 77-80, see also comparative law notes case law analysis, 79 fiche de préexamen, 79 right to a fair trial, 2, 10, 138, 148 Rueff, Jacques, 31, 33

Sauvé, Jean-Marc, 46 Schiemann, Konrad, 88 secrecy of deliberation, 7 separate opinions, 129–133 Advocate General as substitute, 133 at the ECtHR, 131, 132 effects on authority, 131 reappointment of judges, 132 Serrarens, Petrus, 30, 31 Shapiro, Martin, 11 Skouris, Vassilios, 47, 83 Spinelli report, 114

time pressure, 141, *see also* case management Treaty of Lisbon, 103, 156

Vajda, Christopher, 83, 88 Van Gend en Loos, 43 vice-president (ECJ), 144, 148 as member of Grand Chamber, 88 von Danwitz, Thomas, 95 Voßkuhle, Andreas, 48

Weiler, Joseph, 3 witnesses, 74 Wyrzykowski, Mirosław, 49