

# Table of Contents

Abbreviations	13
Chapter 1 Introduction	17
<i>Wolfgang Hau, Bart Krans and Anna Nylund</i>	
Chapter 2 When is a body a court under EU law?	23
<i>Anna Nylund</i>	
I. Introduction – from what to when	23
II. Courts as organs requesting preliminary rulings	25
1. Introduction	25
2. Institutional criteria	28
3. Functional criteria	32
4. Procedural criteria	34
5. Concluding remarks on “courts” and preliminary rulings	36
III. The right to effective judicial protection	37
IV. Brussels I bis Regulation	39
1. Introduction	39
2. Institutional criteria	41
3. Procedural criteria	44
4. Procedural implications beyond Article 45	49
V. European small claims, payment order, and enforcement order procedures	51
VI. Conclusion	54
Chapter 3 What is a judicial decision from the perspective of EU law?	57
<i>Aleš Galič</i>	
I. Introduction	57
II. The concept of a “judgment” in EU primary law	58
III. The definition of a “judgment” in the Brussels I Regulation	59
IV. European Order for Payment Regulation	66

V. EU family law and successions	69
1. The Brussels II ter Regulation	70
2. The Succession Regulation	74
VI. Conclusion	79
Chapter 4 What types of tasks does EU law reserve for formal courts?	83
<i>Wolfgang Hau</i>	
I. Introduction	83
II. Prerogative clauses: illustrations taken from criminal law	83
III. Prerogative clauses in civil and commercial matters	85
IV. Illustrations in EU secondary law on civil and commercial matters	89
1. No delegation to out-of-court bodies	89
2. No delegation to non-judicial court personnel	94
V. Conclusion	98
Chapter 5 Judicial protection as protection against the judiciary: Is there a right of appeal against court judgments in European civil procedure?	99
<i>Anna W Ghavanini</i>	
I. Introduction	99
II. The uneasy relationship between the ECJ and national higher courts	101
III. Right of appeal in the Area of Freedom, Security, and Justice	104
1. Statutory right of appeal	104
2. Appeal and the requirement of service	105
3. Appeal and the right to a reasoned judgment	107
IV. Right of appeal as a fundamental right?	111
1. Right of appeal as a corollary to the right to reasons	111
2. Right of appeal as a “machinery” to ensure legal certainty	113
V. Conclusion	116

Chapter 6 European minimum requirements for the independence of judges as regards decision-making	119
<i>Piet Taelman and Jarich Werbruck</i>	
I. Overview	119
II. Introduction	119
III. Conceptualisation of Judicial Independence and Legal Bases	122
IV. Multilayered Character of Judicial Independence	129
V. Consequences	132
1. Safeguarding judicial independence by means of prevention	133
2. Safeguarding judicial independence by means of cure	137
VI. Conclusion	140
Chapter 7 European minimum requirements for the personal independence of judges: salary, transfer, demotion, early retirement	143
<i>Jordi Nieva-Fenoll</i>	
I. Introduction	143
II. International standards	145
III. Case law and its <i>raison d'être</i>	152
IV. Salary	155
V. Demotion, retirement and transfer	156
VI. Conclusion	158
Chapter 8 Judicial independence and immunity through the eyes of the European Court of Human Rights	159
<i>Laura van Kessel and Bart Krans</i>	
I. Limited liability and judicial independence	159
II. Structure of this contribution	162
III. Privileges and immunities and the right of access to a court	163
1. Privileges and immunities in the light of the right of access to a court	163
2. Value of the independence argument within the legitimate aim review	165

3. Proportionality of the restriction in the particular circumstances of the case and the value of the (legitimate) independence argument in that consideration	166
4. Interim conclusion	171
IV. Privileges and immunities and the right to an effective remedy in the national legal order	171
1. The picture is not yet complete	171
2. An example	172
3. Another example	172
4. Interim conclusion	174
V. Conclusion	175