

CONTENTS

<i>Acknowledgements</i>	v
<i>Table of Cases with Interventions</i>	xiii
<i>List of Abbreviations</i>	xlix

Chapter 1. Introduction

1

1. Context and Scope of the Study	1
2. Method	2
3. Basic Legal Framework	4
3.1. Historical Background	4
3.2. <i>Ratione Personae</i>	5
3.2.1. <i>Amicus Curiae</i> Intervention	6
3.2.2. Member-State Intervention	9
3.2.3. Third-Party Intervention	9
3.3. <i>Ratione Materiae</i>	10
3.4. <i>Ratione Temporis</i>	10
3.5. Form	11
3.5.1. Written Comments	11
3.5.2. Oral Comments	11
3.6. The Court's Engagement with Interventions	12
3.6.1. Summary in Judgments	12
3.6.2. Reference in Reasoning	13
3.6.3. Reference in Separate Opinions	15

Chapter 2. *Amicus Curiae* Intervention

17

1. Introduction	17
2. Historical Origin	19
3. Rationale of <i>Amicus Curiae</i>	20
4. The Court's Legitimacy	22
4.1. Tension between Democracy and Judicial Review	22
4.1.1. Counter-Majoritarian Difficulty	24
4.1.2. <i>Quasi-Constitutional</i> Function	26
4.2. Constitutional Features	29

5.	Argumentative Representation	30
5.1.	Ideological Submissions	31
5.1.1.	Restraint <i>Amicus Curiae</i> Interventions	33
5.1.1.1.	Faith-based NGOs	33
5.1.1.2.	Churches	35
5.1.2.	Activist <i>Amicus Curiae</i> Interventions	35
5.1.3.	Beginning and Ending of Life	38
5.1.4.	Rights of LGBT People	40
5.1.5.	Relation between Religion and the State	41
5.1.6.	Influence on Ideological Directions of Cases	44
5.2.	Knowledge Production	46
5.2.1.	Information on International Law	47
5.2.1.1.	International Human Rights Law	49
5.2.1.2.	European Union Law	50
5.2.1.3.	International Humanitarian Law	51
5.2.1.4.	Preliminary Conclusion	53
5.2.2.	Contextualisation	53
5.2.2.1.	Factual Information	54
5.2.2.2.	Legal Information	55
5.2.2.3.	Situation in Northern Ireland	56
5.2.2.4.	Regime Changes in Central and Eastern Europe	58
5.2.2.5.	Preliminary Conclusion	60
5.3.	Lend Credibility to Arguments	61
5.3.1.	Membership-Based Organisations	61
5.3.2.	Authority	63
5.4.	Preliminary Conclusion	65
6.	Principled Decision-Making	65
6.1.	Proportionality	66
6.1.1.	Proportionality in the European Court's Judgments	67
6.1.2.	Proportionality in the Narrow Sense	68
6.1.2.1.	Intensity	69
6.1.2.2.	Importance	72
6.1.2.3.	Justification	73
6.1.3.	Preliminary Conclusion	74
6.2.	Consensus and Comparative Reference	75
6.2.1.	Absence of Established Case Law	76
6.2.2.	Social or Political Development	79
6.2.3.	Preliminary Conclusion	81
6.3.	Margin of Appreciation	82

6.4.	Precedent	85
6.4.1.	Endorsement	86
6.4.2.	Rejection	87
6.4.3.	Preliminary Conclusion	90
6.5.	Development of the Convention	91
6.5.1.	Rights of Detainees	92
6.5.1.1.	Extradition and Expulsion	93
6.5.1.2.	Enforced Disappearance and Secret Detention	96
6.5.1.3.	Preliminary Conclusion	98
6.5.2.	Rights of LGBT People	99
6.5.2.1.	Rights of Transsexuals	100
6.5.2.2.	Family Life and Marriage	100
6.5.2.3.	Adoption	102
6.5.2.4.	Preliminary Conclusion	102
6.5.3.	Rights of Roma and Travellers	103
6.5.4.	Preliminary Conclusion	107
7.	Acceptance of Court's Authority	108
7.1.	Specific Support	109
7.2.	Diffuse Support	112
7.2.1.	Use of <i>Amicus Curiae</i>	113
7.2.2.	Transparent Procedure	115
7.2.3.	Arbitrary Refusals	116
7.3.	Preliminary Conclusion	117
8.	Admissibility of <i>Amicus Curiae</i>	118
8.1.	Admissibility <i>Ratione Materiae</i>	118
8.1.1.	The Interest of Proper Administration of Justice	118
8.1.2.	General Principles	119
8.1.3.	Practical Implications	122
8.2.	Admissibility <i>Ratione Personae</i>	123
8.2.1.	Non-Governmental Organisations	123
8.2.1.1.	European Organisations	123
8.2.1.2.	Non-European Organisations	124
8.2.2.	National Human Rights Institutions and Ombudspersons	125
8.2.3.	Individuals	126
8.2.4.	Members of Parliamentary Assemblies	126
8.2.5.	International Organisations	127
8.2.6.	Non-Member States	127
8.3.	Preliminary Conclusion	127
9.	Conclusion	128

Chapter 3. Member-State Intervention	131
1. Preliminary Observation	131
2. Notion and Origin	132
3. Reinforcement of State Sovereignty	134
4. Judicial Restraint	136
4.1. Margin of Appreciation	138
4.2. Subsidiarity	140
4.3. Historical Interpretation	141
4.4. Reserved Domain	142
4.4.1. Immigration and National Security	143
4.4.2. Governmental Structure	145
4.5. State Responsibility in Relation to Inter-Governmental Organisations	147
4.6. Restraint Ideological Submissions	150
5. The Court's Engagement with Member-State Intervention	152
5.1. Reflection in Judgments	152
5.2. Weakening Established Case Law	153
6. Conclusion	154
 Chapter 4. Actual Third-Party Intervention	 157
1. Preliminary Observation	157
2. Origin and Notion	158
3. Legal Interest	161
3.1. <i>Ratione Materiae</i>	161
3.1.1. Execution of Judgments	162
3.1.1.1. Reopening of Domestic Proceedings	163
3.1.1.2. Other Individual Measures	165
3.1.2. Conflict of Rights	166
3.1.2.1. Property	166
3.1.2.2. Ancestry	168
3.1.2.3. Abduction of Children	169
3.1.2.4. Child Custody and Visiting Rights	171
3.1.2.5. Employment	171
3.1.2.6. Defamation and Privacy Invasion	172
3.1.3. Preliminary Conclusion	173
3.2. <i>Ratione Personae</i>	173
3.2.1. Natural and Legal Persons	174
3.2.2. State Entities and Intergovernmental Bodies	175
3.3. Preliminary Conclusion	177

4. The Court's Practice	177
5. Scope of Participation	179
5.1. Right to Intervene.....	179
5.2. Litigation Rights.....	181
6. Conclusion.....	182
 Chapter 5. Conclusion	 183
1. Third-Party Intervention: One Term, Three Concepts	183
1.1. <i>Amicus Curiae</i> : Strengthen the Court's Legitimacy.....	183
1.2. Member States: Reinforce State Sovereignty.....	185
1.3. Actual Third Party: Protect Own Legal Interests.....	185
2. Non-Transparent Procedure and Admissibility Criteria.....	186
2.1. <i>Amicus Curiae</i> Intervention	186
2.2. Third-Party Intervention.....	187
3. Impact of Intervention.....	188
3.1. <i>Amicus Curiae</i> Intervention	189
3.2. Member-State Intervention.....	192
3.3. Third-Party Intervention.....	192
 <i>Bibliography</i>	 195
<i>Index</i>	211