



iCourts Working Paper Series, No. 70, 2016

The elusive influence of the Advocate General on the Court of Justice: the case of European citizenship

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iCourts - The Danish National Research Foundation's
Centre of Excellence for International Courts
Forthcoming in the *Yearbook of European Law*, 2016

June 2016

Abstract:

How much influence does the Advocate General (AG) have on the Court? What factors does her influence depend on? To answer these questions, we develop a model of AG influence, distinguishing between implicit and explicit influence, and apply the model to EU citizenship case-law. We show, first, that two personal characteristics of the AG, career background and seniority, sway the Court to adopt the reasoning and the solution proposed in the opinion. Second, AG influence varies with Court composition: whereas resilient against many institutional and personal factors, the AsG will have less influence on the Grand Chamber. Against this backdrop we argue that AG influence (immediate and delayed) depends mostly on personal features of individual AsG with established reputations but is at the same time limited by institutional factors and the context of judicial decision-making.

KEYWORDS: Court of Justice, Advocate General, EU citizenship, model of influence, legal actors, judicial decision-making

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This research is funded by the Danish National Research Foundation Grant no. DNRF105.

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iCourts opened in March 2012. The centre is funded by a large grant from the Danish National Research Foundation (for the period 2012-18).

The elusive influence of the Advocate General on the Court of Justice: the case of European citizenship

Urška Šadl and Suvi Sankari*

'As Sartre wrote, "*Donc recommandons. Cela n'amuse personne ... Mais il faut enfoncer le clou.*"'¹
Advocate General Ruiz-Jarabo Colomer in Case C-258/04 *Ioannidis*, EU:C:2005:375, point 3.

I. INTRODUCTION

Scholars and practitioners of European law largely agree that the influence of the Advocate General (AG) on the Court of Justice of the EU (the Court) is considerable, difficult to assess, and near impossible to quantify.² In fact, it is almost mythical. First, the Court increasingly but still rarely cites AG opinions in its judgments, second, its deliberations are secret and there is no way of knowing whether the opinion was discarded or discussed, third, the Court might reach the same outcome as the AG but on different grounds which it will not spell out in the final judgment, fourth, the Court might follow the AG on some points and not follow her on others. Last, the Court might follow the AG in subsequent cases but not in the case in which the opinion was delivered.³ These are pertinent and dispiriting objections to every empirical study of AG influence.

The present article engages precisely in this type of study. Although the literature has addressed the subject, it has generated as many new questions as answers. A sizeable portion of it is based on personal reflections, wholly qualitative in approach, taking into account only a few parameters of influence, such as case outcome or judicial arguments. It is largely unsystematic, structured around selected examples which are difficult to generalize.⁴ Moreover, some factors which could affect the influence of the AG on the Court, like her personal characteristics, as well as her seniority, or the composition of the Court have never been analysed.

We seek to close the gap in the existing literature with an empirically based assessment of AG influence on the Court in the context of EU citizenship case-law. We selected this area for a case study primarily because we can easily harvest the data from the official sources, such as Curia and EUR-Lex, by making use of simple search terms, and the dataset can be assembled without difficulty. Furthermore, the dataset is sizeable but manageable, permitting a detailed qualitative examination of the findings of the quantitative analysis.

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¹ 'So start again. This does not amuse anyone ... But one must keep doing it.'

² For an overview of literature see C Ritter, 'A New Look at the Role and Impact of Advocates-General-Collectively and Individually' (2005) 12 *Colum J Eur L* 751, 764.

³ E.g., AG La Pergola's opinion in Case C-85/96, *Martínez Sala*, EU:C:1997:335, discussed in further detail below.

⁴ Typically, instead of focusing on case-law, studies refer to individual selected ground-breaking (hard) cases, the 'canon' that collective academic exercise has determined are more important than others, see G Conway, *The Limits of Legal Reasoning and the European Court of Justice* (Cambridge: CUP 2012), 7-8.

Moreover, the dataset is large enough to permit generalizations.⁵ Last, the outcomes of the study can be tested against the findings of prior qualitative research on AG influence on EU citizenship case-law.⁶

We propose a model of influence, which differentiates between explicit and implicit or hidden influence of the AG. We understand influence as the power to initiate change or affect someone or something in an important way, a definition that requires further elaboration. In the context of the Court, explicit AG influence can be manifested by a direct reference of the Court to the AG opinion in the judgment. The implicit AG influence is more difficult to tease out. We assume that it can be observed through four measurable aspects of the case-law: the choice of precedent (or case-law), the method of interpretation, the reasoning, and the outcome. On the basis of how strong the AG influence on all these parameters is we divide the dataset into four categories: very strong, strong, moderate and weak influence groups. We then compare these categories and examine how the measured influence differs with regard to two sets of variables, personal (individual) and institutional. We underpin legal analysis with descriptive statistics to establish whether and to what extent the developments of EU citizenship case-law can be traced back to the opinions and the personal characteristics of the AsG.

We find that the AsG have either a very strong or a strong influence on the Court in more than half of EU citizenship cases. Two personal characteristics, seniority and career background of the AG combined with the career background of the Judge-Rapporteur (JR), and one institutional factor, the composition of the Court, appear to be crucial. Namely, AG influence on the Court is strongest when the AsG have longer tenure at the time of the delivery of the opinion than the Judge-Rapporteurs. Furthermore, our analysis suggests that the AsG with academic background are more influential, in particular when the Judge-Rapporteurs do not have the same academic background. Finally, the AsG have most influence in cases decided by chambers of five and three judges, and less in cases decided by the Grand Chamber (GC). Two sitting judges make a significant difference. On this basis we argue that AG influence is strong and stable, but limited by the context of judicial decision-making, especially judicial minimalism.⁷

In this article we provide the most comprehensive legal assessment of AG influence on the Court to date, which can contribute to the debate about her present and future role in the European legal order. Moreover, the analysis can inform the discussion on the future of the European judicial system and the Court, continuously seeking solutions for more efficient organization of judicial procedures in the context of ever increasing dockets. Finally, it sheds light on the creation of jurisprudence and the long term process of the development of legal concepts and doctrines as well as the role of legal actors in this process.

The argument proceeds as follows. In the next section we analyse the role and the influence of the opinion of the AG which frames our inquiry and provide a detailed overview of the empirical materials and the approach as we develop our model of influence (section two). In section three we present our findings, qualitative and quantitative. In section four we discuss the findings. We conclude in section five.

II. A MODEL OF INFLUENCE

A. AG influence: A framework for analysis

According to Article 252(1) TFEU the AG assists the Court. As stated in Article 252(2) TFEU, her duty is to make, in open court, reasoned, impartial and independent submissions in cases which require her involvement in

⁵ All data are stored and available from the iCourts database.

⁶ Most comprehensively N Burrows and R Greaves, *The Advocate General and EC Law* (Oxford: OUP 2007).

⁷ We discuss these limitations and judicial minimalism in section IV (Discussion).

accordance with the Statute of the Court. In regular procedures, and based on suggestions in the Judge-Rapporteur's preliminary report for the Court's general meeting, Article 20 of the Statute permits the Court to decide the case without the AG opinion 'where it considers that the case raises no new point of law,' but only after hearing the AG.⁸ The AG opinion marks the end of the oral stage of the procedure, and is followed by deliberations from which the AG, albeit formally a Member of the Court, is excluded.

The actual contribution of the AG to the development of European law is impossible to assess on the basis of formal legal sources alone. A fair amount of literature, which directly or indirectly addresses the subject, is written by the AsG themselves, their legal secretaries, or current and former Members of the Court, reflecting on their role and possible influence in academic and quasi-academic work (in particular *Festschriften*⁹). Inter alia, it has been argued that the AsG assist the Court in reaching a consensus judgment,¹⁰ in developing fundamental concepts of EU law,¹¹ and by presenting 'possible directions in which that case law might now go and reasoned suggestions as to why it would be better for the case law to move in one direction rather than another.'¹² Moreover, some suggest that AG opinions are *Ersatz* dissenting opinions, or even *Ersatz* first instance decisions,¹³ or compensation for the Court's lack of open engagement with the academic community.¹⁴ Finally, it has been submitted that AsG are significant for securing the necessary trust in the Court, as they constitute 'an ever present critical voice in the institution' that ensures 'the existence of a public discussion',¹⁵ and that their duty is to preserve the integrity and coherence of the law.¹⁶

More systematic legal empirical studies are few and far apart; however, they provide the groundwork for the empirical analysis, and attempt to lay down criteria for the assessment of AG influence.¹⁷ On the one hand, the

⁸ Art. 23a of the Statute allows for derogations for expedited procedures, and urgent procedures for preliminary rulings relating to the area of freedom, security and justice, see also the Court's Rules of Procedure, Art. 59(1-3).

⁹ See for instance contributions in A Arnall, P Eeckhout and T Tridimas, *Continuity and Change in EU Law: Essays in Honour of Sir Francis Jacobs* (Oxford: OUP 2008); N Fennelly, 'Reflections of an Irish Advocate General' (1996) 5 *Irish J Eur L* 5; FG Jacobs, 'Advocates General and Judges in the European Court of Justice: Some Personal Reflections' in D O'Keefe and A Bavasso (eds), *Judicial Review in European Union Law, Liber Amicorum in Honour of Lord Slynn of Hadley* (The Hague: Kluwer 2000) and sources cited in A Vauchez, 'Keeping the Dream Alive. The Transnational Fabric of Integrationist Jurisprudence' (2012) 5 *European Political Science Review* 51

¹⁰ R Greaves, 'Judge Edward Acting as Advocate General' in M Hoskins and W Robinson (eds), *A True European: Essays for Judge David Edward* (Oxford: Hart Publishing 2003) 98.

¹¹ See E Sharpston, 'The Changing Role of the Advocate General' in A Arnall, P Eeckhout and T Tridimas (eds), *Continuity and Change in EU Law: Essays in Honour of Sir Francis Jacobs* (Oxford: OUP 2008) 30. See also Burrows and Greaves (n 6), 189-214 (on direct effect) and 263-288 (on citizenship). AG participation in developing fundamental concepts of EU law can be separate from immediate or delayed implicit or explicit influence on the Court.

¹² Sharpston (n 11), 33.

¹³ Jacobs (n 9); Fennelly (n 9) and V Perju, 'Reason and Authority in the European Court of Justice' (2009) 49 *Va J Int'l L* 307, 352-4. For a more cautious approach to AG opinions substituting for separate opinions, see MA Jacob, *Precedents and Case-Based Reasoning in the European Court of Justice: Unfinished Business* (Cambridge: CUP 2014), 204-5.

¹⁴ M Bobek, 'A Fourth in the Court: Why Are There Advocates General in the Court of Justice?' in C Barnard, M Gehring and I Solanke (eds), *Cambridge Yearbook of European Legal Studies*, vol 14 2011-2012 (Oxford: Hart Publishing 2012) 559.

¹⁵ A Albers-Llorenz, 'Securing Trust in the Court of Justice of the EU: The Influence of the Advocates General' in C Barnard, M Gehring and I Solanke (eds), *Cambridge Yearbook of European Legal Studies*, vol 14 2011-2012 (Oxford: Hart Publishing 2012) 526.

¹⁶ Jacobs (n 9), 27.

¹⁷ T Tridimas, 'The Role of the Advocate General in the Development of Community Law: Some Reflections' (1997) 34 *CML Rev* 1349; Ritter (n 2); K Mortelmans, 'The Court under the Influence of Its Advocates General: An Analysis of the Case Law on the Functioning of the Internal Market' (2005) 24 *YEL* 127; L Woods, 'Consistency in the Chambers of the ECJ: A Case Study on the Free Movement of Goods' (2012) 31 *Civil Justice Quarterly* 339.

findings of previous studies point to the conclusion that AsG have been immensely influential and a great asset for the Court.¹⁸ They suggest that the dynamics between the AsG and the Court over *a series of cases* is far more important for legal development and ensuring coherence in the case-law than the Court following the recommendation of the AG and reaching the same outcome in *the same case*.¹⁹ On the other hand, they do not further examine how the influence varies with regard to different factors and groups of factors, nor provide a list of factors which need to be taken into account. Furthermore, all studies remain to a large extent qualitative and are more often than not based on well-known individual examples taken from several areas of EU law rather than on more objectively compiled datasets.²⁰

B. Empirical materials and approach

We compile a dataset of all cases of the Court, where the phrases *European citizenship* or *citizenship of the Union* appear in the text or the title of the opinion of the AG, or where a case is classified by the Court as an EU citizenship case. After removing duplicates and obviously misclassified cases, we are left with 118 cases.²¹

Next, we read and categorize all cases in the sample according to the criteria specified below. We build on literature suggesting that AG influence is not always direct or immediately apparent. Hence, we propose a model that distinguishes between hidden and explicit influence.²² In fact, AG influence is most often implicit, and manifested in the Court's reasoning, interpretation, outcome, and the choice of law and legal sources (precedent) in the same case, as well as in subsequent related cases. Explicit influence is reflected in a direct reference to the opinion in the judgment – rarely in another judgment than the one at hand – and is more readily observed and assessed.

We measure the *implicit AG influence* by taking into account four parameters: choice of precedent (sources of law), interpretation, reasoning, and outcome. All measures are of course proxies. As a proxy for AG influence on interpretation, we use the outcome of interpretation, as either pro or against EU citizen, and the method of interpretation. With regard to the method of interpretation we are interested in whether the AG interprets EU law broadly or narrowly and whether the Court uses the same method of interpretation as the AG.²³ With regard to the outcome, we record whether the opinion is pro or against citizen, using measures analogous to those we use above with regard to the outcome of interpretation, as well as the outcome of the judgment, and measure the overlap.²⁴ In direct actions, we categorize the opinion as pro citizen if the outcome (i.e. the MS is found to have infringed EU law or failed to fulfil its obligations stemming from EU law) benefits citizens in any way. In cases of several preliminary questions we also record whether the Court and the AG agree on all, some, or none of the points. The interpretation is classified as pro citizen if the opinion is in favour of granting the citizen the

¹⁸ Ritter (n 2), 770, Sharpston (n 11), 32-3, and more reservedly Burrows and Greaves (n 6), 293 and 297.

¹⁹ Mortelmans (n 17), 169.

²⁰ See however *ibid*, and Woods (n 17) focusing on internal market cases.

²¹ Complete dataset on file with the authors.

²² Similarly, Mortelmans (n 17) distinguishes between the direct and indirect route of measuring influence in internal market cases.

²³ When more than one statutory source is interpreted, we record whether the Court and the AG agree on all issues. If the AG and Court fully agree, the score is 1; disagree on only minor points, the score is 0.75; agree on more than one issue, the score is 0.50; or differ on minor issues, score is 0.25, or differ on all points (score is 0).

²⁴ If the AG and the Court reach the same outcome, the score is 1; if they reach different outcomes, the score is 0; and if they reach the same outcome on one or more points (in the case of several questions for preliminary rulings), the score is 0.50.

entitlement that he claims, for instance minimum subsistence allowance,²⁵ or invalidity pension, or if the outcome of interpretation is that EU law prohibits national measures that refuse these rights to EU citizens.

We measure AG influence on the reasoning of the Court by reading and coding all judgments and opinions. We use four categories to determine the extent to which the AG reasoning is followed by the Court.²⁶ Moreover, we measure the influence by tracing the most pervasive arguments in the Court's case-law to AsG opinions. Concretely, we identify the ten most cited arguments or formulations in the EU citizenship case-law. Last, by measuring the overlap we use references to judgments and opinions (case citations) as a proxy for AG influence on situating the case in a legal framework and determining the relevant precedents. For instance, we record the judgments and opinions to which the AG refers to in a given opinion as well as the references to judgments and opinions in the Court's judgment in the same case. If the Court uses the same judgments and opinions as the AG we conclude that the AG has influenced the Court with regard to the legal framework of the case, by preselecting the sources of law.²⁷ With a view to avoiding the exclusion of other potentially important factors we introduce qualitative measures, focusing on individual cases and the case-law at large.

We assign equal weight to all parameters in estimating *implicit AG influence*. We are interested in both AG influence on each of these parameters and the total influence of the AG on the Court. The total implicit influence is the sum of influence on all parameters of implicit influence. The higher the score, the more the AG has influenced the Court. On this basis we divide the case-law into four groups of influence: very strong, strong, moderate and weak. In the second step we compare their characteristics to determine whether – broadly speaking – AG influence on the Court is individual or institutional. In other words, how much does it depend on the actors involved? With regard to the *explicit AG influence*, we record whether and how many times the Court refers to the AG. The ensuing detailed analysis of AG influence is framed around the findings of the quantitative analysis.

To assess whether AG influence is institutional or personal, we divide the variables into two separate groups of variables, institutional, related to the case and the Court, and personal, that is, characteristics pertaining to the legal actors, in particular the judges and the AsG. In the first group, we include the subject matter of the case (as categorized by the Court), the right that is disputed in the main proceedings before the national court (in preliminary references procedures) or the obligation of the Member State in direct actions (a classification based on the reading of cases), the type of procedure, the parties to the procedure (Member States or EU institutions) and the composition of the Court (including the formation and the number of sitting judges in each case). We also include several formal characteristics of the AG opinion, such as length (counted by the number of paragraphs) and the number of citations to the case-law of the Court. Into the second group, we include variables such as the length of stage of the AG and the Judge-Rapporteur, gender, legal culture and career background, as well as the tenure of the AG and the Judge-Rapporteur at the time when the opinion is delivered.

With regard to the limitations of the model, we do not read the submissions of the parties, observations presented by the Member States and EU institutions, or preliminary reports of the Judge-Rapporteur. One could

²⁵ The allowance (also called minimax in Belgium) is granted to assure a minimum income to persons who do not have sufficient resources and who cannot procure them by personal effort or other means.

²⁶ As in the category of interpretation, if the AG and the Court fully agree, the score is 1; if they completely disagree, the score is 0; if they agree on some points, the score is 0.25; if on several points, the score is 0.50; and if they disagree on only minor points, the score is 0.75.

²⁷ The citations overlap is a continuous variable, and we assign the score 0.25 in cases where there are no common citations or the overlap is less than 25%; 0.50 where the overlap is below 50%; 0.75 where the overlap is below 75%; and 1 in cases where the overlap is above 75%.

claim that these influence the Court more than the AG, and that especially the Member States that intervene in the proceedings can importantly affect the outcomes and the reasoning of the Court. Our main arguments against taking these materials into account are first, that they might further complicate the model for analysis. Namely, one would have to investigate and demonstrate, given the arguable AG influence on the legal community, that these actors were not inspired or influenced by previous opinions of the AsG on the subject, in itself a very broad and interesting topic for further research. Second, several empirical studies found that the influence of governments was limited,²⁸ and that the Court is more constrained by its own precedent than by the pressure of the Member States.²⁹

However, in the qualitative analysis we note and take into account whether the Court or the AG refers to submissions of parties or the Commission in individual cases. Moreover, we also record the number of Member State observations submitted in each case in our sample, as well as whether the Commission submitted written observations, and find that the rate of participation of Member State governments is on average 15 %, and that albeit in the weak influence group the participation is highest (20%) and in the very strong influence group lowest (13%), the influence is driven by a few outliers and does not vary significantly.

III. FINDINGS

A. General findings

The Court referred explicitly to the opinion of the AG given in the same case in 54 judgments (46%) and only once to an opinion of the AG delivered in another case.³⁰ Among the former, 19 (35%) judgments cited the opinion more than once. The Court never specifically indicated disagreement or explicitly stated that it was not endorsing the suggestions of the AG. Peer references, that is, AG opinions to AG opinions, are more frequent. In our sample, 64 opinions (54%) were cited by the AsG, and the number of references to an individual cited opinion varied from 1 to 17 references. This would imply that AG opinions are more important for the work of the AsG than the Court.

Overall, the Court reached the same outcome as the AG in 76 cases (64%), reached a different outcome in 10 cases (9%) and reached an outcome that differed from the opinion of the AG on some points in 32 cases (27%). The Court also agreed with AG reasoning fully in 33 cases (28%), almost fully in 30 cases (28%), partly (that is, it adopted the reasoning that differed on one or more main points) in 33 cases (28%), to a lesser extent in 18 cases (15%), and not at all in 4 cases (3%). In the latter case the Court did not follow the reasoning of the AG with regard to the question for preliminary ruling or the claim in direct actions. In 52 cases (44%) the Court interpreted the legal sources in the same way as the AG. In 30 cases (25%) the Court and the AG differed only slightly, in 23 cases (20%) they disagreed on how to interpret the legal sources on one or more important points, and in 11 cases (9%) on almost all points. They adopted conflicting interpretations in only 2 cases (1.7%). This would imply that the same outcome can be reached differently.

²⁸ M-P Granger, 'From the Margins of the European Legal Field: the Governments' Agents and Their Influence on the Development on European Union Law' in A Vauchez and B de Witte (eds), *Lawyering Europe: European Law as a Transnational Social Field* (Oxford: Hart Publishing 2013).

²⁹ AS Sweet and TL Brunell, 'The European Court of Justice, State Non-Compliance, and the Politics of Override' (2012) 106 *American Political Science Review* 204.

³⁰ In Case C-182/06, *Lakebrink and Peters-Lakebrink*, EU:C:2007:452, para 34, the Court refers to points 97-99 of AG Léger's opinion in Case C-152/03, *Ritter-Coulais*, EU:C:2005:122.

With regard to the selection of precedents and the setting of the legal framework, the overlap ranged from zero (14 cases), where none of the cases that the AG referred to were cited by the Court, to 100%, where all the cases the Court cited were included in the AG opinion (13 cases). On average, the Court cited around 47% of cases cited by the AG in the opinion given in the same case. This would imply that the AG does not have considerable influence on the selection of precedents. Typically, the AG cites more than twice as many cases as the Court (the AsG cite 25 cases per judgment on average while the Court typically cites 11 cases per judgment).

By simply adding up the scores of individual parameters we divided the cases into four groups of implicit influence, very strong, with a score above 85% (32 cases), strong, with a score above 80% (28 cases), moderate, with a score above 65% (40 cases) and weak, with a score below 65% (18 cases).

As shown in Table 1, the implicit AG influence on different parameters is by no means uniform. The Court and the AG diverge greatly on the choice of precedent, as well as in their citation practice. With regard to the reasoning, the Court and the AG most often agree. That said, it is typical for the opinion to expand on the arguments, which are usually broader than the case would call for, and at times play with several solutions to the case, of which the Court selects the one it arguably finds the most persuasive.³¹ The arguments of those involved in the procedure, when spelled out in great detail by the AG, seem to persuade, or not, the AG and the Court to an equal extent.³² Concerning the outcome of the case, the overlap between the judgment and the opinion is very high. It is highest when the Court and the AG are both in favor of the citizen (they adopt pro citizenship decisions), and lowest when the AG is in favor of granting rights to individuals and the Court rules against the individual. Likewise, the overlap between interpretations is greatest when both the AG and the Court interpret legal sources broadly. It is lowest when the AG favors broad interpretation whereas the Court favors a narrower interpretation. In the weak influence group the AG was in favor of the individual in 61% of cases, and the Court in only 44% of cases. While the AG in 83% of cases interpreted the legal sources broadly, the Court did so in 50% of cases. By way of comparison, in the very strong influence group, the AG and the Court reached pro individual outcomes, and interpreted EU law broadly in 65% of cases. This might imply that the Court is less likely to follow the AG who interprets the law too broadly in order to grant rights to EU citizens. On average, the AsG adopt broad interpretation in 62% of cases and propose a solution that favors the citizen in 71% of cases while the Court interprets the law expansively in 60% of cases and rules in favor of the citizen in 54% of cases.

The findings presented in Table 1 further indicate that the Court and the AG will reach the same outcome when they agree on the reasoning and the interpretation of the legal sources, even if they choose to cite different precedents. An explicit reference to the opinion in the judgment in the same case does not necessarily mean that the Court is following the AG. However, the low rate of reference in the weak influence group might indicate that the Court is less likely to cite the AG when it disagrees with her reasoning and interpretation. It also means that the Court might explicitly refer to the AG without fully endorsing her opinion or without being influenced by the AG on central arguments, upon which it decides the case (there is a small difference between

³¹ An example of the former, see AG Sharpston's opinion in Case C-34/09 *Ruiz Zambrano*, EU:C:2010:560; for the latter, see AG Jacobs's opinion in Case C-148/02 *Garcia Avello*, EU:C:2003:311.

³² For instance, the Commission's arguments in *Martinez Sala* persuade whereas arguments by Germany were contrary to them and failed to persuade both the AG and the Court, in *Grzelczyk* both Commission's restrictive interpretation of Union citizenship provisions and arguments of other Member States involved than Portugal failed to convince the AG and the Court, see opinion of AG Alber in Case C-184/99, *Grzelczyk*, EU:C:2000:518, points 32-57 and 62, for disagreement in interpreting Art. 21 TFEU between the Commission and the Court, and between the Commission, the AG, and the Court as to the concept of worker, see Case C-413/99, *Baumbast and R.*, EU:C:2002:493, paras 79, 74, and points 28-36.

the very strong, strong and moderate groups of influence with regard to explicit reference, as shown in column six in Table 1, indicating that explicit reference is not always a “proof” of influence).³³

	OUTCOME	REASONING	INTERPRETATION	PRECEDENT	REFERENCE
VERY STRONG	100	93.75	97.66	79.69	59.38
STRONG	100	77.68	91.96	44.64	53.57
MODERATE	70	50	64.38	56.25	47.50
WEAK	22.22	26.39	33.33	45.83	5.56

Table 1: Overlap in outcome, reasoning, interpretation, and precedent citation between the AG opinion and the judgment in the same case, and the Court’s explicit reference to the AG opinion (all in %), sorted by groups of influence

B. Findings related to institutional and individual factors

When we examine how influence varies with regard to two sets of variables, institutional, related to the Court and the case, and individual, related to the personal characteristics of the AG, we find, first, that generally they vary little with regard to institutional variables. Namely, we find that AG influence on the Court does not significantly vary with regard to the country or organization from which the case originates, the national court that submitted the reference for the preliminary ruling, the type of procedure, the status of applicants and defendants (whether they are private parties or EU institutions), or the subject matter as classified by the Court. Nor does the Court seem to rely more on AG opinions in more recent cases. Still, with regard to the right in dispute in the main proceedings or the direct action in infringements proceedings, the weak influence group does have a higher percentage of expulsion cases compared to the overall percentage of the expulsion cases in our sample (22% compared to 8%); the moderate influence group includes a higher percentage of cases related to civil status (13% compared to 6% in the whole sample); the strong influence group has a slightly higher percentage of cases dealing with taxation (18% compared to 13% in the whole sample); and the very strong influence group has a slightly higher percentage of cases related to various kinds of redistributive transfers, including social advantages and social assistance, than the full dataset (38% compared to 31%).

The influence of the AG does not vary greatly with regard to the subject matter or a particular disputed right. Hence a general quantitative analysis does not suggest that the AG has a leading role in developing specific sub-areas of EU citizenship, such as residence rights, social advantages or taxation issues related to free movement.

One final institutional variable seems to have considerable effect: the number of sitting judges (a variable related to the composition of the Court). As Table 2 shows, the AG has more influence when the Court does not sit in the Grand Chamber, but in the chamber of five or three judges. The percentage of cases decided by the Grand Chamber in the weak influence group is considerably smaller than the percentage of cases decided by the Grand Chamber in the very strong influence group. Moreover, two more sitting judges seem to reduce the influence of the AG.

³³ Within the group of AG opinions most referred to by other AG opinions (three or more explicit citations) the opinions that fall within the very strong implicit influence group are over-represented (37%), when compared to the share of opinions we determined to have very strong influence on the judgment in the entire sample (25%). Explicit references to AG opinions by the Court in its judgment do not alone determine the importance of an AG opinion to other AsG.

	GRAND CHAMBER	SITTING JUDGES
VERY STRONG	41	8
STRONG	50	9
MODERATE	50	8
WEAK	61	10

Table 2: AG influence on different formations of the Court: the percentage of cases decided by the Grand Chamber (middle column) and the average number of sitting judges in the Court per influence group (last column from the left)

Individual characteristics of the AG, such as gender, nationality, legal background (civil law or common law) and the mandate at the Court (both overall and at the time of the delivery of the opinion) are difficult to relate to influence. However, two individual characteristics seem to affect AG influence to a rather large extent. First, her career background, and second, her seniority, that is, the total time spent at the Court at the time of the delivery of the opinion, especially in cases where her stage is longer than the Judge-Rapporteur's.

To assess how AG influence varies with regard to her career background we created three categories in which we placed individual Members of the Court (Judge-Rapporteurs and AsG): legal practice, academia and politics and policy. Individual AsG and Judge-Rapporteurs were placed in the first category if they were previously judges of international or national courts, or acted as lawyers or legal counsel for private or public undertakings; in the second category if they were professors of international or national law, or researchers in any field of law; and in the last category when they were active in national or international politics as ministers or members of parliaments, or held positions as civil servants or expert consultants to governments.³⁴

As shown in Table 3, almost 63% of the opinions in the very strong influence group are written by the AsG with an academic background (compared to 44% of the opinions in the whole sample). By contrast, only 22% of the opinions in the weak influence group are written by the AsG with an academic background. A very high percentage (72%) of the opinions in the weak influence group are delivered by the AsG with background in legal practice as compared to, overall, 23% of opinions in our sample. Interestingly, the AsG with an academic background seem to be most influential when Judge-Rapporteurs do not share that background. The AsG with a background in legal practice appear to be the least influential.

	LEGAL PRACTICE	ACADEMIA	POLITICS/POLICY
WEAK	72.2	22.2	5.6
MODERATE	42.5	22.5	35.0
STRONG	35.7	35.7	28.6
VERY STRONG	25.0	62.5	12.5
AVERAGE	43.9	35.7	20.4

Table 3: The career background of the AG and her influence on the Court (all in %)

With regard to the seniority of the AsG we assume that the AG can influence the Court through the Judge-Rapporteur in the case. The latter has a better overview of the case compared to her colleagues in the chamber

³⁴ We used presentations of the Members of the Court available on the website of the Court as a basis for the categorization. For current Members see http://curia.europa.eu/jcms/jcms/Jo2_7026/ and for former Members see http://curia.europa.eu/jcms/jcms/Jo2_7014/ (page last accessed on January 25, 2016). When the AsG and the judges had held positions in more than one category or could equally be placed in more than one category, we assigned them a career background based on the position they held just before being appointed to the Court.

and can therefore present her arguments with considerable legal force and persuasion. Given the form of procedure and the time constraints at the Court, it is not impossible to imagine that the Judge-Rapporteur, possibly beyond her preliminary report, acts as a bridge between the AG and her colleagues, and can significantly shape all parameters of the case. As Table 4 demonstrates, only in the very strong influence group is the stage of the AG at the time of the delivery of the opinion longer than the stage of the Judge-Rapporteur.

	AG TOTAL	AG OPINION	JR TOTAL	JR OPINION
VERY STRONG	10,8	6,0	10,6	5,3
STRONG	9,1	5,6	11,2	5,7
MODERATE	9	4,2	11,7	5,5
WEAK	10	5,4	11,9	6,3

Table 4: AG influence on the Court with regard to the total amount of years spent at the Court (AG total, JR total) and seniority at the time of the delivery of the opinion (AG opinion, JR opinion)

In summary, the most significant findings of the quantitative analysis suggest, first, that two personal characteristics of the AsG determine her influence on the Court. First, the AsG that have longer tenure (at the time of the delivery of the opinion) than the Judge-Rapporteurs, seem to have a greater influence. Second, the AsG with an academic background and experience seem more influential than other AsG, in particular in cases where the Judge-Rapporteurs do not share this academic background. Last, the AsG have most influence on chambers, and less on the Grand Chamber.

C. AG influence on the legal ideas framing EU citizenship case-law

Table 5 gives an overview of the ten most cited paragraphs of individual judgments in our dataset.³⁵ The substance of the cited paragraphs (third column from the left in Table 5) most often concerns the judge made concept of fundamental status (*Grzelczyk*, para 31; *Garcia Avello*, para 22, *D'Hoop*, para 28; and *Garcia Avello*, para 23, where the Court elaborates on what fundamental status implies), applied most often in the context of defining what falls within the scope of EU law and thus within the scope of application of the prohibition of discrimination on the basis of nationality (*Grzelczyk*, para 33, first column from the right in Table 5).³⁶ The second most frequently cited argument from the case-law appears in the same argumentative context, however, to stress that the exercise of citizenship rights (concretely, the right to move and reside), may not be penalized. Additionally, the prohibition to penalize free movement rights (*De Cuyper*, para 39) is used most often in the context of exportability of work related benefits, however, with the outcome that some restrictions are permissible.³⁷ The third argument is taken from *Martínez Sala*, paragraph 32, to define who is a 'worker' in EU law, and the fourth most cited argument concerns the view of the Court that Directive (Directive 2004/38) has to be interpreted broadly, while the restrictions to free movement rights have to be interpreted narrowly (*Metock*, para 59).³⁸ The Court explicitly refers to the respective AG opinion only in *Pusa*, *Garcia Avello* and *Grzelczyk*. There are no explicit references to the opinion in *De Cuyper*, *Metock and others*, *Martínez Sala* or *D'Hoop*.

³⁵ We obtained these numbers by automated (computer assisted) counting of the number of citations to all paragraphs of all judgments in our dataset, and the whole citation network of the case-law of the Court. We searched the texts of the judgments as well as metadata available on EUR-Lex.

³⁶ Case C-184/99, *Grzelczyk*; Case C-148/02, *Garcia Avello*; Case C-224/98, *D'Hoop*, EU:C:2002:432.

³⁷ Case C-406/04, *De Cuyper*, EU:C:2006:491.

³⁸ Case C-85/96, *Martínez Sala*; Case C-127/08, *Metock*, EU:C:2008:449. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move

CASE:PARAGRAPH	CITATIONS(NR.)	SUBSTANCE	JUSTIFICATORY CONTEXT
Martínez Sala:32	7	Definition of a worker	Who is a worker in EU law, not enough information to determine whether the applicant is a worker
Grzelczyk:31	19	Fundamental status	To stress that non-discrimination applies in situations involving the exercise of fundamental freedoms
Garcia Avello:22	8	Fundamental status	To stress that non-discrimination applies in situations involving the exercise of the fundamental freedoms
D'Hoop:28	6	Fundamental status	To stress that non-discrimination applies in situations involving the exercise of the fundamental freedoms
Garcia Avello:23	7	Fundamental status (meaning)	To stress that non-discrimination applies in situations involving the exercise of the fundamental freedoms
Grzelczyk:33	9	Scope of application of non-discrimination principle	To stress that non-discrimination applies in situations involving the exercise of the fundamental freedoms
De Cuyper:40	7	Justification of restrictions of fundamental rights	To stress that non-discrimination applies in situations involving the exercise of the fundamental freedoms
Pusa:19	9	Prohibition to penalize the exercise of rights to move and reside	To stress that non-discrimination applies in situations involving the exercise of the fundamental freedoms
De Cuyper:39	9	Prohibition to penalize the exercise of rights to move and reside	EU citizens can export unemployment benefits
Metock:59	7	The aim of Directive 2004/38 is to strengthen rights	To distinguish the case from <i>Akrich</i> , where the Court reached the opposite result

Table 5: Most cited paragraphs of individual judgments in EU citizenship case-law (first column from the left), the number of inward citations to individual paragraphs (second column), the substance (third column), and argumentative context (last column)

We can group the most cited arguments of the Court into three more general clusters of legal issues: (1) the relationship between a new citizenship status and the previous status of a worker; (2) the scope of the application of the non-discrimination principle in citizenship cases; and (3) the extension of the concept of a restriction to free movement and its justification to Article 21 TFEU. Assuming that these are the central questions for the Court in this area of law, we tried to trace the legal thinking associated with these concepts and arguments to the opinions of the AsG. On the one hand this helps us assess the more remote AG influence in terms of aspiration as opposed to direct citation in the same case or a reproduction of the reasoning in the opinion without explicit reference in subsequent cases. On the other hand, it checks how reliable our model of influence is.

It is possible to observe that AsG La Pergola and Léger laid down the intellectual framework in their early opinions, which other AsG and finally the Court adopted when it became necessary to interpret the law in situations not falling within the scope of application of more specific free movement provisions (*Martínez Sala* and *Grzelczyk*). The nexus between the concept of Union citizenship and equality (non-discrimination) originates

and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda at OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34).

from AG Léger's opinion in *Boukhalfa*, by which AG La Pergola was explicitly inspired in *Stöber and Pereira*.³⁹ Also, AG Lenz in his opinion in *Faccini Dori* argued that '[t]he introduction of citizenship of the Union raises the expectation that citizens of the Union will enjoy equality, at least before Community law.'⁴⁰ AG La Pergola, drawing inspiration from other AsG, has considered all three clusters in his opinions predating the judgments in which the Court has adopted very similar interpretations. La Pergola is usually credited with the fundamental status formulation, spelled out in his opinion in *Martínez Sala*. Several AsG explicitly refer to this opinion.⁴¹ While the Court does not mention it at any point in later case-law, the substance of points 18-22 of that opinion resonate with the Court's reasoning in *Grzelczyk*, *D'Hoop*, and *Garcia Avello* (normative relations of Art. 21 TFEU, the fundamental legal status, scope of EU law and thereby non-discrimination), *Baumbast* (direct effect of Art. 21 TFEU), *Rottmann* (scope of application of Art. 20 TFEU), and is largely consistent even with *Ruiz Zambrano* and *Dano*.⁴²

In our model, AG La Pergola had moderate to strong influence on the Court, but not a very strong influence (compared to, let's say, AsG Jacobs). He also wrote several opinions for cases decided in the Grand Chamber between 1996-1999,⁴³ and opinions on related issues for Judge-Rapporteurs of (also later) significant judgments.⁴⁴ While existing literature supports his sizable effect on the Court (albeit in much less detail),⁴⁵ his imprint on the case-law can be discussed more in terms of aspiration or "Court-whispering" than measurable influence. By contrast, the influence of AG Léger is clearly strong when compared to other AsG. This assessment however is only indicative, as relative individual influence is hard to assess due to a small sample and large variation.

Finally, we can observe that in the most cited passages of individual cases, and the most often used arguments, collected in Table 5, the Court dealt with specific aspects of its previous jurisprudence, which did not necessitate original (in the sense of novel) legal interpretations but instead an elaboration of previous judgments and the fine-tuning of already established arguments. The most cited paragraph of *Martínez Sala* deals with the definition of a worker and the conditions on which this status is lost or retained, not a novel question at all,⁴⁶

³⁹ See AG La Pergola's opinion in Joined cases C-4/95 and C-5/95, *Stöber and Piosa Pereira*, EU:C:1996:225, point 50, referring to point 63 of AG Léger's opinion in Case C-214/94 *Boukhalfa*, EU:C:1995:381. AG La Pergola could equally well have referred to AG Lenz, but did not. See footnote below.

⁴⁰ Opinion of AG Lenz in Case C-91/92, *Faccini Dori*, EU:C:1994:45, point 52: 'The discrimination argument has gained even more substance since the entry into force of the Maastricht Treaty and of citizenship of the Union, enshrined in the EC Treaty [...].'

⁴¹ At points 49-50 AG Geelhoed's opinion in Case C-413/99 *Baumbast* – delivered to GC before taking judgment in Case C-184/99 *Grzelczyk* – not only refers explicitly to AG La Pergola in *Martínez Sala* (to point 18) but *verbatim* reproduces passages from it. Additionally, four other AG opinions approvingly refer to AG La Pergola in Case C-85/96, *Martínez Sala* (AG Maduro in Case C-72/03, *Apuani*, EU:C:2004:296, points 67-8; AG Geelhoed in Case C-109/01, *Akrich*, EU:C:2003:112, point 75; AG Alber in Case C-92/01, *Stylianakis*, EU:C:2002:567, point 38; AG Leger in Case C-192/99, *Kaur*, EU:C:2000:602, point 27) whereas one engages with it critically (AG Mengozzi in Case C-291/05, *Eind*, EU:C:2007:407, points 123-25).

⁴² Case C-224/98, *D'Hoop*; Case C-148/02, *Garcia Avello*; Case C-413/99, *Baumbast*; Case C-135/08, *Rottmann*, EU:C:2010:104; Case C-34/09, *Ruiz Zambrano*; Case C-333/13, *Dano*, EU:C:2014:2358.

⁴³ Six of 12 AG opinions given during that time were by AG La Pergola; five of them for Grand Chamber. That the GC of the early case-law was a non-rotating one could speculatively have a restraining as well as an unleashing effect.

⁴⁴ AG La Pergola wrote opinions for Judges Jann (Case C-336/94, *Dafeki*, EU:C:1997:579; Case C-466/00, *Kaba*, EU:C:2003:127) and Edward (Case C-85/96, *Martínez Sala*), who were Judge-Rapporteurs in Cases C-224/98 *D'Hoop* and C-184/99 *Grzelczyk*, respectively.

⁴⁵ See Burrows and Greaves (n 6), 292 and 277.

⁴⁶ The Court addressed the issue already in Case 75/63, *Hoekstra* EU:C:1964:19.

and clearly not influenced by the AsG. *Grzelczyk* joins residence, equal treatment and citizenship into the famous passage of fundamental status, stemming from the opinion of the AG in *Martínez Sala*.⁴⁷ *D'Hoop* finetunes the *Grzelczyk* formula by adding that EU law only applies to situations 'within the scope *ratione materiae* of the Treaty,' an addition that is a platitude, but makes explicit that the formula is not open-ended.⁴⁸ The most cited paragraph of *Pusa* concerns a clarification of the reasoning in *D'Hoop* and articulates more clearly the prohibition of obstacles or disadvantage following from free movement and equal treatment.⁴⁹ *De Cuyper*, in the same vein, further clarifies *D'Hoop* by specifying that in principle the Regulation 1408/71 allowing for unemployment allowances not to be exportable to a host Member State is contrary to Article 21 TFEU, and constitutes a disadvantage for exercising free movement rights.⁵⁰ The most cited paragraph of *Garcia Avello* merely cements precedent ('as the Court has ruled on several occasions')⁵¹ that the citizenship of the Union is destined to be the fundamental status of nationals of the Member States. Finally, *Metock* clarifies *Akrich* but not in the way suggested by the AG, who argued that *Akrich* was in fact intended to have a much stricter scope of application than how the Member States wished to interpret it.⁵²

IV. DISCUSSION

As we argue below, our findings indicate that AG influence has been stable and progressively more explicit, but limited by the institutional factors, especially judicial minimalism.⁵³ Our findings furthermore confirm or further clarify several arguments that were put forward in existing literature, and relativize others.

Several findings are in line with the argument that the AsG can best assist the Court when they can rely on existing authorities, not when the law is being developed.⁵⁴ First, while literature suggested that by the end of the 1990s judgments only referred to the points in the AG opinions they endorsed, but did so as a rule,⁵⁵ our findings further reveal that an explicit reference does not always mean substantive influence. While 46% of the judgments explicitly referred to an AG opinion, and the Court often cited the conclusions of the AG with which it agreed, the references sometimes pertained less to the legal solutions proposed than to the state of the national law, facts in the main proceedings, or established legal solutions and interpretations.⁵⁶ Second, the findings also raise doubts that the AsG developed fundamental concepts of EU law beyond AG La Pergola's inspiration for the

⁴⁷ Case C-184/99, *Grzelczyk*; Case C-85/96, *Martínez Sala*.

⁴⁸ Case C-224/98, *D'Hoop*, para 28.

⁴⁹ Case C-224/02, *Pusa*, EU:C:2004:273; Case C-224/98, *D'Hoop*.

⁵⁰ AG Geelhoed's opinion, referring to *D'Hoop* at point 103: 'Those circumstances fall within the scope of Community law and Mr De Cuyper may therefore rely on the rights it confers on him, in particular the right to move and reside freely within the territory of the Member States.'

⁵¹ Case C-148/02, *Garcia Avello*, para 22.

⁵² View of AG Poiares Maduro in Case 127/08 *Metock*, points 11-15.

⁵³ According to Sunstein, the main proponent of judicial minimalism as a theory of judicial decision-making, judges prefer narrow to broad rulings and shallow to deep rulings. They decide on what is necessary to resolve the case at hand and tend to avoid or postpone principled discussion and deeper theoretical issues that the case raises. See C R Sunstein, *One Case at a Time : Judicial Minimalism on the Supreme Court* (Harvard University Press 1999). Sarmiento, who explored Sunstein's minimalism in the EU context, attributed the Court's minimalist decision-making to a series of causes, internal (such as the rotating Grand Chamber) and external (such as technical complexity or unclear division of competences between the EU and the Member States behind the individual case). See D Sarmiento, 'Half a Case at a Time: Dealing with Judicial Minimalism at the European Court of Justice' in M Claes and others (eds), *Constitutional Conversations in Europe: Actors, Topics and Procedures* (Cambridge: Intersentia 2012) 13, 23-29.

⁵⁴ Burrows and Greaves (n 6), 288.

⁵⁵ T Tridimas, 'The Role of the Advocate-General in the Development of Community Law; Some Reflections' (1997) 34 *Common Market Law Review* 1349

⁵⁶ E.g. Case C-75/11, *Commission v Austria*, EU:C:2012:605.

Court's standard formulation on the legal concept of Union citizenship,⁵⁷ which we demonstrate found its way into the judgments through the repeated references of the AsG and the support of individual Judge-Rapporteurs.

Third, we find that AG influence is weakest when the AG is more pro-citizen than the Court. On average, the AsG adopt broad interpretations in 62% of cases and propose a solution that is in favor of the citizen in 71% of cases while the Court interprets the law expansively in 60% of cases and rules in favor of the citizen in 54% of cases. That said, the AsG are not consistently in favor of the citizen and do not insist on expansive interpretations of legal sources as a rule. Fourth, we find that the influence of the AG remained stable in the whole twenty year period. This relativizes the argument that the AG influence varied over time, from full support in the period of signalling intentions (1998-2000), to considerably less support in times of institutional change (2001-2003); that is in cases like *Grzelczyk*, *Baumbast*, *Akrich* and *Collins*.⁵⁸

According to our analysis AG influence, while considerable and stable, depends more on her personal characteristics, in particular on her status and background, than on her legal analysis. This is in line, but demonstrated in much greater detail, with Burrows and Greaves's conclusion that although the AG can influence the Court, not all AsG have been able to influence the Court in the same way.⁵⁹ Finally, our finding that influence diminishes in larger formations certainly challenges the view that the role of the AG is to help the Court reach a consensus judgment⁶⁰ and implies that the influence of the AsG is limited in more contentious cases.

On the basis of the above findings it is possible to conclude that the institutional logic and the context of judicial decision-making importantly limit the influence of the AG. More concretely, they imply that the consensus and new concepts are formed around personal preferences of judges rather than around established legal sources. They support the conclusion that especially in situations which allow the AsG to be more progressive, the Court sticks to the provisions and preliminary questions raised by the national courts.⁶¹

This could be due to the fact that judicial decision-making in cases that tackle potentially contentious issues is guided more by the non-legal concerns and judicial sensitivities than by sound legal arguments. Our qualitative analysis however indicates that this lower rate of influence can be better explained in the framework of judicial minimalism, rather than in terms of greater deference to Member State interests and immediate policy concerns. The reasoning in these cases is often coherent, but reduced to a minimum compared to the reasoning of the AG,⁶² and remains in the limits of more narrow secondary law as opposed to broader Treaty provisions, and the object of the dispute as defined by the preliminary reference, that is, judicial minimalism.⁶³

⁵⁷ See Sharpston (n 11), 30, see also Burrows and Greaves (n 6), 189-214 (on direct effect) and 263-288 (on citizenship). AG participation in developing fundamental concepts of EU law can be separate from immediate or delayed implicit or explicit influence on the Court.

⁵⁸ Burrows and Greaves (n 6), 287-8. Their periodisation follows that in D Kostakopoulou, 'Ideas, Norms, and European Citizenship' (2005) 68 *The Modern Law Review* 233, 238 and 244.

⁵⁹ Burrows and Greaves (n 6), 287.

⁶⁰ Greaves (n 10), 98.

⁶¹ S Sankari, *European Court of Justice Legal Reasoning in Context* (Groningen: Europa Law Publishing 2013), and the discussion on *Grzelczyk* above.

⁶² See for instance Case C-480/08, *Teixeira* EU:C:2010:83, Case C-140/12, *Brey* EU:C:2013:565, or Case C-256/11, *Dereci and others* EU:C:2011:734

⁶³ For the increasing tendency of the Court to decide the cases in the area of EU citizenship on the basis of secondary law, see N Nic Shuibhne, 'Limits Rising, Duties Ascending: The Changing Legal Shape of Union Citizenship' (2015) 52 *CML Rev* 889, and for the logic of judicial minimalism and judicial silences Sarmiento (n 53).

One could speculate that judicial minimalism continues to make the AsG irreplaceable as providers of applied academic research, presenting ‘possible directions in which that case-law might now go and reasoned suggestions as to why it would be better for the case-law to move in one direction rather than another.’⁶⁴ The academic community, which could (and does) provide such inspiration, would be less comprehensive, and fare worse in terms of time lag than the present duration of the Court’s procedure.

V. CONCLUDING REMARKS AND QUESTIONS FOR FURTHER RESEARCH

In this article we developed a framework, within which it is possible to assess AG influence on the Court empirically. Our model is the most comprehensive model to date, as it takes into account both the implicit and explicit impact of the AG on the Court. While the latter is reflected in citation or explicit reference to the opinion in the judgment, the former is present in the choice of precedents, reasoning and method of interpretation, as well as in the case outcome. We applied the model to the European citizenship case-law, consisting of 118 Court judgments. We demonstrated that the influence of the AG in this area of law depends to a large extent on two personal characteristics of the AG, her seniority and career background, and one institutional factor, the composition of the Court. It is importantly limited by the context of judicial decision-making.

Our study adds to the literature in several areas. First, it improves the existing methodology for assessing AG influence in three related aspects: (1) we can demonstrate influence in greater detail, and distinguish between the situations in which the Court reaches the same outcome as the AG but on different grounds, and situations, in which the Court reaches the same outcome on the basis of the same reasoning; (2) we can differentiate between cases in which the Court fully endorses the reasoning, the interpretation and the choice of case-law of the AG, and the cases in which it does so only to a certain degree or not at all; (3) by systematically recording the citations of individual paragraphs and arguments, we can trace the influence of the AG on the substance of the case-law beyond the case in which the opinion was delivered.

Second, our analysis can substantiate the normative discussion of the role of the AG, and shed light on the debate about her present as well as her future role in the European legal order. Third, we contribute empirical evidence to a more general debate on the nature of judicial decision-making: what determines the outcome of cases, law or diplomacy? This can supplement the legal reasoning approach, according to which the Court subscribes to its own established universal criteria of interpretation. It adds to the discussion of the importance of the social and political context in the evolution of courts, their jurisprudence and their authority to make law.

With regard to future research, our model can be expanded to include any other areas of EU law, as well as various groups of legal actors and institutions to study their influence on the Court, and contrast it. By combining qualitative and quantitative analysis, it can be extended to legal and socio-legal studies of the significance of personal characteristics of individual legal actors, including judges, in the process of the construction of legal concepts and doctrines. Related to the previous point, our discussion can highlight the significance of the seldom discussed working culture of the Court, and its social fabric.⁶⁵ Most interestingly, however, it can be used to address a difficult and never studied question of peer influence among the AsG: is there a peer effect in the corps and what factors does it depend on, and what implications does it have for European case-law?

⁶⁴ Sharpston (n 11), 33.

⁶⁵ On the working culture, social fabric and the possible tensions in terms of older and newer judges after the enlargement see H Rasmussen, ‘Present and Future European Judicial Problems after Enlargement and the Post-2005 Ideological Revolt’ (2007) 44 *CML Rev* 1661, 1668 and seq. and more broadly Vauchez (n 9).

Authors: Urška Šadl and Suvi Sankari

Title: The elusive influence of the Advocate General on the Court of Justice: the case of European citizenship
iCourts Working Paper, No. 70, 2016

Publication date: 15/June/2016

URL: <http://jura.ku.dk/icourts/working-papers/>

© Author

iCourts Working Paper Series
ISSN: 2246-4891

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