

Table of Contents

<i>Biographies</i>	xi
<i>Prologue</i>	xvii
<i>Jörg Polakiewicz</i>	

1. Introduction—A Matter for Two Courts: The Fundamental Rights Question for the EU	1
<i>Sonia Morano-Foadi and Lucy Vickers</i>	
I. The Interactions between the Two Courts in Europe	3
II. The Fundamental Rights Quest: Equality in Employment Law, Computer Law, Citizenship and Migration, Access to Justice and Judicial Cooperation in Civil Matters.....	5
III. The Future of Fundamental Rights Protection in Europe: The EU's Accession to the ECHR	6

PART I

2. The Place of the EU Charter within the Tradition of Fundamental and Human Rights	11
<i>Dr Niilo Jääskinen</i>	
I. Introduction	11
II. The Different Sources of the Law of Fundamental and Human Rights	12
III. Comprehensive Versus Sectorial Protection of Fundamental Rights.....	15
IV. The Charter as a Comprehensive and Pluralistic Instrument	17
3. Closing the Gaps in the Protection of Fundamental Rights in Europe: Accession of the EU to the ECHR	21
<i>Kristi Raba</i>	
I. Introduction	21
II. EU's Accession to the ECHR.....	22
A. Placing Accession in its Context.....	22
B. Pre-requisites of Accession from the EU Perspective	25
C. Procedure and State of Negotiations.....	27
D. Substance of the CJEU Opinion.....	30
III. Key Elements of the Accession Agreement of 5 April 2013	32
A. Main Features of the 2013 Draft Accession Agreement	32

B.	Attribution Clause	34
C.	EU Participation in the Committee of Ministers	36
D.	Co-respondent Mechanism	37
E.	Prior Involvement of the CJEU	41
F.	The Relationship between the Draft Accession Agreement and the EU Internal Rules	43
IV.	What Next for EU Accession to the ECHR?	45
4.	Problems and Challenges of the EU's Accession to the ECHR:	
	Empirical Findings with a View to the Future	47
	<i>Stelios Andreidakis</i>	
I.	Introduction	47
II.	The EU's Accession to the ECHR: The Three Pillars and the Overarching Rationale	49
III.	Empirical Findings: Voices from Luxembourg, Strasbourg and Brussels	51
A.	Challenges and Obstacles	53
(i)	Relationship between the Two Courts	53
(ii)	The Co-respondent Mechanism	59
(iii)	The Bosphorus Ruling: To be or Not to be (Upheld)?	61
IV.	Looking at the Future: The Post-accession Era and the 'Europe of Rights'	64
V.	Conclusion	66
5.	The EU Human Rights Regime Post Lisbon: Turning the CJEU into a Human Rights Court?	69
	<i>Wolfgang Weifß</i>	
I.	Introduction: Continuity and Change in the Lisbon EU Human Rights Regime	69
II.	CJEU Human Rights Adjudication and Proportionality Assessment	71
A.	Proportionality Review and Human Rights Protection	71
B.	Proportionality Review by the CJEU	72
(i)	Criticism of Partial Balancing and Loose Standards	72
(ii)	Intensified Proportionality Review Post Lisbon?	74
III.	CJEU Human Rights Adjudication and Judicial Interpretive Traditions	79
A.	Conformity with the ECHR Versus Established CJEU Case Law	80
B.	Interpretation of the Charter and Traditional Interpretive Methods: Human Rights Ensured 'Within the Framework of EU Structure and Objectives'	83
IV.	Conclusion	88

PART II

6. European Judicial Dialogue and the Protection of Fundamental Rights in the New Digital Environment: An Attempt at Emancipation and Reconciliation: The Case of Freedom of Speech	93
<i>Oreste Pollicino</i>	
I. More than an Introduction: A Methodological Declaration of Intent.....	93
II. Freedom of Speech in the US and its Protection Offline and Online: A Critical Analysis.....	97
III. Freedom of Speech in the Worlds of 'Atoms': The European Perspective.....	101
IV. The Impact of the Internet on the Protection of Free Speech in Europe.....	103
A. The European Convention on Human Rights.....	103
B. The Court of Justice of the European Union.....	107
V. Conclusions.....	111
7. Migration and Human Rights: The European Approach	115
<i>Sonia Morano-Foadi</i>	
I. Introduction.....	115
II. Human Rights and Migration in Europe.....	117
III. Judicial Views on Human Rights and Migration.....	120
IV. The 'Human Rights Meeting Point' in Migration Law Cases.....	125
A. Article 15 Qualification Directive and Article 3 ECHR.....	126
B. EU Dublin II Regulation and Article 3 ECHR.....	129
C. EU Returns Directive and Article 5 ECHR.....	132
D. Qualification Directive, Procedure Directive and Article 13 ECHR: Revocation of the Refugees' Status.....	133
V. Concluding Remarks.....	135
8. Who has the Right to have rights? The Judgments of the CJEU and the ECtHR as Building Blocks for a European 'ius commune' in Asylum Law	139
<i>Samantha Velluti</i>	
I. Introduction.....	139
II. The Dublin Regulation and Mutual Trust.....	141
A. The Dublin II Regulation.....	141
B. The Dublin Regulation Recast.....	144
III. The Role of the European Courts in Ensuring Adequate Standards of Asylum Seekers' Human Rights Protection.....	148
A. The ECtHR, the Presumption of Equivalent Protection and EU Asylum Law.....	148
B. The CJEU and Asylum.....	150

IV. Concluding Remarks: The European Courts and Asylum Seekers' Human Rights.....	156
9. More is Less? Multiple Protection of Human Rights in Europe and the Risks of Erosion of Human Rights Standards	159
<i>Titia Loenen and Lucy Vickers</i>	
I. Introduction.....	159
II. EU Competence Regarding Human Rights.....	161
III. The Headscarf Jurisprudence of the ECHR.....	162
IV. The Headscarf Issue under EU Law.....	166
V. A Deferential Approach by the CJEU?.....	170
A. Reasons to Support a Deferential Approach	170
B. Reasons for Not Following a Deferential Line	173
VI. Conclusions	175
10. In Extending Human Rights, which European Court is Substantively 'Braver' and Procedurally 'Fitter'? The Example of Sexual Orientation and Gender Identity Discrimination	179
<i>Robert Wintemute</i>	
I. Introduction.....	179
II. In this Area, does the CJEU Wait for ECtHR Case Law that it can Follow?.....	180
A. Gender Identity Discrimination	188
B. Sexual Orientation Discrimination.....	189
III. In this Area, is the ECtHR Substantively 'Braver' than the CJEU?.....	192
IV. Is the ECtHR Procedurally 'Fitter' to Extend Human Rights than the CJEU?.....	194
V. Conclusion	199
11. Access to Justice in the Recent Grand Chamber Judgments of the European Court of Human Rights.....	201
<i>Dragoljub Popović</i>	
I. Introduction.....	201
II. Article 6 of the Convention: Application Requirements	201
A. The Evolution.....	201
B. Overruling Previous Stance	204
C. Injunction Proceedings	206
D. Common Features	208
III. Expanding the Scope of Application	209
A. The Origin.....	209
B. Prisoners' Cases	211
C. State Immunity Cases.....	213
IV. Conclusions.....	216

12. Fundamental Rights and Judicial Cooperation in the Decisions of the Court of Justice on the Brussels I Regulation 2009–2014: The Story So Far	219
<i>Lorna Gillies</i>	
I. Introduction	219
II. The Area of Freedom, Security and Justice in Title IV of the Lisbon Treaty and the Charter of Fundamental Rights.....	223
III. A Gradual Expansion: Decisions of the CJEU on the Brussels I Regulation and the Charter.....	226
A. Case C-7/98 <i>Dieter Krombach v Andre Bamberski</i> : Does Enforcement of a Foreign Judgment Infringe a Fundamental Right?.....	226
B. Case C-394/07 <i>Marco Gambazzi v Daimler Chrysler</i> : Restrictions must not be ‘Manifestly Disproportionate’.....	227
IV. Taking Account of the Charter in the Case Law of the CJEU on the Brussels I Regulation 2009–2014	228
A. Prorogation of Jurisdiction and Coherence with Article 47: Case C-112/13 <i>A v B</i>	228
B. Exclusive Jurisdiction: Case C-483/12 <i>Irmengard Weber v Mechthilde Weber</i>	229
V. Compatibility of Service Via Public Notice with Article 6 ECHR/Article 47 Charter: Case C-292/10 <i>G v Cornelius De Visser</i>	231
A. Protective Measures under the Brussels I Regulation: Case C-350/13 <i>Antonio Gramsci Shipping Corp v Aivars Lembergs</i>	232
B. Refusal to Recognise a Foreign Judgment and Article 47 of the Charter: Case C-619/10 <i>Trade Agency Ltd v Seramico Investments Ltd</i>	233
C. Enforcement of Judgments under the Brussels I Regulation and Article 47 of the Charter	236
(i) Case C-156/12 <i>GREP GmbH v Freistaat Bayern</i>	236
(ii) Preliminary Reference in Case C-4/14 <i>Bohez v Wiertz</i>	236
VI. Conclusions	237
13. Concluding Remarks	239
<i>Sonia Morano-Foadi and Lucy Vickers</i>	
<i>Index</i>	243