

Contents

<i>Foreword by Vassilios Skouris, President of the Court of Justice of the European Union</i>	v
<i>Editors' Preface</i>	vii
<i>List of Contributors</i>	xxxix

Part I – Commentary on the Articles of the EU Charter of Fundamental Rights

Article 1 – Human Dignity	3
<i>Catherine Dupré</i>	

Text of Explanatory Note on Article 1	3
Select Bibliography	3

A. Article 1 and the Scope of EU Law	4
B. Interrelationship of Article 1 with Other Provisions of the Charter	6
C. Sources of Article 1	8
I. ECHR	8
II. Council of Europe Treaties	9
III. UN Treaties	10
IV. Relevant EU Law	11
V. Other Sources: National Constitutions	11
D. Analysis	13
I. General Remarks	13
II. Scope of Application	15
III. Specific Provisions	18
IV. Limitations and Derogations	21
V. Remedies	23
E. Evaluation	24

Article 2 – Right to Life	25
<i>Elizabeth Wicks</i>	

Text of Explanatory Note on Article 2	25
Select Bibliography	25

A. Field of Application of Article 2	26
B. Interrelationship of Article 2 with Other Provisions of the Charter	27
C. Sources of Article 2 Rights	29
I. ECHR	29
II. UN Treaties	30
III. Other Sources	30

D. Analysis	31
I. General Remarks	31
II. Scope of Application	31
III. Specific Provisions.....	33
IV. Limitations and Derogations.....	36
V. Remedies.....	37
E. Evaluation	38
 Article 3 – Right to the Integrity of the Person	39
<i>Sabine Michalowski</i>	
Text of Explanatory Note on Article 3	39
Select Bibliography	39
 A. Field of Application of Article 3	40
B. Interrelationship of Article 3 with Other Provisions of the Charter	42
C. Sources of Article 3 Rights.....	43
I. ECHR.....	43
II. UN Treaties.....	43
III. Council of Europe Treaties	43
D. Analysis	44
I. General Remarks	44
II. Scope of Application	45
III. Specific Provisions.....	46
IV. Limitations and Derogations.....	57
V. Remedies.....	58
E. Evaluation	58
 Article 4 – Prohibition of Torture and Inhuman or Degrading Treatment or Punishment.....	61
<i>Manfred Nowak and Anne Charbord</i>	
Text of Explanatory Note on Article 4	61
Select Bibliography	61
 A. Field of Application of Article 4	63
B. Interrelationship of Article 4 with Other Provisions of the Charter	67
C. Sources of Article 4 Rights.....	70
I. ECHR.....	70
II. UN Treaties.....	71
III. Council of Europe Treaties	74
D. Analysis	74
I. General Remarks	74
II. Scope of Application	76
III. Specific Provisions.....	80
IV. Limitations and Derogations.....	92
V. Remedies.....	95
E. Evaluation	97

Article 5 – Prohibition of Slavery and Forced Labour	101
<i>Heli Askola</i>	
Text of Explanatory Note on Article 5	101
Select Bibliography	102
A. Field of Application of Article 5	103
B. Interrelationship of Article 5 with Other Provisions of the Charter	104
C. Sources of Rights under Article 5.....	105
D. Analysis	106
I. General Remarks	106
II. Scope of Application	107
III. Specific Provisions.....	108
IV. Limitations and Derogations.....	117
V. Remedies.....	118
 Article 6 – Right to Liberty and Security.....	121
<i>Daniel Wilsher</i>	
Text of Explanatory Note on Article 6	121
Select Bibliography	122
A. Field of Application of Article 6.....	122
B. Interrelationship of Article 6 with Other Provisions of the Charter	125
C. Sources of Article 6 Rights.....	126
I. ECHR	126
II. UN Treaties	126
III. Council of Europe Treaties.....	127
IV. Other Sources.....	128
D. Analysis	128
I. General Remarks	128
II. Scope of Application	129
III. Specific Provisions.....	131
IV. Limitations and Derogations.....	132
V. Remedies.....	150
E. Evaluation	150
 Article 7 – Respect for Private and Family Life (Private Life, Home and Communications)	153
<i>Jens Vested-Hansen</i>	
Text of Explanatory Note on Article 7	153
Select Bibliography	153
A. Field of Application of Article 7 (Public Life, Home and Communications)	154
B. Interrelationship of Article 7 with Other Provisions of the Charter	154
C. Sources of Article 7 Rights.....	155

D. Analysis	155
I. General Remarks	155
II. Scope of Application	155
III. Specific Provisions.....	161
IV. Limitations and Derogations.....	179
V. Remedies.....	180
E. Evaluation	181

Article 7 – Right to Respect for Private and Family Life (Family Life Aspects)	183
<i>Shazia Choudhry</i>	

Text of Explanatory Note on Article 7	183
Select Bibliography	183

A. Field of Application of Article 7	183
I. Gender Equality.....	184
II. Children's Rights	187
III. Free Movement, Immigration and Asylum	190
B. Interrelationship of Article 7 with Other Provisions of the Charter	193
C. Sources of Article 7 Rights.....	194
I. ECHR.....	194
II. Council of Europe Treaties	195
III. UN Treaties.....	198
D. Analysis	201
I. General Remarks	201
II. Scope of Application	202
III. Specific Provisions.....	207
IV. Limitations and Derogations.....	216
V. Remedies.....	220
E. Evaluation	220

Article 8 – Protection of Personal Data.....	223
<i>Herke Kranenborg</i>	

Text of Explanatory Note on Article 8	223
Select Bibliography	223

A. Field of Application of Article 8	224
I. EU Competence on Data Protection before the Entry into Force of the Lisbon Treaty	224
II. EU Competence on Data Protection after the Entry into Force of the Lisbon Treaty	225
III. The Scope of Application of Secondary Legislation	227
B. Interrelationship of Article 8 with Other Provisions of the Charter	228
I. Article 7 (Right to Respect for Private and Family Life)	228
II. Article 11 (Freedom of Expression and Information)	231
III. Article 17 (Right to Property) and Article 47 (Right to an Effective Remedy and to a Fair Trial)	232

IV. Article 21 (Prohibition of Discrimination)	233
V. Article 42 (Right of Access to Documents)	234
C. Sources of Article 8.....	235
I. ECHR.....	235
II. UN Treaties.....	236
III. Council of Europe Treaties	238
IV. Organisation for Economic Cooperation and Development.....	238
D. Analysis	239
I. General Remarks	239
II. Scope of Application	241
III. Specific Provisions.....	247
IV. Limitations and Derogations.....	259
V. Remedies.....	263
E. Evaluation	264
Article 9 – Right to Marry and Right to Found a Family.....	267
<i>Shazia Choudhry</i>	
Text of Explanatory Note on Article 9	267
Select Bibliography	267
A. Field of Application of Article 9.....	267
B. Interrelationship of Article 9 with Other Provisions of the Charter	273
C. Sources of Article 9 Rights.....	274
I. ECHR.....	274
II. Council of Europe Treaties	275
III. UN Treaties.....	277
D. Analysis	279
I. General Remarks	279
II. Scope of Application	280
III. Specific Provisions.....	280
IV. Limitations and Derogations.....	287
V. Remedies.....	290
E. Evaluation	290
Article 10 – Right to Freedom of Thought, Conscience and Religion.....	291
<i>Ronan McCrea</i>	
Text of Explanatory Note on Article 10	291
Select Bibliography	291
A. Field of Application of Article 10.....	291
B. Interrelationship of Article 10 with Other Provisions of the Charter	293
I. Religious Freedom and Free Expression.....	293
II. Discrimination on Grounds of Religion.....	295
C. Sources of Article 10 Rights.....	298
D. Analysis	299
I. General Remarks	299
II. Scope of Application	300

III. Specific Provisions.....	301
IV. Limitations and Derogations.....	301
V. Remedies.....	307
E. Evaluation	307
F. Conclusion	309
 Article 11 – Freedom of Expression and Information	311
<i>Lorna Woods</i>	
Text of Explanatory Note on Article 11	311
Select Bibliography	311
A. Field of Application of Article 11	312
B. Interrelationship of Article 11 with Other Provisions of the Charter	314
C. Sources of Article 11 Rights.....	314
I. ECHR.....	314
II. UN Treaties.....	315
III. Council of Europe Treaties	318
IV. Other Sources	318
D. Analysis	320
I. General Remarks	320
II. Scope of Application	321
III. Specific Provisions.....	325
IV. Limits and Derogations	327
V. Remedies.....	330
E. Evaluation	331
 Article 12 – Freedom of Assembly and of Association	341
Article 12(1)	341
<i>Filip Dorssemont</i>	
Text of Explanatory Note on Article 12(1)	341
Select Bibliography	341
A. Field of Application of Article 12(1).....	342
B. Interrelationship of Article 12(1) with Other Provisions of the Charter	345
C. Sources of Article 12(1) Rights.....	347
I. Council of Europe Treaties	347
II. UN Treaties.....	348
III. Other Sources	349
D. Analysis	349
I. General Remarks	349
II. Scope of Application	350
III. Limitations and Derogations.....	359
IV. Remedies.....	360
E. Evaluation	364

Article 12(2)	367
<i>Jo Shaw and Lamin Khadar</i>	
Text of Explanatory Note on Article 12(2)	367
Select Bibliography	367
A. Field of Application of Article 12(2)	368
B. Interrelationship of Article 12(2) with Other Provisions of the Charter	368
C. Sources of Article 12(2) Rights.....	368
I. ECHR.....	369
II. UN Treaties.....	369
III. Other Sources	370
D. Analysis	370
I. General Remarks	370
II. Scope of Application	375
III. Detailed Analysis	375
IV. Limitations and Derogations.....	377
V. Remedies.....	377
E. Evaluation	377
 Article 13 – Freedom of the Arts and Sciences	379
<i>Debbie Sayers</i>	
Text of Explanatory Note on Article 13	379
Select Bibliography	379
A. Field of Application of Article 13	379
B. Interrelationship of Article 13 with Other Provisions of the Charter	381
C. Sources of Article 13 Rights.....	382
I. ECHR.....	382
II. UN Treaties.....	383
III. Council of Europe Treaties	387
IV. Other Sources	388
D. Analysis	389
I. General Remarks	389
II. Scope of Application	390
III. Specific Provisions.....	391
IV. Limitations and Derogations.....	397
V. Remedies.....	398
E. Evaluation	399
 Article 14 – Right to Education	401
<i>Gisella Gori</i>	
Text of Explanatory Note on Article 14	401
Select Bibliography	401
A. Field of Application of Article 14.....	402
B. Interrelationship of Article 14 with Other Provisions of the Charter	407

C. Sources of Article 14 Rights.....	408
I. ECHR.....	408
II. UN Treaties.....	411
III. Council of Europe Treaties.....	412
IV. Other Sources.....	413
D. Analysis.....	414
I. General Remarks.....	414
II. Scope of Application.....	416
III. Specific Provisions.....	418
IV. Limitations and Derogations.....	419
V. Remedies.....	420
E. Evaluation.....	421
 Article 15 – Freedom to Choose an Occupation and Right to Engage in Work.....	423
<i>Diamond Ashiagbor</i>	
Text of Explanatory Note on Article 15.....	423
Select Bibliography.....	423
A. Article 15 and the Scope of EU Law.....	424
B. Interrelationship of Article 15 with Other Provisions of the Charter.....	425
C. Sources of Article 15 Rights.....	427
I. European Social Charter.....	427
II. UN Treaties.....	429
III. Other Sources.....	430
D. Analysis.....	430
I. General Remarks.....	430
II. Scope of Application.....	431
III. Specific Provisions.....	432
IV. Limitations and Derogations.....	433
V. Remedies.....	434
E. Evaluation.....	435
 Article 16 – Freedom to Conduct a Business.....	437
<i>Michele Everson and Rui Correia Gonçalves</i>	
Text of Explanatory Note on Article 16.....	437
Select Bibliography.....	437
A. Field of Application.....	438
I. Freedom to Conduct a Business as a Human Right.....	440
II. Freedom to Conduct a Business as an Element of the European Economic Constitution.....	441
B. Relation of Article 16 to Articles 15 and 17 of the Charter.....	442
C. Sources of Law.....	445
D. Analysis.....	448
I. General Remarks.....	448
II. Scope of Application of Article 16.....	450

III. Specific Provisions.....	452
IV. Limitation to and Derogations from the Application of Article 16.....	458
V. Remedies.....	462
E. Conclusion	463
Article 17 – Right to Property	465
Article 17(1)	465
<i>Ferdinand Wollenschläger</i>	
Text of Explanatory Note on Article 17(1)	465
Select Bibliography	465
A. Field of Application of Article 17(1)	467
B. Interrelationship of Article 17(1) with Other Provisions of the Charter	467
C. Sources of Article 17(1) Rights.....	468
I. ECHR.....	468
II. UN Treaties.....	469
III. Other Sources	469
D. Analysis	470
I. General Remarks	470
II. Scope of Application.....	471
III. Limitations and Derogations.....	476
IV. Remedies.....	486
E. Evaluation	487
Article 17(2)	489
<i>Paul Torremans</i>	
Text of Explanatory Note on Article 17(2)	489
Select Bibliography	489
A. Field of Application of Article 17(2)	490
B. Interrelationship of Article 17(2) with Other Provisions of the Charter	492
C. Sources of Article 17(2) Rights.....	494
I. The Human Rights Approach to Copyright in International Instruments.....	494
II. The Human Rights Approach to Other Intellectual Property Rights in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights	500
III. ECHR.....	501
D. Analysis	502
I. General Remarks	502
II. Scope of Application.....	503
III. Specific Provisions.....	503
IV. Limitations and Derogations.....	515
V. Remedies.....	516
E. Evaluation	516

Article 18 – Right to Asylum	519
<i>Maarten den Heijer</i>	
Text of Explanatory Note on Article 18	519
Select Bibliography	519
A. Field of Application of Article 18	520
B. Interrelationship of Article 18 with Other Provisions of the Charter	521
C. Sources of Article 18 Rights.....	523
I. ECHR.....	523
II. UN Treaties.....	523
III. Council of Europe Treaties	526
IV. Constitutional Traditions	528
V. Other Sources	529
D. Analysis	530
I. General Remarks	530
II. Scope of Application	531
III. Limitations and Derogations.....	537
IV. Remedies.....	539
E. Evaluation	539
Article 19 – Protection in the Event of Removal, Expulsion or Extradition	543
<i>Elsbeth Guild</i>	
Text of Explanatory Note on Article 19	543
Select Bibliography	543
A. Article 19 and the Scope of EU Law.....	544
B. Interrelationship of Article 19 with Other Provisions of the Charter	545
C. Sources of Article 19 Rights.....	546
I. ECHR.....	546
II. UN Treaties.....	546
III. Council of Europe Treaties	548
IV. Other Treaties	548
V. Relevant EU law	548
D. Analysis	552
I. General Remarks	552
II. Scope of Application	553
III. Specific Provisions.....	554
IV. Limitations and Derogations.....	559
V. Remedies.....	560
E. Evaluation	561
Article 20 – Equality before the Law.....	563
<i>Mark Bell</i>	
Text of Explanatory Note on Article 20	563
Select Bibliography	563
A. Field of Application of Article 20	563
B. Interrelationship of Article 20 with Other Provisions of the Charter	564

C. Sources of Article 20 Rights.....	566
I. ECHR.....	566
II. UN Treaties.....	567
III. Council of Europe Treaties.....	567
IV. Other Sources.....	567
D. Analysis.....	568
I. General Remarks.....	568
II. Scope of Application.....	569
III. Specific Provisions.....	570
IV. Limitations and Derogations.....	573
V. Remedies.....	575
E. Evaluation.....	576
Article 21 – Non-Discrimination.....	579
<i>Claire Kilpatrick</i>	
Text of Explanatory Note on Article 21.....	579
Select Bibliography.....	579
A. Field of Application of Article 21.....	580
B. Interrelationship of Article 21 with Other Provisions of the Charter.....	582
C. Sources of Article 21 Rights.....	584
I. ECHR.....	584
II. UN Treaties.....	584
III. Council of Europe Treaties.....	586
D. Analysis.....	586
I. General Remarks.....	586
II. Scope of Application.....	587
III. Specific Provisions.....	594
IV. Limitations and Derogations.....	600
V. Remedies.....	602
E. Evaluation.....	602
Article 22 – Cultural, Religious and Linguistic Diversity.....	605
<i>Rachael Craufurd Smith</i>	
Text of Explanatory Note on Article 22.....	605
Select Bibliography.....	605
A. Field of Application of Article 22.....	605
B. Interrelationship of Article 22 with Other Provisions of the Charter.....	610
C. Sources of Article 22 Rights.....	613
I. ECHR.....	613
II. UN Treaties.....	616
III. Council of Europe Treaties.....	617
IV. Other.....	618
D. Analysis.....	618
I. General Remarks.....	618
II. Scope of Application.....	622
III. Specific Provisions.....	623

IV. Limitations and Derogations.....	627
V. Remedies.....	629
E. Evaluation	630
Article 23 – Equality between Women and Men	633
<i>Dagmar Schiek</i>	
Text of Explanatory Note on Article 23	633
Select Bibliography	633
A. Field of Application of Article 23	634
B. Interrelationship of Article 23 with Other Provisions of the Charter	636
I. Article 23 and Articles 20, 21 CFREU.....	636
II. Article 23 and Other Charter Articles.....	638
C. Sources for Article 23 Rights	639
I. Council of Europe Treaties.....	639
II. UN Treaties.....	640
III. EU Law.....	641
D. Analysis	643
I. General Remarks	643
II. Paragraph 1.....	644
III. Paragraph 2.....	650
E. Evaluation	655
I. Opportunities.....	655
II. Shortcomings.....	659
III. Conclusion.....	660
Article 24 – The Rights of the Child	661
<i>Ruth Lamont</i>	
Text of Explanatory Note on Article 24	661
Select Bibliography	661
A. Field of Application of Article 24.....	662
B. Interrelationship of Article 24 with Other Provisions of the Charter	671
C. Sources of Article 24 Rights.....	672
I. ECHR.....	672
II. UN Treaties.....	674
D. Analysis	678
I. General Remarks	678
II. Scope of Application.....	679
III. Specific Provisions.....	680
IV. Limitations and Derogations.....	686
V. Remedies.....	688
E. Evaluation	689
Article 25 – The Rights of the Elderly.....	693
<i>Colm O’Cinneide</i>	
Text of Explanatory Note on Article 25	693
Select Bibliography	693

A. Field of Application of Article 25	694
B. Interrelationship of Article 25 with Other Provisions of the Charter	695
C. Sources of Article 25 Rights.....	696
I. ECHR.....	696
II. UN Treaties.....	697
III. Council of Europe Treaties	698
IV. Other Sources	699
D. Analysis	701
I. General Remarks	701
II. Scope of Application	703
III. Specific Provisions.....	705
IV. Limitations and Derogations.....	706
V. Remedies.....	706
E. Evaluation	706
Article 26 – Integration of Persons with Disabilities	709
<i>Charlotte O’Brien</i>	
Text of Explanatory Note on Article 26	709
Select Bibliography	709
A. Field of Application of Article 26.....	710
B. Interrelationship of Article 26 with Other Provisions of the Charter	712
C. Sources of Article 26 Rights.....	717
I. ECHR.....	717
II. UN Treaties.....	721
III. Council of Europe Treaties	726
IV. Other Sources	728
D. Analysis	729
I. General Remarks	729
II. Scope of Application	734
III. Specific Provisions.....	736
IV. Limitations and Derogations.....	743
V. Remedies.....	745
E. Evaluation	747
Article 27 – Workers’ Right to Information and Consultation within the Undertaking.....	749
<i>Filip Dorssemont</i>	
Text of Explanatory Note on Article 27	749
Select Bibliography	749
A. Field of Application of Article 27	749
B. Interrelationship of Article 27 with Other Provisions of the Charter	750
C. Sources of Article 27 Rights.....	752
D. Analysis	755
I. General Remarks	755
II. Scope of Application	756
III. Specific Provisions.....	758

IV. Limitations and Derogations.....	763
V. Remedies.....	768
E. Evaluation	769
Article 28 – Right of Collective Bargaining and Action	773
<i>Catherine Barnard</i>	
Text of Explanatory Note on Article 28	773
Select Bibliography	773
A. Field of Application of Article 28 CFREU	774
B. Interrelationship of Article 28 with Other Provisions of the Charter	777
I. Other Provisions in the Charter.....	777
II. Protocol 30.....	778
C. Sources of Article 28 Rights.....	779
I. Right to Bargain Collectively.....	779
II. Right to Take Collective Action	781
D. Analysis	783
I. General Remarks	783
II. Scope of Application: Definition of Terms.....	784
III. Specific Provisions.....	787
IV. Limitations and Derogations.....	792
V. Remedies.....	793
E. Evaluation	794
Article 29 – Right of Access to Placement Services.....	795
<i>Diamond Ashiagbor</i>	
Text of Explanatory Note on Article 29	795
Select Bibliography	795
A. Article 29 and the Scope of EU Law.....	795
B. Interrelationship of Article 29 with Other Provisions of the Charter	797
C. Sources of Article 29 Rights.....	798
I. Council of Europe: European Social Charter	798
II. UN Treaties.....	798
III. Other Sources	800
D. Analysis	800
I. General Remarks	800
II. Scope of Application	801
III. Specific Provisions.....	802
IV. Limitations and Derogations.....	802
V. Remedies.....	802
E. Evaluation	803
Article 30 – Protection in the Event of Unjustified Dismissal	805
<i>Jeff Kenner</i>	
Text of Explanatory Note on Article 30	805
Select Bibliography	805
A. Article 30 and the Scope of EU Law.....	805

B.	Interrelationship of Article 30 with Other Provisions of the Charter	810
C.	Sources of Article 30 Rights.....	814
I.	ECHR.....	814
II.	UN Treaties.....	815
III.	ILO	816
IV.	Council of Europe Treaties	817
V.	National Constitutional Laws.....	817
D.	Analysis	818
I.	General Remarks	818
II.	Scope of Application	824
III.	Specific Provisions.....	825
IV.	Limitations and Derogations.....	829
V.	Remedies.....	831
E.	Evaluation	832
Article 31 – Fair and Just Working Conditions.....		833
<i>Alan Bogg</i>		
Text of Explanatory Note on Article 31		833
Select Bibliography		833
A.	Article 31 and the Scope of EU Law.....	834
B.	Interrelationship of Article 31 with Other Provisions of the Charter	836
C.	Sources of Article 31 Rights.....	839
I.	Council of Europe Treaties	839
II.	Other Sources	841
D.	Analysis	845
I.	General Remarks	845
II.	Scope of Application	850
III.	Specific Provisions.....	852
IV.	Limitations and Derogations.....	862
V.	Remedies.....	867
E.	Evaluation	868
Article 32 – Prohibition of Child Labour and Protection of Young People at Work		869
<i>Helen Stalford</i>		
Text of Explanatory Note on Article 32		869
Select Bibliography		869
A.	Field of Application of Article 32	870
B.	Interrelationship of Article 32 with Other Provisions of the Charter	874
C.	Sources of Article 32 Rights.....	876
I.	UN Treaties.....	876
II.	Council of Europe Treaties	877
III.	Other Sources	878
D.	Analysis	879
I.	General Remarks	879
II.	Scope of Application	879

III. Specific Provisions.....	883
IV. Limitations and Derogations.....	884
V. Remedies.....	886
E. Evaluation	888
Article 33 – Family and Professional Life.....	891
<i>Cathryn Costello</i>	
Text of Explanatory Note on Article 33	891
Select Bibliography	891
A. Field of Application of Article 33	892
B. Interrelationship of Article 33 with Other Provisions of the Charter	895
C. Sources of Article 33 Rights.....	897
I. ECHR.....	897
II. UN Treaties.....	900
III. Council of Europe Sources—The European Social Charter and Revised European Social Charter.....	905
IV. Other Sources	911
D. Analysis	917
I. General Remarks	917
II. Scope of Application	918
III. Specific Provisions and Issues	919
IV. Limitations and Derogations.....	922
V. Remedies.....	923
E. Evaluation	924
Article 34 – Social Security and Social Assistance	927
<i>Robin White</i>	
Text of Explanatory Note on Article 34	927
Select Bibliography	927
A. Field of Application of Article 34	928
B. Interrelationship of Article 34 with Other Provisions of the Charter	930
C. Sources of Article 34 Rights.....	930
I. ECHR.....	930
II. UN Treaties.....	932
III. Council of Europe Treaties	933
IV. Other Sources	936
D. Analysis	936
I. General Remarks	936
II. Scope of Application	937
III. Specific Provisions.....	941
IV. Limitations and Derogations.....	947
V. Remedies.....	948
E. Evaluation	948

Article 35 – The Right to Health Care	951
<i>Tamara Hervey and Jean McHale</i>	
Text of Explanatory Note on Article 35	951
Select Bibliography	951
A. Field of Application of Article 35	951
B. Interrelationship of Article 35 with Other Provisions of the Charter	952
C. Sources of Article 35 Rights	953
I. ECHR	953
II. UN Treaties	953
III. Council of Europe Treaties	954
IV. Other Sources	956
D. Analysis	957
I. General Remarks	957
II. Scope of Application	957
III. Specific Provisions	959
IV. Limitations and Derogations	966
V. Remedies	966
E. Evaluation	967
 Article 36 – Access to Services of General Economic Interest.....	969
<i>Erika Szyszczak</i>	
Text of Explanatory Note on Article 36	969
Select Bibliography	969
A. Article 36 and the Scope of EU Law.....	969
B. Interrelationship of Article 36 with Other Provisions of the Charter	970
C. Sources of Article 36 ‘Rights’ and ‘Principles’	971
D. Analysis	971
I. General Remarks	971
II. Scope of Application	972
III. Specific Provisions.....	972
IV. Limitations and Derogations.....	981
V. Remedies.....	981
E. Evaluation	981
 Article 37 – Environmental Protection	983
<i>Elisa Morgera and Gracia Marín Durán</i>	
Text of Explanatory Note on Article 37	983
Select Bibliography	983
A. Field of Application of Article 37	984
B. Interrelationship of Article 37 with Other Provisions of the Charter	985
C. Sources of Article 37	987
I. EU Law.....	987
II. National Constitutional Law	989

D. Analysis	991
I. General Remarks	991
II. Specific Provisions.....	992
III. Legal Nature.....	995
IV. Limitations and Derogations.....	997
V. Remedies.....	1000
E. Evaluation	1002
 Article 38 – Consumer Protection	1005
<i>Steve Weatherill</i>	
Text of Explanatory Note on Article 38	1005
Select Bibliography	1005
A. Field of Application of Article 38	1005
B. Interrelationship of Article 38 with Other Provisions of the Charter	1006
C. Sources of Article 38 Rights.....	1006
D. Analysis	1008
I. General Remarks	1008
II. Scope of Application	1010
III. Specific Provisions.....	1010
IV. Limitations.....	1024
V. Remedies.....	1025
E. Evaluation	1025
 Article 39 – Right to Vote and to Stand as a Candidate at Elections to the European Parliament.....	1027
<i>Lamin Khadar and Jo Shaw</i>	
Text of Explanatory Note on Article 39	1027
Select Bibliography	1027
A. Field of Application of Article 39	1028
B. Interrelationship of Article 39 with Other Provisions of the Charter	1028
C. Sources of Article 39 Rights.....	1030
I. ECHR.....	1030
II. UN Treaties.....	1030
III. Council of Europe Treaties	1032
IV. Other Sources	1032
D. Analysis	1033
I. General Remarks	1033
II. Scope of Application	1040
III. Specific Provisions.....	1040
IV. Limitations and Derogations.....	1046
V. Remedies.....	1050
E. Evaluation	1052

**Article 40 – Right to Vote and to Stand as a Candidate
at Municipal Elections.....1057**

Kees Groenendijk

Text of Explanatory Note on Article 401057

Select Bibliography1057

A. Field of Application of Article 401058

B. Interrelationship of Article 40 with Other Provisions of the Charter1058

C. Sources of Article 40 Rights.....1059

I. ECHR.....1059

II. UN Treaties.....1060

III. Council of Europe.....1061

IV. Other Sources1061

D. Analysis1062

I. General Remarks1062

II. Scope of Application1063

III. Specific Provisions.....1064

IV. Limitations and Derogations.....1065

V. Remedies.....1066

E. Evaluation1066

Article 41 – Right to Good Administration.....1069

Paul Craig

Text of Explanatory Note on Article 411069

Select Bibliography1069

A. Article 41 and the Scope of EU Law.....1070

B. Interrelationship of Article 41 with Other Provisions of the Charter1071

C. Sources of Article 41 Rights.....1071

D. Analysis1072

I. General Remarks1072

II. Scope of Application1072

III. Specific Provisions.....1076

IV. Limitations and Derogations.....1097

V. Remedies.....1097

E. Evaluation1098

Article 42 – Right of Access to Documents1099

Deirdre Curtin and Joana Mendes

Text of Explanatory Note on Article 421099

Select Bibliography1099

A. Field of Application of Article 421100

B. Interrelationship of Article 42 with Other Provisions of the Charter1102

C. Sources of Article 42 Rights.....1103

D. Analysis	1104
I. General Remarks	1104
II. Scope of Application	1107
III. Specific Provisions.....	1111
IV. Limitations and Derogations.....	1112
V. Remedies.....	1118
E. Evaluation	1118
Article 43 – European Ombudsman	1121
<i>Ian Harden</i>	
Text of Explanatory Note on Article 43	1121
Select Bibliography	1121
A. Field of Application of Article 43	1121
B. Interrelationship of Article 43 with Other Provisions of the Charter	1124
C. Sources of Article 43 Rights.....	1124
I. UN Treaties.....	1125
II. Council of Europe Treaties	1125
III. Other Sources	1126
D. Analysis	1127
I. General Remarks	1127
II. Scope of Application	1129
III. Specific Provisions.....	1136
IV. Limitations and Derogations.....	1140
V. Remedies.....	1141
E. Evaluation	1143
I. The Ombudsman Remedy as an Alternative Route to Redress.....	1144
II. The Ombudsman Remedy as an Instrument of Public Participation	1147
III. Future Trends	1149
Article 44 – Right to Petition	1151
<i>Mats Lindfelt</i>	
Text of Explanatory Note on Article 44	1151
Selected Bibliography.....	1151
A. Field of Application of Article 44	1151
B. Interrelationship with Other Provisions of the Charter	1152
C. Sources of Article 44 Rights.....	1153
D. Analysis	1154
I. General Remarks	1154
II. Scope of Application	1155
III. Specific Provisions.....	1157
IV. Limitations.....	1158
V. Remedies.....	1158
E. Evaluation	1159
I. A Tool for Democratic Control.....	1159

Article 45 – Freedom of Movement and of Residence1161

Eleanor Spaventa

Text of Explanatory Note on Article 451161

Select Bibliography1161

A. Field of Application of Article 451161

B. Interrelationship of Article 45 with Other Provisions of the Charter1162

C. Sources of Article 45 Rights1163

D. Analysis1164

I. General Remarks1164

II. Scope of Application—Article 45(1)1164

III. Right to Move, Right to Enter and Right to Exit1165

IV. Right to Reside1166

V. The Right to Move and Claims Against the Member State of Origin1172

VI. Nature of Charter Rights—and Purely Internal Situations1174

VII. Article 45(2)1175

VIII. Remedies1175

E. Evaluation1176

Article 46 – Diplomatic and Consular Protection1177

Eileen Denza

Text of Explanatory Note on Article 461177

Select Bibliography1177

A. Field of Application of Article 461178

B. Interrelationship of Article 46 with Other Provisions of the Charter1178

C. Sources of Article 46 Rights1179

I. Commission Proposals and Research1180

II. National Implementing Measures1181

D. Analysis1181

I. General Remarks1181

II. Background—Diplomatic Protection, Protection by Diplomatic Missions and Consular Protection1184

III. Scope of the ‘Right’ to Protection1185

IV. Whether ‘Diplomatic Protection’ in the Formal Sense is Covered1187

V. Specific Provisions1188

VI. Limitations1193

VII. Remedies1193

E. Evaluation1194

Article 47 – Right to an Effective Remedy and to a Fair Trial1197

Pekka Aalto, Herwig CH Hofmann, Liisa Holopainen, Elina Paunio, Laurent Pech, Debbie Sayers, Dinah Shelton and Angela Ward

Text of Explanatory Note on Article 471197

Select Bibliography1198

A. Field of Application1199

B. Interrelationship with Other Provisions of the Charter1199

C.	Sources of Article 47 Rights.....	1200
I.	An 'Effective Remedy'	1200
II.	A 'Fair and Public Hearing'	1205
III.	'Within a Reasonable Time'	1207
IV.	'By an Independent and Impartial Tribunal Previously Established by Law'	1207
V.	Legal Aid for Indigents	1209
D.	Analysis	1209
I.	General Remarks.....	1209
II.	Scope of Application.....	1210
III.	Specific Provisions (Meaning)	1211
IV.	Effective Remedies before Member State Courts and the Principle of Non-Discrimination.....	1228
V.	Damages for Breach of the Charter	1235
VI.	Effective Judicial Remedies before the Court of Justice	1241
VII.	Article 47(2): Everyone is entitled to a fair and public hearing within a reasonable time <i>by an independent and impartial tribunal previously established by law</i> . Everyone shall have the possibility of being advised, defended and represented.....	1250
VIII.	Article 47(2): Everyone is entitled to a <i>fair and public hearing within a reasonable time</i> by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.....	1258
IX.	Article 47(3): Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice	1269
E.	Evaluation	1273
Article 48 – Presumption of Innocence and Right of Defence (Administrative Law)		1277
<i>Hanns Peter Nehl</i>		
Text of Explanatory Note on Article 48		1277
Select Bibliography		1277
I.	ARTICLE 48(1)—PRESUMPTION OF INNOCENCE	
A.	Field of Application of Article 48(1)	1278
B.	Interrelationship of Article 48(1) with Other Provisions of the Charter	1279
C.	Sources of Rights under Article 48(1)	1280
D.	Analysis	1281
I.	General Remarks	1281
II.	Scope of Application	1282
III.	Specific Provisions: Substantive Content of Article 48(1)	1283
IV.	Limitations and Derogations.....	1287
V.	Remedies	1288
E.	Evaluation	1289
II.	ARTICLE 48(2)—RIGHTS OF THE DEFENCE	
A.	Field of Application of Article 48(2)	1289
B.	Interrelationship of Article 48(2) with Other Provisions of the Charter	1291

C. Sources of Rights under Article 48(2)	1291
D. Analysis	1292
I. General Remarks	1292
II. Scope of Application	1292
III. Specific Provisions: Substantive Content of Article 48(2)	1293
IV. Limitations and Derogations	1298
V. Remedies	1298
E. Evaluation	1301

Article 48 – Presumption of Innocence and Right of Defence (Criminal Law)

Debbie Sayers

Text of Explanatory Note on Article 48	1303
Select Bibliography	1303

I. ARTICLE 48(1)—PRESUMPTION OF INNOCENCE

A. Field of Application of Article 48(1)	1304
B. Interrelationship of Article 48(1) with Other Provisions of the Charter	1305
C. Sources of Rights under Article 48(1)	1306
I. ECHR	1306
II. UN Treaties	1307
III. Council of Europe Treaties	1309
IV. Other Sources	1309

II. ARTICLE 48(2)—RIGHTS OF THE DEFENCE

A. Field of Application of Article 48(2)	1309
B. Interrelationship of Article 48(2) with Other Provisions of the Charter	1313
C. Sources of Rights under Article 48(2)	1313
I. ECHR	1313
II. UN Treaties	1316
III. Other Sources	1319
D. Analysis	1319
I. General Remarks	1319
II. Scope of Application	1321
III. Specific Provisions: Substantive Content of Article 48	1322
IV. Limitations and Derogations	1344
V. Remedies	1345
E. Evaluation	1347

Article 49 – Principles of Legality and Proportionality of Criminal Offences and Penalties

Valsamis Mitsilegas

Text of Explanatory Note on Article 49	1351
Select Bibliography	1351

A. Field of Application of Article 49	1352
B. Interrelationship of Article 49 with Other Provisions of the Charter	1352

C. Sources of Rights under Article 49.....	1353
I. UN Sources.....	1353
II. ECHR.....	1354
D. Analysis	1358
I. General Remarks	1358
II. Legality.....	1359
III. Proportionality	1365
E. Evaluation	1371

Article 50 – Right not to be Tried or Punished Twice in Criminal Proceedings for the same Criminal Offence1373

Jonathan Tomkin

Text of Explanatory Note on Article 50	1373
Select Bibliography	1373

A. Field of Application of Article 50	1374
I. Criminal Law.....	1375
II. Administrative Law Proceedings and Sanctions.....	1377
B. Interrelationship of Article 50 with Other Provisions of the Charter	1378
C. Sources of Rights under Article 50.....	1379
I. ECHR.....	1380
II. UN Treaties.....	1381
III. Other Sources	1383
D. Analysis	1384
I. General Remarks	1384
II. Scope of Application	1385
III. Specific Provisions.....	1392
IV. Limitations and Derogations.....	1407
V. Remedies.....	1410
E. Evaluation	1411

Article 51 – Field of Application1413

Angela Ward

Text of Explanatory Note on Article 51	1413
Select Bibliography	1414

A. Field of Application of Article 51	1415
B. Interrelationship of Article 51 with Other Provisions of the Charter	1415
I. Article 51(1).....	1415
II. Article 51(2).....	1421
C. Sources of Article 51 Rules	1422
D. Analysis	1424
I. General Remarks	1424
II. Specific Provisions.....	1427
E. Evaluation	1449

Article 52 – Scope and Interpretation of Rights and Principles.....	1455
<i>Steve Peers and Sacha Prechal</i>	
Text of Explanatory Note on Article 52	1455
Select Bibliography	1457
A. Field of Application of Article 52	1458
B. Interrelationship of Article 52 with Other Provisions of the Charter	1458
C. Sources of Article 52 Rules	1459
D. Analysis	1459
I. General Remarks	1459
II. Specific Provisions.....	1461
E. Evaluation	1521
 Article 53 – Level of Protection.....	 1523
<i>Bruno de Witte</i>	
Text of Explanatory Note on Article 53	1523
Select Bibliography	1523
A. Sources of Article 53	1524
B. Analysis	1524
I. Relation with the Rest of European Union Law.....	1525
II. Relation with International Law.....	1526
III. Relation with National Constitutions	1527
IV. An Exception to the Primacy of EU Law?	1529
V. The Legal Significance of Article 53.....	1533
C. Conclusion.....	1537
 Article 54 – Abuse of Rights	 1539
<i>Lorna Woods</i>	
Text of Explanatory Note on Article 54	1539
Select Bibliography	1539
A. Article 54 and the Scope of EU Law.....	1539
B. Interrelationship of Article 54 with Other Provisions of the Charter	1540
C. Sources of Article 54 Rights.....	1540
I. ECHR	1540
II. UN Treaties	1541
III. Council of Europe Treaties	1543
IV. Other Sources	1544
D. Analysis	1545
I. General Remarks	1545
II. Scope of Application	1545
III. Specific Provisions.....	1547
IV. Limits and Derogation	1550
E. Evaluation	1550

Part II – Reflections on the EU Charter of Fundamental Rights

The Place of the Charter in the EU Constitutional Edifice	1559
<i>Koen Lenaerts and José Antonio Gutiérrez-Fons</i>	

A. The Scope of Application of the Charter	1561
I. <i>Wachauf</i> as a Token of Positive Action on the Part of the Member States	1562
II. The Derogation Situation	1568
III. <i>Annibaldi</i> as an Example of the Situations where the Charter does not Apply	1569
B. The Charter and Primary EU Law	1571
I. The Charter and the Treaties	1571
II. The Charter and General Principles of EU Law	1575
C. The Charter and the Common Constitutional Space	1580
I. The Charter and the ECHR	1580
II. The Charter and the Constitutional Traditions Common to the Member States	1586
D. Concluding Remarks	1592

Protocol (No 30) on the Application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom	1595
<i>Anthony Arnall</i>	

Select Bibliography	1596
A. Introduction	1597
B. The Background to Protocol No 30	1599
C. The Meaning and Effect of Protocol No 30	1603
I. The Preamble	1603
II. Article 1(1) of the Protocol	1604
III. Article 1(2) of the Protocol	1607
IV. Article 2 of the Protocol	1609
D. Evaluation	1610

The EU Fundamental Rights Agency and the Fundamental Rights Charter: How Fundamental is the Link Between them?	1613
<i>Gabriel N Toggenburg</i>	

A. Introduction	1613
B. The FRA: a Glimpse at its Role in the EU's Institutional Landscape	1614
C. The Agency's Founding Regulation and its Multiannual Framework: a Case of 'Charter-blindness'?	1616
D. The Charter in the Agency's Practice: Legal Benchmark and Tool	1619
E. Instead of Conclusions: a Triptych of Proposals for Making the Link Between the Charter and the Agency even more Fundamental	1623

The Implementation of the Charter by the Institutions of the European Union	1627
<i>Olivier De Schutter</i>	
A. Introduction	1627
B. The Integration of the Charter of Fundamental Rights in the Work of the European Parliament.....	1629
I. The Parliament's Role in Monitoring the EU Member States.....	1629
II. The Parliament as Guardian of Legality	1636
III. The Parliament as Co-legislator	1641
C. The Integration of the Charter of Fundamental Rights by the European Commission	1643
I. Assessment of Compatibility of Legislative Proposals with the Charter	1643
II. Impact Assessments.....	1645
III. Ensuring the Implementation of the Charter of Fundamental Rights.....	1648
D. The Integration of the Charter of Fundamental Rights by the Council of the EU	1650
E. The Integration of the Charter of Fundamental Rights in Law- and Policy-making: the Next Steps.....	1652
 The Extraterritorial Application of the EU Charter of Fundamental Rights: From Territoriality to Facticity, the Effectiveness Model	1657
<i>Violeta Moreno-Lax and Cathryn Costello</i>	
Select Bibliography	1657
A. Introduction	1658
B. Relevant Provisions: The Treaty and the Charter.....	1661
C. The Place of 'Jurisdiction' in the EU Legal Order	1663
I. 'PIL Jurisdiction' and EU Law	1663
II. 'IHRL Jurisdiction' and EU Law.....	1668
D. Analysis: The Applicability of EU Fundamental Rights, an Autonomous Paradigm	1679
E. Evaluation: The Emergence of a New Model	1682
 The Charter and Universal Human Rights Instruments	1685
<i>Allan Rosas</i>	
A. Introduction	1685
B. The Relevance of International Human Rights Instruments for the Development of EU Fundamental Rights	1687
C. Examples from Case Law	1691
D. Human Rights Instruments in EU External Relations.....	1694
E. The Lisbon Treaty, the Charter and Universal Instruments	1697
F. Conclusions	1700

Fundamental Social Rights in the Charter—Are They Rights? Are They Fundamental?	1703
<i>Niilo Jääskinen</i>	
A. Introduction	1703
B. A Short History of EU Fundamental Social Rights.....	1704
C. Nature and Effects of Fundamental Social Rights.....	1707
I. Philosophical Foundations of Fundamental Social Rights.....	1708
II. Effects of Fundamental Social Rights	1710
D. Protection of Fundamental Social Rights in a Multi-level Constitutional Structure	1710
E. From an Exception to the Fundamental	1712
The Explanations Relating to the Charter of Fundamental Rights of the European Union	1715
<i>Jean-Paul Jacqué</i>	
A. The Origin of the Explanations.....	1715
I. The First Convention: the Explanations as an Explanatory Report.....	1716
II. The Second Convention: Moving Towards a Specific Status for the Explanations.....	1717
B. A Diversified Content	1718
C. The Use of the Explanations in Jurisdiction.....	1721
I. The Search for the Source of a Guaranteed Right	1721
II. Interpreting the Charter's Guaranteed Rights and General Provisions.....	1722
D. Conclusion.....	1724
 Part III – Commentary on the Treaty of EU Accession to the European Convention on Human Rights	
Agreement on the Accession of the European Union to the European Convention on Human Rights.....	1727
<i>Paul Gragl</i>	
Text of the Agreement.....	1727
Select Bibliography	1733
A. Background and Overview of EU Accession to the ECHR.....	1734
I. The Long History of Accession	1734
II. The Constraints of Article 218 TFEU, Article 6(2) TEU, and Protocol No 8 to the Treaties.....	1737
III. The Relevance of Article 52(3) of the Charter of Fundamental Rights.....	1741
B. The Substantive Provisions of the Accession Agreement.....	1745
Article 1—Scope of the Accession and Amendments to Article 59 of the Convention	1745
Article 2—Reservations to the Convention and the Protocols	1758
Article 3—Co-Respondent Mechanism.....	1761
Article 4—Inter-Party Cases.....	1790

Article 5—Interpretation of Articles 35 and 55 of the Convention	1795
Article 6—Election of Judges	1797
Article 7—Participation of the European Union in the Committee of Ministers of the Council of Europe	1801
Article 8—Participation of the European Union in the Expenditure Related to the Convention	1812
Article 9—Relations with other Agreements.....	1815
Article 10—Signature and Entry into Force.....	1817
Article 11—Reservations	1819
Article 12—Notifications.....	1819
C. Appraisal	1820
<i>Appendix</i>	1825
<i>Index</i>	1861