

THE EU
CHARTER OF
FUNDAMENTAL
RIGHTS

A Commentary

SECOND EDITION

Edited by

Steve Peers, Tamara Hervey,
Jeff Kenner and Angela Ward



THE EU CHARTER OF FUNDAMENTAL RIGHTS

This second edition of the first commentary of the EU Charter of Fundamental Rights in English, written by experts from several EU Member States, provides an authoritative but succinct statement of how the Charter impacts upon EU, domestic and international law.

Following the conventional article-by-article approach, each commentator offers an expert view of how each article is either already being interpreted in the courts, or is likely to be interpreted. Each commentary is referenced to the case law and is augmented with extensive references to further reading. This is a much-welcomed new edition of the authoritative guide to the Charter.

Second Edition

The EU Charter of Fundamental Rights

A Commentary

Second Edition

Edited by
Steve Peers
Tamara Hervey
Jeff Kenner
and
Angela Ward



HART PUBLISHING

Bloomsbury Publishing Plc

Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, UK

1385 Broadway, New York, NY 10018, USA

29 Earlsfort Terrace, Dublin 2, Ireland

HART PUBLISHING, the Hart/Stag logo, BLOOMSBURY and the Diana logo are trademarks of Bloomsbury Publishing Plc

First published in Great Britain 2021

Copyright © The editors and contributors severally 2021

The editors and contributors have asserted their right under the Copyright, Designs and Patents Act 1988 to be identified as Authors of this work.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or any information storage or retrieval system, without prior permission in writing from the publishers.

While every care has been taken to ensure the accuracy of this work, no responsibility for loss or damage occasioned to any person acting or refraining from action as a result of any statement in it can be accepted by the authors, editors or publishers.

All UK Government legislation and other public sector information used in the work is Crown Copyright ©.

All House of Lords and House of Commons information used in the work is Parliamentary Copyright ©.

This information is reused under the terms of the Open Government Licence v3.0 (<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3>) except where otherwise stated.

All Eur-lex material used in the work is © European Union,
<http://eur-lex.europa.eu/>, 1998–2021.

A catalogue record for this book is available from the British Library.

ISBN: HB: 978-1-50993-347-1 Hart Publishing
HB: 978-3-406-76965-8 (Beck)
HB: 978-3-8487-8612-1 (Nomos)
ePDF: 978-1-50993-348-8
ePub: 978-1-50993-350-1

Typeset by Compuscript Ltd, Shannon

Printed and bound in Great Britain by CPI Group (UK) Ltd, Croydon CR0 4YY



To find out more about our authors and books visit www.hartpublishing.co.uk. Here you will find extracts, author information, details of forthcoming events and the option to sign up for our newsletters.

Foreword

KOEN LENAERTS*

It is now just over a decade since the Charter of Fundamental Rights of the European Union entered into force together with the Lisbon Treaty on 1 December 2009, as primary EU law on an equal footing with the EU Treaties. It is, moreover, just over two decades since the Charter was first proclaimed as an indicative catalogue of rights at Nice on 7 December 2000. Of course, fundamental rights protection in the law of the Union predates the Charter, having been recognised as a general principle of law over fifty years ago, first in 1969 in *Stauder v City of Ulm*¹ and then even more explicitly a year later in the *Internationale Handelsgesellschaft* case.² However, there is no doubt that the Charter has, particularly since its formal entry into force, afforded much greater visibility to the rights that it protects and, in so doing, has significantly enhanced legal certainty for those seeking to rely on those rights.

The timeliness of the Charter's elevation to primary law status can hardly be over-estimated. Europe, and indeed the wider world, face myriad and ever-greater fundamental rights challenges. Authoritarian regimes the world over are increasingly strident and open in their disregard for fundamental rights and in their insistence that the way in which they treat their own citizens is no one else's business. The ubiquity of digital communications has also raised new and difficult issues surrounding respect for fundamental rights, in particular as regards the right to respect for private and family life and the right to the protection of personal data, not only by State authorities but also by private corporations which may well be headquartered outside the jurisdiction in which the effects of alleged breaches of those rights are being felt. The need to 'lock down' entire societies in the face of the ongoing global pandemic – a development that is unprecedented in modern times – has also thrown into sharp relief the potential fragility of rights and freedoms that were previously taken for granted in democratic societies, as decision-makers have grappled with the competing imperatives of respect for those rights and freedoms, on the one hand, and of the need to prioritise public health and to save lives, on the other. As the European Union has confronted these challenges, the Charter has served as an anchor in troubled waters, providing all three branches of government, at both European and Member State level, with an indispensable tool for ensuring that all action undertaken under Union law remains grounded in the values on which the Union is founded.

This Commentary, to which several dozen of the most distinguished lawyers and academics from across Europe, including a number of my judicial colleagues at the Court of Justice, have contributed will, in my opinion, provide invaluable assistance to all those seeking to carry out the vital work of putting the Charter's provisions into effect. In practical terms, Part I will be of particular value to those who wish to ascertain the specific scope and meaning of the provisions

* President of the Court of Justice of the European Union and Professor of European Union Law, University of Leuven.

¹ Judgment of 12 November 1969, *Stauder v City of Ulm*, Case 29–69, EU:C:1969:57.

² Judgment of 17 December 1970, *Internationale Handelsgesellschaft*, Case 11–70, EU:C:1970:114.

of the Charter. Each Charter article is analysed in turn, taking account of its wording, context and objectives, as well as the relevant case law of the CJEU that has interpreted it. Whether practicing lawyer, academic researcher, or interested European citizen, anyone who wishes to learn more about the rights that are protected by the Charter, and the way in which it operates to ensure such protection in practice, will, I believe, find answers to his or her questions in the pages of this part of the Commentary.

Part II, to which I myself have contributed a chapter, seeks to take a step back and to provide a more reflective and contextual overview of particular aspects of the operation of the Charter. Each chapter approaches the Charter from a different analytical standpoint. While some authors focus on fundamental rights protection in specific fields or on particular aspects of that protection that are currently dominating the case law – in particular, the law of international protection, developments relating to the principle of mutual trust, fundamental social rights and the obligation to provide effective remedies to enforce Charter rights – others explore the interaction between the Charter, as the catalogue of fundamental rights applicable under EU law, and systems of national or international law.

Finally, Part III of the Commentary contains one single contribution assessing an important subject tangential to the Charter, namely the prospects for EU accession to the European Convention on Human Rights, in accordance with Article 6(2) TEU.

In conclusion, the Commentary provides a comprehensive guide to the Charter of Fundamental Rights of the European Union from a broad range of different perspectives and I thoroughly recommend it to anyone who has an interest, whether practical or academic, in the application of fundamental rights in the EU legal order.

Editor's Preface Second Edition

Fundamental human rights. The phrase resonates in so many ways – historically, politically, socially, rhetorically, and legally. The notion of inalienable rights, which inhere in human beings merely by reason of their humanity, and apply regardless of nationality, race, religion, sex, gender, sexual orientation, age, disability and other categories, is not only a crucial part of Europe's history, and its emergence from its dark past of the early 20th century. It is also an essential touchstone in contemporary times: we cannot assume that striving for equal dignity for all human beings, and constraining the power of those who govern, is somehow no longer necessary. A global pandemic is just one of the challenges of the first part of the 21st century in which human rights have a critical role to play. Other challenges include how best to uphold the rule of law in contemporary democratic societies, where populism seems to be enjoying renewed voter support – a matter on which courts across the globe, including the CJEU, are being invited to rule. The contemporary contexts are of course important, but our core focus here is EU human rights law. While originally the Council of Europe was the institutional context for the development of human rights in Europe, the EU became involved in human rights from at least the 1970s onwards. This initial development, however, was in the context of the CJEU's jurisprudence, rather than in a single human rights instrument such as the Council of Europe's Convention on Human Rights and Fundamental Freedoms, or European Social Charter. It was not until the late 1990s that the idea of a fundamental rights instrument for the EU was realised in practice.

The Charter of Fundamental Rights of the European Union, which enshrines certain civil, political, social, economic and cultural rights in EU law, was given full legal effect by the entry into force of the Treaty of Lisbon on 1 December 2009. This brief description belies a long and convoluted journey which began with a decision of the European Council in 1999 to draw up a Charter of Fundamental Rights and resulted quite quickly in the publication of a first draft in 2000. By December 2000, the Charter had been enshrined in the Treaty of Nice. But between 2001 and 2004 the Charter became enmeshed in the ultimately unsuccessful effort to introduce an EU Constitutional Treaty, and by the end of 2004, with votes in the Netherlands and France having gone against the Constitutional Treaty, it appeared that the Charter would remain forever in legal limbo. Remarkably, it was revived by the Treaty of Lisbon, which at the same time provided for the accession of the EU to the European Convention on Human Rights. Although the latter has not taken place, the place of the Charter in EU law is now secure: the Charter provides a standard against which the EU institutions, and, in some circumstances, institutions of the Member States are held to account.

The rhetorical power of human rights is undeniable. But in this book, our focus is on their legal status. The idea that human beings have rights that are legally enforceable against institutions of public power (typically, institutions of government in a state) is one of the most powerful aspects of human rights. Human rights thus embody important constitutional principles, including the separation of powers and the independence of the judiciary. These principles are far from secure in contemporary Europe: human rights vigilance constitutes an important tool against excesses of power. As the EU has taken on greater public authority, particularly in areas where its actions affect matters that profoundly relate to human beings (such as their freedoms, dignity, and equality), the need for subjecting the EU's decision-making to human rights review

has become ever more pressing. Whatever doubts may have existed about the importance or legal status of the Charter during the early years of its gestation and infancy, there can be no doubt that it now plays this important role. Having come of age, the Charter now takes its place among the catalogue of international human rights instruments.

Each of the general editors of this volume has long been concerned with understanding the Charter and we have all written, spoken and taught about it; in Angela's case, before working at the CJEU, she advised clients on its impact and appeared as counsel in leading human rights cases. In 2003, when the shape of the Charter was known but its ultimate fate remained unclear, two of us, Tammy and Jeff, writing in the Foreword to the book *Economic and Social Rights under the EU Charter of Fundamental Rights* (Oxford, Hart, 2003) wondered whether "the inclusion of economic and social rights in the Charter would signal a change of status of these values within the EU's legal order?" Only months later, Steve and Angela, writing in the Foreword to the book *The EU Charter of Fundamental Rights: Politics, Law and Policy* (Oxford, Hart, 2004) expressed the opinion that "the Charter seems set to play an increasingly pivotal role in the development of the complex legal and constitutional order of the European Union". It turns out we were both right and wrong. Right because the Charter has assumed huge significance within the EU legal order, wrong perhaps in anticipating that the status of social rights would change quite so fundamentally. But as many of the commentaries in this book demonstrate, there have been significant changes, even in the field of social rights.

What this Second Edition of our Commentary demonstrates most emphatically, and to our great delight, is the depth of scholarship that has developed around the Charter. When we began this project we had hoped to assemble an expert team to help us; what became apparent very quickly was that we were able to attract many of the best and most interesting scholars currently at work in European law and human rights. We have been fortunate to retain most of the authors from the first edition, and to add some outstanding new contributors. Working on the project during a global pandemic was far from easy. Many of us were juggling teaching and meetings from home, home schooling and other caring duties, alongside our research commitments. The text of this Second Edition reflects developments up to May 2021, which is the date on which our contributors were last invited to amend their chapters. To all our contributors, those who accepted our invitation to update their earlier work, and those who for various reasons were unable to join us this time, but on whose earlier work we build for the Second Edition: sincere and most heartfelt thanks. It is with a suitable sense of awe that we now stand back and admire your craftsmanship and skill. The Charter is a major part of the landscape of EU law, and our contributing authors have provided a sparkling examination of it.

The book has more than 50 contributing authors, which means that our list of thank yous and acknowledgements is inevitably a long one. First and foremost we thank our authors, who without exception accepted our invitation to contribute without hesitation, and who have brought an infectious enthusiasm to the project. We cannot single out authors for individual praise, but we thank Elspeth Guild for putting at our disposal her firm's office in London, where our first editorial planning meeting, for the first edition, took place, and Richard Hart, for his enthusiastic backing of such a gargantuan project in the form of an Article by Article commentary on the Charter, at the project's genesis. We also thank former President Skouris and President Lenaerts of the CJEU, who each have kindly accepted our invitation to write the Forewords for the first and second editions respectively, and who have supported the project since its inception. We have leant heavily on our publisher, whose staff has been exemplary in their professionalism and skill; Sinead Moloney and Richard Cox at Hart Publishing, as well as Christopher Long who copy edited the book, have all made signal and vital contributions. We are particularly grateful to Sinead for her patience, especially during the pandemic's early months.

Finally, and with sincere apologies to anyone whose contribution we may have inadvertently overlooked, we thank our families and colleagues for their forbearance and support during the long and occasionally stressful process of bringing the Second Edition of this gargantuan book to completion.

Tamara Hervey, Jeff Kenner, Steve Peers and Angela Ward

London

Nottingham

Luxembourg

September 2021

Contents

<i>Foreword</i>	v
<i>Editor's Preface Second Edition</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. Field of Application of Article 1	4
B. Interrelationship of Article 1 with Other Provisions of the Charter	6
C. Sources of Article 1	7
I. ECHR.....	7
II. Council of Europe Treaties	8
III. UN Treaties.....	9
IV. Relevant EU Law	10
V. Other Sources: National Constitutions.....	10
D. Analysis.....	13
I. General Remarks.....	13
II. Scope of Application.....	14
III. Specific Provisions	16
IV. Limitations and Derogations.....	20
V. Remedies	21
E. Evaluation.....	22
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	28
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	36
E. Evaluation.....	38
Article 3 – Right to the Integrity of the Person	39
<i>Steve Peers</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	44
III. Specific Provisions	45
IV. Limitations and Derogations	55
V. Remedies	56
E. Evaluation.....	56
Article 4 – Prohibition of Torture and Inhuman or Degrading Treatment or Punishment.....	59
<i>Maria-Teresa Gil-Bazo</i>	
Text of Explanatory Note on Article 4	59
Select Bibliography	59
A. Field of Application of Article 4.....	61
B. Interrelationship of Article 4 with Other Provisions of the Charter.....	64
C. Sources of Article 4 Rights.....	66
I. ECHR.....	66
II. UN Treaties.....	67
III. Council of Europe Treaties	69
D. Analysis	70
I. General Remarks.....	70
II. Scope of Application.....	71
III. Specific Provisions	75
IV. Limitations and Derogations.....	86
V. Remedies	89
E. Evaluation.....	91

Article 5 – Prohibition of Slavery and Forced Labour	93
<i>Heli Askola</i>	
Text of Explanatory Note on Article 5	93
Select Bibliography	94
A. Field of Application of Article 5.....	95
B. Interrelationship of Article 5 with Other Provisions of the Charter	96
C. Sources of Rights under Article 5.....	97
D. Analysis.....	98
I. General Remarks.....	98
II. Scope of Application.....	99
III. Specific Provisions	100
IV. Limitations and Derogations.....	113
V. Remedies	113
Article 6 – Right to Liberty and Security	115
<i>Daniel Wilsher</i>	
Text of Explanatory Note on Article 6	115
Select Bibliography	116
A. Field of Application of Article 6.....	116
B. Interrelationship of Article 6 with Other Provisions of the Charter	118
C. Sources of Article 6 Rights.....	119
I. ECHR.....	119
II. UN Treaties.....	121
III. Council of Europe Treaties	121
IV. Other Sources.....	122
D. Analysis.....	122
I. General Remarks.....	122
II. Scope of Application.....	123
III. Specific Provisions	125
IV. Limitations and Derogations.....	127
V. Remedies	147
E. Evaluation.....	148
Article 7 (Private Life, Home and Communications) – Respect for Private and Family Life	151
<i>David Mangan</i>	
Text of Explanatory Note on Article 7	151
Select Bibliography	151
A. Field of Application of Article 7 (Private Life, Home and Communications)	152
B. Interrelationship of Article 7 with Other Provisions of the Charter	153
C. Sources of Article 7 Rights.....	153
D. Analysis.....	154
I. General Remarks.....	154
II. Scope of Application.....	154

III. Specific Provisions	164
IV. Limitations and Derogations.....	189
V. Remedies	191
E. Evaluation.....	192
Article 7 (Family Life Aspects) – Right to Respect for Private and Family Life.....	195
<i>Miriam Kullmann</i>	
Text of Explanatory Note on Article 7	195
Select Bibliography	195
A. Field of Application of Article 7	195
I. Gender Equality	196
II. Children’s Rights	199
III. Free Movement, Immigration and Asylum	201
B. Interrelationship of Article 7 with Other Provisions of the Charter.....	204
C. Sources of Article 7 Rights.....	205
I. ECHR.....	205
II. Council of Europe Treaties.....	205
III. UN Treaties.....	208
D. Analysis.....	210
I. General Remarks	210
II. Scope of Application.....	211
III. Specific Provisions	216
IV. Limitations and Derogations.....	225
V. Remedies	229
E. Evaluation.....	229
Article 8 – Protection of Personal Data	231
<i>Herke Kranenborg</i>	
Text of Explanatory Note on Article 8	231
Select Bibliography	231
A. Field of Application of Article 8.....	232
I. EU Acquis on Data Protection Before the Entry into Force of the Lisbon Treaty.....	232
II. EU Acquis on Data Protection After the Entry into Force of the Lisbon Treaty.....	233
III. The Scope of Application of the EU Acquis on Data Protection.....	235
B. Interrelationship of Article 8 with Other Provisions of the Charter.....	237
I. Article 7 (Right to Respect for Private and Family Life).....	238
II. Article 10 (Freedom of Thought, Conscience and Religion).....	242
III. Article 11 (Freedom of Expression and Information)	243
IV. Article 17 (Right to Property)	246
V. Article 21 (Prohibition of Discrimination)	247
VI. Article 42 (Right of Access to Documents)	247
VII. Article 47 (Right to an Effective Remedy and to a Fair Trial).....	249

C.	Sources of Article 8	251
I.	ECHR.....	251
II.	UN Treaties.....	253
III.	Council of Europe Treaties.....	254
IV.	Organisation for Economic Cooperation and Development.....	256
D.	Analysis.....	256
I.	General Remarks.....	256
II.	Scope of Application.....	256
III.	Specific Provisions	263
IV.	Limitations and Derogations.....	280
V.	Remedies	286
E.	Evaluation.....	287
Article 9 – Right to Marry and Right to Found a Family.....		291
<i>Steve Peers</i>		
	Text of Explanatory Note on Article 9	291
	Select Bibliography	291
A.	Field of Application of Article 9.....	291
B.	Interrelationship of Article 9 with Other Provisions of the Charter.....	296
C.	Sources of Article 24 Rights.....	297
I.	ECHR	297
II.	Council of Europe Treaties.....	298
III.	UN Treaties.....	300
D.	Analysis.....	302
I.	General Remarks	302
II.	Scope of Application.....	302
III.	Specific Provisions	303
IV.	Limitations and Derogations.....	309
V.	Remedies	311
E.	Evaluation.....	312
Article 10 – Right to Freedom of Thought, Conscience and Religion.....		313
<i>Ronan McCrea</i>		
	Text of Explanatory Note on Article 10	313
	Select Bibliography	313
A.	Field of Application of Article 10.....	313
B.	Interrelationship of Article 10 with Other Provisions of the Charter.....	315
I.	Religious Freedom and Free Expression.....	316
II.	Discrimination on Grounds of Religion.....	317
III.	Exemptions from Non-Discrimination Duties for Individuals.....	321
IV.	Religious Discrimination, Neutrality and the Right to Run a Business.....	321
V.	Duties of Neutrality as a Limit on Religious Expression at Work.....	322
C.	Sources of Article 10 Rights.....	324
D.	Analysis.....	325
I.	General Remarks.....	325
II.	Scope of Application.....	325

III. Specific Provisions	326
IV. Limitations and Derogations.....	326
V. Remedies	329
E. Evaluation.....	330
F. Conclusion	331

Article 11 – Freedom of Expression and Information..... 333

Lorna Woods

Text of Explanatory Note on Article 11	333
Select Bibliography	333
A. Field of Application of Article 11	334
B. Interrelationship of Article 11 with Other Provisions of the Charter.....	336
C. Sources of Article 11 Rights.....	337
I. ECHR.....	337
II. UN Treaties.....	337
III. Council of Europe Treaties	341
IV. Other Sources.....	341
D. Analysis.....	343
I. General Remarks.....	343
II. Scope of Application.....	344
III. Specific Provisions	351
IV. Limits and Derogations	354
V. Remedies	362
E. Evaluation.....	362
I. The Right to Transmit	363
II. Intermediary Liability.....	365
III. Right to a Forum.....	366
IV. The Right to Search.....	366
V. Pluralism	367
VI. Copyright and Freedom of Expression.....	368

Article 12(1) – Freedom of Assembly and of Association 371

Filip Dorsemont

Text of Explanatory Note on Article 12(1)	371
Select Bibliography	371
A. Field of Application of Article 12(1)	372
B. Interrelationship of Article 12(1) with Other Provisions of the Charter.....	375
C. Sources of Article 12(1) Rights.....	377
I. Council of Europe Treaties	377
II. UN Treaties.....	377
III. Other Sources.....	378
D. Analysis.....	379
I. General Remarks.....	379
II. Scope of Application.....	379

III. Limitations and Derogations.....	387
IV. Remedies	389
E. Evaluation.....	392
Article 12(2) – Freedom of Assembly and of Association	395
<i>Jo Shaw and Lamin Khadar</i>	
Text of Explanatory Note on Article 12(2)	395
Select Bibliography	395
A. Field of Application of Article 12(2).....	396
B. Interrelationship of Article 12(2) with Other Provisions of the Charter.....	396
C. Sources of Article 12(2) Rights.....	397
I. ECHR.....	397
II. UN Treaties.....	397
III. Other Sources.....	398
D. Analysis.....	398
I. General Remarks.....	398
II. Scope of Application.....	402
III. Detailed Analysis.....	402
IV. Limitations and Derogations.....	404
V. Remedies	404
E. Evaluation.....	404
Article 13 – Freedom of the Arts and Sciences	405
<i>Debbie Sayers</i>	
Text of Explanatory Note on Article 13	405
Select Bibliography	405
A. Field of Application of Article 13	406
B. Interrelationship of Article 13 with Other Provisions of the Charter.....	407
C. Sources of Article 13 Rights.....	408
I. ECHR	408
II. UN Treaties	409
III. Council of Europe Treaties	414
IV. Other Sources.....	415
D. Analysis.....	416
I. General Remarks.....	416
II. Scope of Application	417
III. Specific Provisions	419
IV. Limitations and Derogations.....	424
V. Remedies	426
E. Evaluation.....	427
Article 14 – Right to Education.....	429
<i>Gisella Gori</i>	
Text of Explanatory Note on Article 14	429
Select Bibliography	429

A.	Field of Application of Article 14	430
B.	Interrelationship of Article 14 with Other Provisions of the Charter	435
C.	Sources of Article 14 Rights.....	436
	I. ECHR.....	436
	II. UN Treaties.....	438
	III. Council of Europe Treaties	439
	IV. Other Sources.....	440
D.	Analysis.....	441
	I. General Remarks.....	441
	II. Scope of Application.....	442
	III. Specific Provisions	445
	IV. Limitations and Derogations.....	446
	V. Remedies	447
E.	Evaluation.....	447
 Article 15 – Freedom to Choose an Occupation and Right to Engage in Work		449
<i>Eleni Frantziou and Virginia Mantouvalou</i>		
	Text of Explanatory Note on Article 15	449
	Select Bibliography	449
A.	Article 15 and the Scope of EU Law.....	450
B.	Interrelationship of Article 15 with Other Provisions of the Charter	451
C.	Sources of Article 15 Rights.....	453
	I. European Convention of Human Rights and European Social Charter.....	453
	II. UN Treaties.....	454
	III. Other Sources.....	455
D.	Analysis.....	456
	I. General Remarks.....	456
	II. Scope of Application.....	456
	III. Specific Provisions	457
	IV. Limitations and Derogations.....	458
	V. Remedies	459
E.	Evaluation.....	460
 Article 16 – Freedom to Conduct a Business.....		463
<i>Michelle Everson and Rui Correia Gonçalves</i>		
	Explanatory Note on Article 16.....	463
	Selected Bibliography.....	463
A.	Field of Application	464
	I. Freedom to Conduct Business as a Human Right.....	466
	II. Freedom to Conduct a Business as an Element of the European Economic Constitution	466
B.	Relation of Article 16 to Articles 15 and 17 of the Charter.....	468
C.	Sources of Law.....	470

D. Analysis.....	473
I. General Remarks.....	473
II. Scope of Application of Article 16.....	475
III. Specific Provisions.....	477
IV. Limitation to and Derogations from the Application of Article 16.....	483
V. Remedies.....	487
E. Conclusion.....	488
Article 17(1) – Right to Property.....	489
<i>Ferdinand Wollenschläger</i>	
Text of Explanatory Note on Article 17(1).....	489
Select Bibliography.....	489
A. Field of Application of Article 17(1).....	491
B. Interrelationship of Article 17(1) with Other Provisions of the Charter.....	492
C. Sources of Article 17(1) Rights.....	493
I. ECHR.....	493
II. UN Treaties.....	494
III. Other Sources.....	494
D. Analysis.....	495
I. General Remarks.....	495
II. Scope of Application.....	496
III. Limitations and Derogations.....	503
IV. Remedies.....	517
E. Evaluation.....	517
Article 17(2) – Right to Property.....	519
<i>Paul Torremans</i>	
Text of Explanatory Note on Article 17(2).....	519
Select Bibliography.....	519
A. Field of Application of Article 17(2).....	519
B. Interrelationship of Article 17(2) with Other Provisions of the Charter.....	521
C. Sources of Article 17(2) Rights.....	523
I. The Human Rights Approach to Copyright in International Instruments.....	524
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.....	529
III. ECHR.....	529
D. Analysis.....	531
I. General Remarks.....	531
II. Scope of Application.....	531
III. Specific Provisions.....	532
IV. Limitations and Derogations.....	548
V. Remedies.....	549
E. Evaluation.....	550

Article 18 – Right to Asylum	551
<i>Maarten den Heijer</i>	
Text of Explanatory Note on Article 18	551
Select Bibliography	551
A. Field of Application of Article 18	552
B. Interrelationship of Article 18 with Other Provisions of the Charter	553
C. Sources of Article 18 Rights.....	555
I. ECHR.....	555
II. UN Treaties.....	555
III. Council of Europe Treaties	558
IV. Constitutional Traditions	559
V. Other Sources.....	560
D. Analysis.....	561
I. General Remarks.....	561
II. Scope of Application.....	562
III. Limitations and Derogations.....	568
IV. Remedies	570
E. Evaluation.....	571
 Article 19 – Protection in the Event of Removal, Expulsion or Extradition	 573
<i>Elspeth Guild</i>	
Text of Explanatory Note on Article 19	573
Select Bibliography	573
A. Article 19 and the Scope of EU Law.....	574
B. Interrelationship of Article 19 with Other Provisions of the Charter	575
C. Sources of Article 19 Rights.....	576
I. ECHR.....	576
II. UN Treaties.....	576
III. Council of Europe Treaties	578
IV. Other Treaties.....	578
V. Relevant EU Law	578
D. Analysis.....	581
I. General Remarks.....	581
II. Scope of Application.....	583
III. Specific Provisions	583
IV. Limitations and Derogations.....	593
V. Remedies	593
E. Evaluation.....	594
 Article 20 – Equality Before the Law	 597
<i>Mark Bell</i>	
Text of Explanatory Note on Article 20	597
Select Bibliography	597
A. Field of Application of Article 20	597
B. Interrelationship of Article 20 with Other Provisions of the Charter	599

C.	Sources of Article 20 Rights.....	602
I.	ECHR.....	602
II.	UN Treaties.....	602
III.	Council of Europe Treaties.....	602
IV.	Other Sources.....	603
D.	Analysis.....	603
I.	General Remarks.....	603
II.	Scope of Application.....	603
III.	Specific Provisions.....	605
IV.	Limitations and Derogations.....	607
V.	Remedies.....	610
E.	Evaluation.....	611
Article 21 – Non-Discrimination.....		613
<i>Claire Kilpatrick and Hanna Eklund</i>		
	Text of Explanatory Note on Article 21.....	613
	Select Bibliography.....	613
A.	Field of Application of Article 21.....	614
B.	Interrelationship of Article 21 with Other Provisions of the Charter.....	616
C.	Sources of Article 21 Rights.....	618
I.	ECHR.....	618
II.	UN Treaties.....	618
III.	Council of Europe Treaties.....	619
D.	Analysis.....	620
I.	General Remarks.....	620
II.	Scope of Application.....	622
III.	Specific Provisions.....	629
IV.	Limitations and Derogations.....	634
V.	Remedies.....	636
E.	Evaluation.....	637
Article 22 – Cultural, Religious and Linguistic Diversity.....		639
<i>Rachael Craufurd Smith</i>		
	Text of Explanatory Note on Article 22.....	639
	Select Bibliography.....	639
A.	Field of Application of Article 22.....	640
B.	Interrelationship of Article 22 with Other Provisions of the Charter.....	644
C.	Sources of Article 22 Rights.....	647
I.	ECHR.....	647
II.	UN Treaties.....	649
III.	Council of Europe Treaties.....	651
IV.	Other.....	652
D.	Analysis.....	652
I.	General Remarks.....	652
II.	Scope of Application.....	656
III.	Specific Provisions.....	658

IV. Limitations and Derogations	663
V. Remedies	664
E. Evaluation.....	666
Article 23 – Equality between Women and Men	667
<i>Dagmar Schiek and Biljana Kotevska</i>	
Text of Explanatory Note on Article 23	667
Select Bibliography	667
A. Field of Application of Article 23	668
B. Interrelationship of Article 23 with Other Provisions of the Charter.....	670
I. Article 23 and Articles 20 and 21	670
II. Article 23 and Other Charter Articles.....	672
C. Sources of Article 23 Rights.....	673
I. Council of Europe Treaties	673
II. UN Treaties.....	674
III. EU Law	675
D. Analysis.....	677
I. General Remarks.....	677
II. Paragraph 1	677
III. Paragraph 2	683
E. Evaluation.....	687
I. Opportunities.....	687
II. Shortcomings	691
III. Conclusion	692
Article 24 – The Rights of the Child	693
<i>Ruth Lamont</i>	
Text of Explanatory Note on Article 24	693
Select Bibliography	693
A. Field of Application of Article 24	693
B. Interrelationship of Article 24 with Other Provisions of the Charter.....	703
C. Sources of Article 24 Rights.....	705
I. ECHR.....	705
II. UN Treaties.....	707
D. Analysis.....	711
I. General Remarks	711
II. Scope of Application	713
III. Specific Provisions	714
IV. Limitations and Derogations.....	720
V. Remedies	721
E. Evaluation.....	723

Article 25 – The Rights of the Elderly	725
<i>Colm O’Cinneide</i>	
Text of Explanatory Note on Article 25	725
Select Bibliography	725
A. Field of Application of Article 25	726
B. Interrelationship of Article 25 with Other Provisions of the Charter.....	728
C. Sources of Article 25 Rights.....	729
I. ECHR	729
II. UN Treaties.....	730
III. Council of Europe Treaties	731
IV. Other Sources.....	732
D. Analysis.....	734
I. General Remarks	734
II. Scope of Application	736
III. Specific Provisions	738
IV. Limitations and Derogations	739
V. Remedies	739
E. Evaluation.....	739
 Article 26 – Integration of Persons with Disabilities	 743
<i>Charlotte O’Brien</i>	
Text of Explanatory Note on Article 26	743
Select Bibliography	743
A. Field of Application of Article 26	743
B. Interrelationship of Article 26 with Other Provisions of the Charter.....	746
C. Sources of Article 26 Rights.....	750
I. ECHR.....	750
II. UN Treaties	753
III. Council of Europe Treaties	757
IV. Other Sources.....	759
D. Analysis.....	760
I. General Remarks.....	760
II. Scope of Application	765
III. Specific Provisions	768
IV. Limitations and Derogations.....	774
V. Remedies	775
E. Evaluation	777
 Article 27 – Workers’ Right to Information and Consultation within the Undertaking	 779
<i>Filip Dorssemont</i>	
Text of Explanatory Note on Article 27	779
Select Bibliography	779
A. Field of Application of Article 27	780
B. Interrelationship of Article 27 with Other Provisions of the Charter.....	780

C. Sources of Article 27 Rights.....	782
D. Analysis.....	785
I. General Remarks.....	785
II. Scope of Application.....	786
III. Specific Provisions.....	787
IV. Limitations and Derogations.....	792
V. Remedies.....	796
E. Evaluation.....	798
Article 28 – Right of Collective Bargaining and Action	801
<i>Catherine Barnard</i>	
Text of Explanatory Note on Article 28	801
Select Bibliography	801
A. Field of Application of Article 28 CFREU	802
B. Interrelationship of Article 28 with Other Provisions of the Charter.....	806
I. Other Provisions in the Charter.....	806
II. Protocol 30 and Brexit	806
C. Sources of Article 28 Rights.....	807
I. Right to Bargain Collectively.....	807
II. Right to Take Collective Action.....	809
D. Analysis.....	812
I. General Remarks	812
II. Scope of Application: Definition of Terms.....	812
III. Specific Provisions	815
IV. Limitations and Derogations	822
V. Remedies	823
E. Evaluation.....	825
Article 29 – Right of Access to Placement Services	827
<i>Jeff Kenner</i>	
Text of Explanatory Note on Article 29	827
Select Bibliography	827
A. Article 29 and the Scope of EU Law.....	828
B. Interrelationship of Article 29 with Other Provisions of the Charter.....	830
C. Sources of Article 29 Rights.....	830
I. Council of Europe: European Social Charter.....	830
II. UN Treaties (Including Monitoring Bodies' Positions).....	831
III. Other Sources.....	832
D. Analysis.....	832
I. General Remarks.....	832
II. Scope of Application	834
III. Specific Provisions	834
IV. Limitations and Derogations.....	834
V. Remedies	834
E. Evaluation.....	835

Article 30 – Protection in the Event of Unjustified Dismissal	837
<i>Jeff Kenner</i>	
Text of Explanatory Note on Article 30	837
Select Bibliography	837
A. Article 30 and the Scope of EU Law.....	838
B. Interrelationship of Article 30 with Other Provisions of the Charter.....	844
C. Sources of Article 30 Rights.....	848
I. ECHR.....	848
II. UN Treaties.....	849
III. ILO.....	849
IV. Council of Europe Treaties	850
V. National Constitutional Laws.....	851
D. Analysis.....	852
I. General Remarks.....	852
II. Scope of Application.....	854
III. Specific Provisions	856
IV. Limitations and Derogations.....	868
V. Remedies	871
E. Evaluation.....	872
 Article 31 – Fair and Just Working Conditions	 875
<i>Alan Bogg and Michael Ford</i>	
Text of Explanatory Note on Article 31	875
Select Bibliography	875
A. Article 31 and the Scope of EU Law.....	876
B. Interrelationship of Article 31 with Other Provisions of the Charter.....	879
C. Sources of Article 31 Rights.....	881
I. Council of Europe Treaties	882
II. Other Sources	885
D. Analysis.....	888
I. General Remarks	888
II. Scope of Application.....	895
III. Specific Provisions	899
IV. Limitations and Derogations	910
V. Remedies	916
E. Evaluation.....	919
 Article 32 – Prohibition of Child Labour and Protection of Young People at Work.....	 923
<i>Helen Stalford and Nuno Ferreira</i>	
Text of Explanatory Note on Article 32	923
Select Bibliography	923
A. Field of Application of Article 32	924
B. Interrelationship of Article 32 with Other Provisions of the Charter.....	928
C. Sources of Article 32 Rights.....	930
I. UN Treaties.....	930

II. Council of Europe Treaties.....	930
III. Other Sources.....	931
D. Analysis.....	932
I. General Remarks.....	932
II. Scope of Application.....	933
III. Specific Provisions.....	936
IV. Limitations and Derogations.....	938
V. Remedies.....	940
E. Evaluation.....	942
Article 33 – Family and Professional Life.....	943
<i>Jeff Kenner and Katrina Peake</i>	
Text of Explanatory Note on Article 33.....	943
Select Bibliography.....	943
A. Field of Application of Article 33.....	944
B. Interrelationship of Article 33 with Other Provisions of the Charter.....	947
C. Sources of Article 33 Rights.....	950
I. ECHR.....	950
II. UN Treaties.....	952
III. The European Social Charter and Revised European Social Charter.....	955
IV. Other Sources.....	961
D. Analysis.....	969
I. General Remarks.....	969
II. Scope of Application.....	971
III. Specific Provisions and Issues.....	972
IV. Limitations and Derogations.....	979
V. Remedies.....	980
E. Evaluation.....	983
Article 34 – Social Security and Social Assistance.....	985
<i>Oxana Golynger</i>	
Text of Explanatory Note on Article 34.....	985
Select Bibliography.....	985
A. Field of Application of Article 34.....	986
B. Interrelationship of Article 34 with Other Provisions of the Charter.....	988
C. Sources of Article 34 Rights.....	988
I. ECHR.....	988
II. UN Treaties.....	991
III. Council of Europe Treaties.....	992
IV. Other Sources.....	994
D. Analysis.....	995
I. General Remarks.....	995
II. Scope of Application.....	995
III. Specific Provisions.....	999

IV. Limitations and Derogations.....	1005
V. Remedies	1005
E. Evaluation.....	1005
Article 35 – The Right to Health Care.....	1007
<i>Tamara Hervey and Jean McHale</i>	
Text of Explanatory Note on Article 35	1007
Select Bibliography	1007
A. Field of Application of Article 35	1007
B. Interrelationship of Article 35 with Other Provisions of the Charter.....	1008
C. Sources of Article 35 Rights.....	1008
I. ECHR.....	1008
II. UN Treaties.....	1009
III. Council of Europe Treaties	1010
IV. Other Sources.....	1012
D. Analysis.....	1012
I. General Remarks	1012
II. Scope of Application.....	1013
III. Specific Provisions	1014
IV. Limitations and Derogations	1022
V. Remedies	1023
E. Evaluation.....	1023
Article 36 – Access to Services of General Economic Interest.....	1025
<i>Erika Szyszczak</i>	
Text of Explanatory Note on Article 36	1025
Select Bibliography	1025
A. Article 36 and the Scope of EU Law.....	1026
B. Interrelationship of Article 36 with Other Provisions of the Charter.....	1026
C. Sources of Article 36 ‘Rights’ and ‘Principles’.....	1027
D. Analysis.....	1027
I. General Remarks.....	1027
II. Scope of Application.....	1028
III. Specific Provisions	1028
IV. Limitations and Derogations.....	1036
V. Remedies	1037
E. Evaluation.....	1037
Article 37 – Environmental Protection.....	1041
<i>Elisa Morgera and Gracia Marín Durán</i>	
Text of Explanatory Note on Article 37	1041
Select Bibliography	1041
A. Field of Application of Article 37	1042
B. Interrelationship of Article 37 with Other Provisions of the Charter.....	1043

C.	Sources of Article 37	1045
I.	EU Law	1045
II.	National Constitutional Law	1046
D.	Analysis	1048
I.	General Remarks	1048
II.	Specific Provisions	1049
III.	Legal Nature	1053
IV.	Limitations and Derogations	1055
V.	Remedies	1058
E.	Evaluation	1060
Article 38 – Consumer Protection		1065
<i>Steve Weatherill</i>		
	Text of Explanatory Note on Article 38	1065
	Select Bibliography	1065
A.	Field of Application of Article 38	1065
B.	Interrelationship of Article 38 with Other Provisions of the Charter	1066
C.	Sources of Article 38 Rights	1066
D.	Analysis	1068
I.	General Remarks	1068
II.	Scope of Application	1069
III.	Specific Provisions	1069
IV.	Limitations	1083
V.	Remedies	1084
E.	Evaluation	1084
Article 39 – Right to Vote and to Stand as a Candidate at Elections to the European Parliament		1085
<i>Jo Shaw and Lamin Khadar</i>		
	Text of Explanatory Note on Article 39	1085
	Select Bibliography	1085
A.	Field of Application of Article 39	1086
B.	Interrelationship of Article 39 with Other Provisions of the Charter	1087
C.	Sources of Article 39 Rights	1088
I.	ECHR	1088
II.	UN Treaties	1089
III.	Council of Europe Treaties	1090
IV.	Other Sources	1090
D.	Analysis	1091
I.	General Remarks	1091
II.	Scope of Application	1097
III.	Specific Provisions	1098
IV.	Limitations and Derogations	1104
V.	Remedies	1108
E.	Evaluation	1109

Article 40 – Right to Vote and to Stand as a Candidate at Municipal Elections	1113
<i>Kees Groenendijk</i>	
Text of Explanatory Note on Article 40	1113
Select Bibliography	1113
A. Field of Application of Article 40	1114
B. Interrelationship of Article 40 with Other Provisions of the Charter	1114
C. Sources of Article 40 Rights	1115
I. ECHR	1115
II. UN Treaties	1115
III. Council of Europe	1116
IV. Other Sources	1117
D. Analysis	1117
I. General Remarks	1117
II. Scope of Application	1118
III. Specific Provisions	1119
IV. Limitations and Derogations	1121
V. Remedies	1121
E. Evaluation	1121
Article 41 – The Right to Good Administration	1125
<i>Paul Craig</i>	
Text of Explanations on Article 41—Right to good administration	1125
Select Bibliography	1125
A. Article 41 and the Scope of EU Law	1126
B. Interrelationship of Article 41 with Other Provisions of the Charter	1127
C. Sources of Article 41 Rights	1127
D. Analysis	1127
I. General Remarks	1127
II. Scope of Application	1128
III. Specific Provisions	1132
IV. Limitations and Derogations	1151
V. Remedies	1151
E. Evaluation	1151
Article 42 – Right of Access to Documents	1153
<i>Ivan Lazarov</i>	
Text of Explanatory Note on Article 42	1153
Selected Bibliography	1153
A. Field of Application of Article 42	1154
B. Interrelationship of Article 42 with Other Provisions of the Charter	1154
C. Sources of Article 42 Rights	1155
D. Analysis	1156
I. General Remarks	1156
II. Scope of Application	1157