

# Contents

<b>Authors</b> .....	V
<b>Abbreviations</b> .....	XV
<b>Introduction</b> ( <i>Jan Barcz</i> ) .....	1
I. Political and legal conditions .....	1
II. Starting point – provisions of the TEU and TFEU .....	4
III. The Charter of Fundamental Rights in the course of discussion concerning ratification of the Lisbon Treaty .....	8
IV. The structure of the research project and main research issues ...	10
Appendices .....	12
 <b>Part I. The Charter of Fundamental Rights. Significance for the Protection of Individual Rights in the EU</b>	
<b>Chapter I. Introduction: limits of power and limits of interpretation</b>	
<i>(Miroslaw Wyrzykowski)</i> .....	
§ 1. The parliamentary mandate .....	25
§ 2. Typology of argumentation which justifies negation of Charter's provisions and Polish accession to Protocol No. 7 on Application of the Charter to Poland .....	28
§ 3. The attempt to explain the essence and function of the Polish-British Protocol in the light of Declaration No. 62 .....	34
§ 4. Arguments against the Charter in the light of the Constitution of RP .....	36
<b>Chapter II. Charter of Fundamental Rights: structure, scope of regulation and present practical meaning</b> ( <i>Filip Jasiński</i> ) .....	
§ 5. Opening remarks .....	39
§ 6. The course of works on the concept and contents of the CFR ...	40
I. The beginnings .....	40
II. First tests of cataloguing of the fundamental rights .....	41
III. Effects of works of the I European Convention .....	42
IV. From the Constitutional Treaty of the Lisbon Treaty .....	44
§ 7. Structure and scope of regulation of CFR .....	45
I. Addressees of CFR .....	47
II. Relation of CFR with ECHR in the light of Article 52.3 of CFR .....	49
III. Specific category: modern rights .....	49
§ 8. Practical meaning of CFR .....	50
I. Legislative and interpretative importance .....	52
II. Diplomatic and institutional significance .....	55

§ 9. Conclusions .....	57
<b>Chapter III. The Charter of Fundamental Rights: determinants of Protective Standards</b> ( <i>Cezary Mik</i> ) .....	60
§ 10. Introduction .....	60
§ 11. The Charter of Fundamental Rights of the EU of 2007 – general remarks .....	62
§ 12. Normative forms of fundamental rights .....	64
I. Introductory remarks .....	64
II. Rights, freedoms and principles – the significance of categorization .....	65
III. The normative structure of rights .....	68
IV. The normative structure of principles .....	72
§ 13. The ChFR’s fundamental rights v fundamental rights as general principles of law .....	73
§ 14. Principles of enjoyment of fundamental rights and their protection .....	75
I. Enjoyment of fundamental rights .....	75
II. Rules concerning the Protection of Fundamental Rights .....	75
§ 15. Obligations for Poland inferred from the ChFR in the light of protective standards determinants .....	77
<b>Chapter IV. Incorporation of the Charter of Fundamental Rights into the EU Law: status of the charter, scope of its binding force and application, interpretation problems and the Polish position</b> ( <i>Anna Wýrozumska</i> ) .....	80
§ 16. The status of the Charter of Fundamental Rights in the EU law .....	80
§ 17. The scope of application of the Charter of Fundamental Rights .....	84
§ 18. Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom .....	89
§ 19. Polish declarations on the Charter of Fundamental Rights and the Polish-British Protocol .....	98
§ 20. The Czech Declaration .....	100
§ 21. Reasons of binding Poland with the Protocol on application of the Charter and some of its further consequences .....	101
I. Morality and decency problems .....	101
II. Social standards .....	106
III. Property claims connected with the Second World War .....	110
§ 22. Conclusions .....	112
<b>Chapter V. Provisions of the Charter of Fundamental Rights in the light of the 1997 Constitution of RP and international agreements which are binding upon Poland</b> ( <i>Roman Wieruszewski</i> ) .....	114
§ 23. Introduction .....	114
§ 24. Title I of the Charter – Dignity .....	115
I. Dignity .....	115
II. Right to life .....	116

III.	Right to integrity of a person .....	117
IV.	Prohibition of torture, and inhuman or degrading treatment or punishment .....	118
V.	Prohibition of slavery and forced labour .....	118
§ 25.	Title II of the Charter – Freedoms .....	119
I.	Right to liberty and security .....	119
II.	Right for private and family life .....	120
III.	Protection of personal data .....	121
IV.	Right to marry and right to found a family .....	121
V.	Freedom of thought, conscience and religion .....	122
VI.	Freedom of expression and information .....	123
VII.	Freedom of assembly and of association .....	123
VIII.	Freedom of the arts and sciences .....	124
IX.	Right to education .....	124
X.	Freedom to choose an occupation and right to engage in work .....	125
XI.	Freedom to conduct a business .....	126
XII.	Right to property .....	127
XIII.	Right to asylum .....	127
XIV.	Protection in the event of removal, expulsion or extradition .....	128
§ 26.	Title III of the Charter – Equality .....	129
I.	Equality before the law .....	129
II.	Non-discrimination .....	129
III.	Cultural, religious and linguistic diversity .....	130
IV.	Equality between women and men .....	131
V.	The rights of the child .....	132
VI.	The rights of the elderly .....	132
VII.	Integration of persons with disabilities .....	132
§ 27.	Title IV of the Charter – Solidarity .....	132
I.	Workers’ rights to information and consultation within the undertaking .....	133
II.	Right to collective bargaining and actions .....	133
III.	Right of access to placement services .....	133
IV.	Protection in the event of unfair dismissal .....	134
V.	Unfair and unjust working conditions .....	134
VI.	Prohibition of child labour and protection of young people at work .....	134
VII.	Family and professional life .....	135
VIII.	Social security and social assistance .....	135
IX.	Health care .....	136
X.	Access to services of general economic interest .....	136
XI.	Environmental protection .....	137
XII.	Consumer protection .....	137
§ 28.	Title V of the Charter – Citizen Rights .....	137
I.	Right to vote and to stand as a candidate at elections to the European Parliament .....	138

II. Right to vote and to stand as candidate at municipal elections .....	138
III. Right to good administration .....	138
IV. Right of access to documents .....	139
V. European Ombudsman .....	139
VI. Right to petition .....	139
VII. Freedom of movement and of residence .....	139
VIII. Diplomatic and consular protection .....	140
§ 29. Title VI of the Charter – Justice .....	140
I. Right to an effective remedy and to access to an impartial court .....	140
II. Presumption of innocence and right to defence .....	141
III. Principles of legality and proportionality of criminal offences and penalties .....	141
IV. Right not to be tried or punished twice in criminal proceedings for the same criminal offence .....	142
§ 30. Title VII – General provisions .....	142
I. Field of application .....	142
II. Scope and interpretation of rights and principles .....	142
III. Level of protection .....	143
IV. Prohibition of abuse of rights .....	144
§ 31. Final remarks .....	144
<b>Chapter VI. The Charter of Fundamental Rights: Differentiated Legal Character of Charter’s Provisions, Their Consequences for Individuals, Courts and Legislator (Adam Bodnar) .....</b>	
§ 32. Introduction – outline of the EU fundamental rights protection system .....	145
§ 33. Classification of substantial provisions of the ChFR from the perspective of their normative character .....	148
I. General comments .....	148
II. Right and freedoms which may be directly applied .....	149
III. Rights and freedoms which refer to the European or national law .....	152
IV. Principles (‘The Union recognises and respects’) .....	155
V. Programmatic and aspirational provisions (‘The Union policies should ensure’) .....	158
VI. Rights connected with the Union citizenship .....	159
§ 34. Value of the ChFR for individuals, courts and the Polish legislator .....	161
I. General comments .....	161
II. Invoking by an individual directly applicable ChFR provisions in front of national and Community courts .....	162
III. Due regard for ChFR provisions in the course of national law-making process .....	165
§ 35. Conclusions .....	167

<b>Chapter VII. The EU Agency for Fundamental Rights – Limits and Potential</b> ( <i>Adam Łazowski</i> )	168
§ 36. Introduction	168
§ 37. The genesis of the Agency of Fundamental Rights	169
§ 38. The legal framework – Regulation 168/2007/EC	172
I. Introduction	172
II. The aims and mandate of the Agency for Fundamental Rights	174
III. The territorial mandate of the Agency	177
IV. Tasks and working methods of the Agency	178
§ 39. Multiannual programme for 2007–2012	182
§ 40. Conclusions	183
 <b>Part II. The Consequences of the EU Accession to the ECHR for Strengthening of Individual’s Protection in the EU and for Strengthening of the European Human Rights Protection System</b>	
<b>Introduction</b> ( <i>Andrzej Wróbel</i> )	187
<b>Chapter VIII. Significance of the ECHR Provisions for the Protection of Fundamental Rights as General Principles of the EU law</b> ( <i>Cezary Mik</i> )	202
§ 41. Introduction	202
§ 42. ECHR protection system – general features	202
§ 43. Evolution of correlation between fundamental rights as general principles of law and the ECHR	205
§ 44. Factors determining position of the ECHR with reference to fundamental rights as general principles of the EU law	212
§ 45. Scope, measures and aims of using the ECHR in the sphere of fundamental rights protection as the general principles of law	217
§ 46. Conclusions	223
<b>Chapter IX. Relationship Between the European Convention on Human Rights and the Charter of Fundamental Rights After the European Union’s Accession to the Convention</b> ( <i>Zdzisław Kędzia</i> )	224
§ 47. Diagnosis of the current situation	224
§ 48. Complementarity of incorporation of the Charter of Fundamental Rights into the Treaty law and the EU’s accession to the ECHR	229
§ 49. The substantial relationship between the ChFR and the ECHR	233
§ 50. The relationship between the ChFR and the ECHR as sources of law	235
I. National law perspective	235
II. The Union law perspective	237
III. The ECHR Perspective	239
§ 51. The consequences of the EU accession as an international organization to the ECHR	240
§ 52. Influence of the EU’s accession to the ECHR on human rights protection in Europe	246

<b>Chapter X. Accession of the EU to the ECHR – Institutional and Legal Relationship of the European Union and the Council of Europe</b> ( <i>Hanna Machińska</i> ) .....	249
§ 53. Introduction .....	249
§ 54. The course of the debate on the EC/EU accession to the ECHR .....	250
§ 55. Treaty basis for the EU accession to the ECHR .....	257
§ 56. Towards coherence of human rights protection in Europe .....	259
§ 57. Institutional relations between the EC/EU with the Council of Europe .....	261
§ 58. Final remarks .....	266
<b>Chapter XI. The Accession of the EU to the ECHR and Incorporation of the Charter of Fundamental Rights into the law of the EU in the Context of Fundamental Rights Protection Enforcement in the Third Pillar of the EU</b> ( <i>Anastazja Gajda</i> ) .....	268
§ 59. Individual Rights Protection in the Third Pillar of the EU .....	268
§ 60. Fundamental Rights Enforcement in the Police and Judicial Cooperation in Criminal Matters on the basis of the Lisbon Treaty .....	280
§ 61. The influence of the Charter of Fundamental Rights and the EU's accession to the ECHR on Criminal Law of the EU in the light of the Lisbon Treaty .....	285
§ 62. Conclusions .....	293
<b>Chapter XII. Strengthening of an Individuals' Status in the EU after the EU's Accession to the ECHR – Consequences for the Legislator and National Courts – Practical Results</b> ( <i>Dagmara Kornobis-Romanowska</i> ) .....	296
§ 63. Strengthening individuals' rights protection in the Treaty of Lisbon .....	296
§ 64. Exercising competences in the field of fundamental rights protection in the European Union .....	301
§ 65. Effective protection of individuals' rights in the EU .....	305
I. Coherence of individuals' rights in the ECHR and the ChFR .....	305
II. The right to an effective judicial protection .....	307
§ 66. Liability for infringement of the ECHR as the result of the EU law application as a necessary element of fundamental rights protection .....	314
§ 67. Conclusions .....	320
<b>Part III. Country Reports</b>	
<b>Chapter XIII. Country report for the Hungary</b> ( <i>Gábor Halmai, Eszter Polgári, Balázs D. Tóth</i> ) .....	327
§ 68. Assessment of the proposal of incorporating the Charter of Fundamental Rights into the EU law .....	327
I. Political consensus .....	327
II. Expert debates .....	329

§ 69. Assessment of the proposal of the EU accession to the ECHR . . .	331
§ 70. Main problems resulting from the incorporation of the Charter into the EU law in the light of the national law . . . . .	332
I. The Hungarian ‘Europe Clause’ and the Domestic Constitutional Review of the EU law . . . . .	332
II. Welfare rights . . . . .	342
III. <i>Nullum crimen sine lege</i> . . . . .	344
IV. Hate speech . . . . .	349
V. Positive Discrimination . . . . .	354
<b>Chapter XIV. Country report for the Czech Republic (Zdeněk Kúhn) . . . .</b>	<b>356</b>
§ 71. Introduction . . . . .	356
§ 72. Will the Charter of Fundamental Rights become part of the Czech constitutional order? . . . . .	357
I. The Czech constitutional order, the status of international treaties on human rights in Czech law, and the Constitutional Court’s jurisprudence . . . . .	357
II. Euro-Amendment of the Constitution and the Constitutional Court’s jurisprudence . . . . .	358
III. The status of the Charter of Fundamental Rights in Czech law . . . . .	363
IV. The Charter as a persuasive source of Czech national constitutional law . . . . .	365
§ 73. The potential conflicts between the Charter and the national constitution . . . . .	366
I. The current position of the CCC with respect to constitutional review of the EU law . . . . .	366
II. Conflicts between the Charter and the national Bill of Rights . . . . .	368
§ 74. The EU Charter and the scholarly discourse . . . . .	372
§ 75. Political discourse and the Charter of Fundamental Rights . . . . .	374
§ 76. The Referral of the Reform Treaty by the Senate to the Constitutional Court . . . . .	378
§ 77. Conclusions: The EU Charter as a scapegoat? . . . . .	380
<b>Chapter XV. Country report for the Slovak Republic (Radoslav Procházka) . . . . .</b>	<b>381</b>
§ 78. Assessment of legalization of the Charter . . . . .	381
I. Political stances . . . . .	381
II. Academic discourse . . . . .	382
III. Media coverage . . . . .	384
§ 79. Assessment of accession to the Convention . . . . .	384
I. Public arena . . . . .	384
II. Academic arena . . . . .	385
§ 80. Expected difficulties . . . . .	386
§ 81. Summary . . . . .	388