

I N D E X

Executive summary	7
Introduction to SELECT project	9
INTRODUCTION	
THE NICE CHARTER FOR HONORARY JUDGES (M.E. Bartoloni)	13
1. The birth of the SELECT project	13
2. Why the Nice Charter?	14
3. What is the Charter of Fundamental Rights?	15
4. The structure of the Manual	18
CHAPTER I	
PROTECTING FUNDAMENTAL RIGHTS WITHIN THE EU LEGAL ORDER	21
SECTION I – THE CHARTER OF FUNDAMENTAL RIGHTS WITHIN THE SYSTEM OF EU LEGAL SOURCES (N. Faiola)	
1.1. Introduction	21
1.2. Primary law	22
1.2.1. <i>The Treaties</i>	22
1.2.2. <i>The Charter of Fundamental Rights</i>	24
1.2.3. <i>The general principles of law</i>	25
1.3. Intermediate law	26
1.4. Secondary law	26
1.4.1. <i>The binding legal instruments</i>	28
1.4.2. <i>The regulation</i>	28
1.4.3. <i>The directive</i>	29
1.4.4. <i>The decision</i>	34
1.4.5. <i>Delegated and implementing acts</i>	34
1.4.6. <i>The non-binding legal instruments</i>	35
1.4.7. <i>The authentication of acts, the forms of advertising and the entry into force</i>	35
1.5. Conclusion	36

SECTION II – THE CHARTER OF FUNDAMENTAL RIGHTS AND COMPETING TOOLS (R. Silvestre)	37
1.6. The general principles of EU law concerning the protection of fundamental rights	37
1.7. The Charter of Fundamental Rights of the European Union	42
1.8. The European Convention on Human Rights	50
1.9. The relationship between the Charter and the ECHR	55
1.9.1. <i>The problem of the overlap between the Charter and the EU Convention</i>	59
CHAPTER II THE SCOPE OF APPLICATION OF THE CHARTER: THEORY AND PRACTICE (G. D’Agnone and M.E. Bartoloni)	65
2.1. Introduction	65
2.2. The field of application of general principles of law on the protection of fundamental rights	66
2.2.1. <i>The recognition of the application of general principles of law on the protection of fundamental rights to national measures implementing Community rules: the Wachauf case</i>	66
2.2.2. <i>The recognition of the application of general principles of law on the protection of fundamental rights to national measures falling within the field of Union law by limiting one of the EU free movement rights: the ERT case</i>	67
2.2.3. <i>The exclusion of the application of general principles on the protection of fundamental rights</i>	69
2.3. The field of application of the Charter of fundamental principles of the European Union	70
2.3.1. <i>The Åkerberg Fransson decision</i>	72
2.3.2. <i>The Siragusa judgment</i>	73
2.3.3. <i>The logical steps to follow to determine whether a national legislation involves the implementation of EU law under Art. 51 of the EU Charter of fundamental rights</i>	74
2.3.4. <i>Cases of exclusion of the Charter’s application</i>	77
2.3.5. <i>Flowchart: How to determine the scope of application of the Charter</i>	78

INDEX	5
CHAPTER III	79
SECTION I – THE PROTECTION OF FUNDAMENTAL RIGHTS IN THE EU: THE RIGHT TO ASYLUM (R. Silvestre)	79
3.1. The Asylum Policy in the European Union: a story until the Dublin regulation system	79
3.2. The regime of sources between 1951 Refugee Convention and EU law: a focus on article 18 of the Charter of Fundamental Rights and on EU secondary law	83
3.3. A summary of the most relevant case law and the judicial dialogue between the European Court of Justice and Strasbourg Court	92
3.4. Conclusions: how the EU handles migration flows?	104
3.5. Future development on the right of an effective judicial protection for asylum seekers and refugees	106
SECTION II – THE RIGHTS OF THE CHILD (G. D’Agnone)	113
3.6. Definition of “minors”	113
3.7. Minors’ rights in international law	114
3.8. The protection of minors within the framework of the European Union	115
3.9. Primary Law: The Treaties	116
3.9.1. <i>Primary Law: The Charter</i>	117
3.10. Secondary Law	118
3.10.1. <i>Children’s rights under EU family unity and family reunification law</i>	119
3.10.2. <i>Children’s rights under EU migration and asylum law</i>	125
3.10.3. <i>The Family Reunification Directive and the regime for refugees who are unaccompanied minors</i>	125
3.10.4. <i>Minors and EU Asylum law</i>	127
SECTION III – THE PROTECTION OF FUNDAMENTAL RIGHTS IN EU CRIMINAL LAW (N. Faiola)	131
3.11. The criminal matter in EU legal system	131
3.12. The content of CFREU in criminal matter	132
3.12.1. <i>The right to a fair trial (art. 47 CFREU)</i>	132
3.12.2. <i>The presumption of innocence (art. 48 CFREU)</i>	135
3.12.3. <i>The proportionality and legality (art. 49 CFREU)</i>	137
3.12.4. <i>The right not to be tried or punished twice in criminal proceedings for the same criminal offence (art. 50 CFREU)</i>	140
3.13. The EU competences in criminal matter	144
3.14. The secondary law in criminal law	149

SECTION IV – THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE (N. Faiola)	153
3.15. The safeguarding of private and family life in EU legal system	153
3.16. The respect for private and family life (art. 7 CFREU)	153
3.16.1. <i>The scope of application of art. 7 CFREU</i>	155
3.17. The cross-cutting nature of art. 7 CFREU	157
3.17.1. <i>The interactions with private life</i>	157
3.17.2. <i>The interactions with family life</i>	162
3.18. The secondary law	169
3.19. Conclusion	171
 SECTION V – CONSUMER PROTECTION (G. D’Agnone)	 173
3.20. The notion of “consumer”	173
3.21. Consumer protection under EU primary Law	173
3.22. Secondary Law	175
3.23. Soft Law	180
3.24. Case-law of the Court of Justice of the European Union on Art. 38 of the Charter	 180
 CHAPTER IV	
THE ROLE OF LAY JUDGES IN THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS (N. Faiola)	185
4.1. The preliminary ruling	185
4.1.1. <i>Objective condition and purposes of the preliminary ruling procedure</i>	186
4.1.2. <i>Subjective condition</i>	188
4.1.3. <i>Discretion or duty to refer</i>	189
4.1.4. <i>The preliminary ruling proceedings in short</i>	192
4.1.5. <i>The urgent preliminary reference</i>	194
4.1.6. <i>The request for application of the urgent preliminary ruling procedure</i>	195
4.2. The status of lay and honorary judges	196
4.2.1. <i>Lay and honorary judges in different Member States</i>	197
4.2.2. <i>The status of the Italian honorary judges according the CJEU</i>	200
4.2.3. <i>Lay and honorary judges and preliminary ruling</i>	205
 Bibliography	 212
Sitography	217