

JAKUB CZEPEK*

The Universal Protection of Human Rights and Central Europe: Poland

■ **ABSTRACT:** *As a founding member of the United Nations, Poland has been present since the very beginning of the organisation. When the UN was established, Poland was one of the first 51 members and was also a state party to the Declaration by United Nations of 1st January 1942, which became the basis of the establishment of the UN.¹ To this day, Poland has signed and ratified the most important human rights treaties within the UN system. Currently Poland is state-party to 14 (out of 18) UN human rights treaties. Following their ratification, some of these treaties have become important elements in the Polish legal landscape, while other – despite ratification – did not have an impressive impact on the Polish legal system. Poland undertakes activities deriving from these treaties, including the reporting and implementation of Treaty Bodies' observations. Within the UN Treaty Body system individuals may bring individual cases against Poland to HRC, CtERD, CtEDAW, CtAT and recently CtED. To this day there have been a total of 12 cases brought before UN Treaty Bodies. The HRC decided on merits in four cases against Poland. The main aim of this article is to examine the Polish input in the universal system of human rights protection. Its purpose is to analyse the impact of the UN system on domestic law and practice by examining the influence of all UN human rights treaties ratified by Poland. The article will also seek to examine problems with the implementation of UN human rights treaty obligations.*

■ **KEYWORDS:** *universal system, human rights, Poland, treaty bodies, UN human rights protection*

* Associate Professor, Faculty of Law and Administration, Cardinal Stefan Wyszyński University in Warsaw, Poland; j.czepek@uksw.edu.pl; ORCID: 0000-0001-7741-7806.

1 Abraszewski, 1975, p. 12.



1. The historical development of human rights in Poland: a contextual introduction

Poland has a long tradition of individual human rights protection. One of its great developments were the achievements of Paweł Włodkowic (*Paulus Vladimiri*), the Polish philosopher, lawyer and diplomat. In the XV century, during the Council of Constance (1414–1418) he defended Poland from accusations by the Teutonic Order. He expressed the thesis that pagans and Christians could respect their own religions. Włodkowic also criticised the Teutonic Order for its wars of conquest against the pagan peoples in Prussia and Lithuania.

Paweł Włodkowic stressed that ‘according to truth, our fellows are both believers and unbelievers’.² He also stressed the necessity of love towards everyone. According to Włodkowic, ‘Christians and unbelievers, Saracens and Jews’ share the benefits of this world and ‘share with us the law of nature’.³ These were very powerful and innovative ideas at that time. Generally, the thoughts of Paweł Włodkowic emanated from the spirit of understanding, respect and tolerance. This is the reason why he is considered the father of religious tolerance in Europe.⁴

Apart from that, Włodkowic laid foundation for the concept of human dignity. He connected it with the notion of the freedom of individual, stressing that ‘by nature all men were free’.⁵ The basis of his concept was the recognition of the dignity of a human being, similarly to the work of Stanisław ze Skarbimierza (Stanisław of Skarbimierz), who called a human ‘the most dignified of all creatures in the world’.⁶ From the recognition of the dignity of the human being derives the recognition of one’s freedom of will, which was linked to the recognition of the obligation to love one’s fellow man.⁷

Both lawyers, Stanisław ze Skarbimierza and Paweł Włodkowic had a substantive influence on the formation of latter legal and political doctrine. This influence concerned in particular, the ideas of the right to self-determination and natural liberty,⁸ which play a special role in the works of Paweł Włodkowic and Stanisław ze Skarbimierza.⁹ Both lawyers also focused on the issue of a just war. In this regard Włodkowic’s concept stemmed from the teachings of Stanislaus of Skarbimierz, while still remaining his original thought.¹⁰

2 *Saevientibus*, 1415, cited in Ehrlich, 2018, p. 147.

3 *Saevientibus*, 1415, pp. 88, 92; Jasudowicz, 2018, p. 147.

4 Jasudowicz, 2010, p. 44.

5 *Saevientibus*, 1415, p. 13; Jasudowicz, 2018, p. 147.

6 Ehrlich, 1955, pp. 4–5; Jasudowicz, 1995, p. 19.

7 Ehrlich, 1968a, p. XLVIII; Jasudowicz, 1995, p. 19.

8 Czarторыński, 1963, pp. 131–132. See also: Płotka, 2020, p. 39.

9 Płotka, 2020, p. 39.

10 Płotka, 2020, pp. 41–44.

Stanisław of Skarbimierz wrote the sermon *De bellis iustis* (On just wars). According to K. Lankosz, it is a superbly constructed, logical and erudite scientific treatise. At the same time, the sermon by Stanisław ze Skarbimierza is the earliest surviving treatise in world literature devoted exclusively to legal issues of public war.¹¹ L. Ehrlich also emphasises that the scientific level of the sermon is similar to subsequent renowned studies in world literature.¹² The sermon analyses the rights and obligations of the party initiating a war, the permissibility of wars, the conditions under which a war may be considered just, the legal effects of a just war, the legal consequences of unjust war, who may initiate wars, self-defence, whether and within what limits it is permissible to use the assistance of infidels, as well as the rights and duties of subordinates, the obligation to investigate whether a war is just, and the limits of this duty, the duty to fight and obey, the right of conquest, and matters of plunder.¹³

Referring to Paweł Włodkowic, K. Lankosz stressed that he was an advocate of peaceful coexistence between Christians and pagans. Apart from being the precursor of religious tolerance, Włodkowic examined issues which have remained fully valid in contemporary international law. He focused *inter alia* on the principle of the self-determination of peoples, which was fully recognised and developed in the UN Charter. He also laid the foundations for the contemporary concept of human rights. Sadly, Włodkowic was forgotten and similar ideas were popularised by de Vitoria, Gentili, Grotius and other fathers of law of the nations.¹⁴ I fully agree with K. Lankosz that Włodkowic is still waiting for his rightful place in the pantheon of international law classics.¹⁵

Despite his impact on the laws of nations, the most memorable idea coined by Włodkowic was religious tolerance. This – revolutionary at that time – thought laid underlying foundations for Polish religious tolerance, which in that era was completely unique in Europe. Poland was the only European state ‘without stakes’ for burning heretics. It enabled the coexistence of Christians (Catholics, Protestants, Orthodox), Jews and Muslims.

This tradition was continued by act of the Warsaw Confederacy (*Konfederacja Warszawska*) 1573. This document guaranteed religious tolerance as a principle. The Warsaw Confederacy stressed *inter alia* that ‘common peace between divided and diverse people in faith and in religious rites must be maintained.’¹⁶ The articles of Confederacy were included in the Henrician Articles (*Artykuły Henrykowskie*), which had to be sworn upon by every newly-elected Polish king upon his election

11 Lankosz, 2000b, p. 53.

12 Ehrlich, 1968a, pp. XLVIII et seq.; Jasudowicz, 1995, p. 19.

13 Lankosz, 2000b, pp. 53–54.

14 Lankosz, 2000a, pp. 62–63.

15 Lankosz, 2000a, pp. 62–63.

16 Konfederacja Generalna Warszawska (The General Confederation of Warsaw), 28 January 1573.

to the throne. This document stated the fundamental principles of governance and constitutional law in the Polish–Lithuanian Commonwealth.

Poland has also had noticeable achievements concerning protection of right to life and prohibition of torture. Humanitarian traditions in this regard date back to XVIII century, when torture was prohibited in criminal trials (in 1776). It was also prohibited to carry out the death penalty in a manner causing particular suffering to the convict.¹⁷ In this regard Poland was a precursor and surpassed other countries in this respect.¹⁸

T. Jasudowicz stresses that the most profound elements of Polish tradition regarding human rights protection also included: privilege *neminem captivabimus*, which guaranteed that the king could neither punish nor imprison any representative of the nobility without a viable court verdict; the principles of democracy of the nobility as the system functioning in Kingdom of Poland and the Polish–Lithuanian Commonwealth; *pacta conventa* which was a contractual agreement (functioning from 1573 until 1764) between the Polish Nobility (*Szlachta*) and a newly elected king upon his election to the throne. The culmination of the tradition of the First Republic was the Constitution of 3rd May 1791 (*Konstytucja 3 Maja*),¹⁹ which was the Second constitution in the world (after USA) and the first one in Europe. Tragically, the heritage of the Constitution could not be continued and Poland lost its independence after its partition between the Russian Empire, the Kingdom of Prussia and Habsburg Monarchy at the end of XVIII century.

After regaining independence during the reign of the Second Republic (*II Rzeczpospolita*) 1918–1939, Poland became one of the first countries that guaranteed voting rights for women. This happened after it regained independence in 1918.²⁰ The Constitution of 1921 provided the right to the protection of life, freedom and property to all people on Poland's territory, regardless of origin, nationality, language, race, religion, and equality before the law.²¹ The Constitution of 1921 also provided equal rights for aliens.²²

After World War II, Poland became dependent on the Soviet Union and a socialist government came into power. In 1952 the Constitution of the communist regime was adopted. This act did not contain rights and freedoms expressed in

17 Łopatka, 1980, pp. 8–9; Michalski, 1996, pp. 89 et seq.; Constitutions of Polish Sejm, 1776, p. 42.

18 Łopatka, 1980, p. 9.

19 See: Jasudowicz, 1997, p. 12. See also: Jasudowicz, 2010, pp. 44–45.

20 Decree on the electoral law for the Legislative Assembly (Dekret o ordynacji wyborczej do Sejmu Ustawodawczego), 28 November 1918, Dz.U. 1918, Nr 18, Poz. 46, Art. 1; Art. 7.

21 Polish Constitution (Konstytucja Rzeczypospolitej Polskiej) of 17 March 1921, Dz.U. 1921, No. 44, item 267, Arts. 95, 96 et seq. The scope of rights was substantial, especially in respect of aliens, minorities and freedom of religion: see 1921 Constitution Arts. 95–122.

22 Polish Constitution. This provision was the result of the signature by Poland of the Little Treaty of Versailles on minority rights in 1919.

the form of fundamental rights.²³ As with most of the similar acts in communist countries in the Eastern Bloc, the 1952 Constitution focused mostly on labour rights, rights to education, access to culture, etc.²⁴ Civil rights and freedoms were marginalised and perceived as a potential threat to the regime. The factual disregard for personal and political freedoms, along with a grave economic crisis, were the causes of mass protests in Poland,²⁵ and the emergence of the Solidarity (*Solidarność*) movement. In 1981 the communist regime declared martial law in order to crush the opposition. The dire economic situation of the country and the lack of political support forced the communist regime to initiate negotiations with the opposition. This led to round table talks, which resulted in the first partially free elections in 1989. These elections showed the strength of the democratic opposition and resulted in ending the period of communism in the country and commencing its democratisation.

Currently the protection of human rights and fundamental freedoms is enshrined in the Constitution which was adopted in 1997. Chapter II of the 1997 Constitution focuses solely on ‘The Freedoms, Rights and Obligations of Persons and Citizens.’²⁶ The constitutional catalogue of rights and freedoms was widely inspired by the international human rights treaties binding Poland, in particular the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁷

The means that the protection of rights enshrined in the Constitution include recourse by any person to the courts²⁸ and the right to appeal against judgments and decisions made at the first stage.²⁹ The Constitution also guarantees the right to appeal to the Constitutional Tribunal against its judgment on conformity with regards to the final decision on an individual’s freedoms or rights specified in the Constitution.³⁰ The Constitution of Poland also provides the right to apply to the Commissioner for Citizens’ Rights for assistance in the protection of freedoms or rights infringed upon by organs of public authority.³¹ The Commissioner is an ombuds-type National Human Rights Institution (NHRI) with an ‘A’ accreditation granted by the Global Alliance of National Human Rights Institutions (GANHRI).³² The Commissioner is responsible for safeguarding liberties and human and

23 Łętowska, 1996, p. 824.

24 Constitution of People’s Republic of Poland (Konstytucja Polskiej Rzeczypospolitej Ludowej) of 22 July 1952, Dz. U. 1952, No. 33, item 232, Arts. 57 et seq.

25 Sękowska-Kozłowska et al., 2024, p. 824.

26 The Constitution of the Republic of Poland (Konstytucja Rzeczypospolitej Polskiej), 2 April 1997, Dz. U., No. 78, item 483.

27 Sękowska-Kozłowska et al., 2024, p. 824.

28 The Constitution of the Republic of Poland, Art. 77.

29 The Constitution of the Republic of Poland, Art. 78.

30 The Constitution of the Republic of Poland, Art. 79, para. 1.

31 The Constitution of the Republic of Poland, Art. 80.

32 GANHRI: Our Members. [Online]. Available at: <https://ganhri.org/membership/> (Accessed: 13 June 2024). See also: Sękowska-Kozłowska et al., 2024, p. 825.

citizens' rights as set forth in the Constitution and other normative acts.³³ The Commissioner may also submit an application to the Constitutional Tribunal to adjudicate the conformity of regulations with regards to the Constitution, ratified international agreements, and complaints concerning constitutional infringements.³⁴ A similar competence, with respect to the protection of children's rights is vested in Commissioner for Children's Rights.³⁵

2. The Relationship between Poland and the UN from a human rights perspective

As a founding member of the United Nations, Poland has been present since the very beginning of the organisation. When the UN was established, Poland was one of the first 51 members and also a state party to the Declaration by United Nations of 1 January 1942, which became the basis for the establishment of the UN.³⁶

Poland has also actively participated in various activities within the UN. Poland was a non-permanent member of the UN Security Council,³⁷ has participated in numerous UN peacekeeping operations,³⁸ and was a member of the Human Rights Council³⁹ (Previously also UN Commission on Human Rights⁴⁰). Poland has been a member of numerous organisations, programs and specialised agencies within the UN framework. This includes membership *inter alia* in: UNICEF, UNCTAD, UNDP, UNIDO, UNITAR, UNEP, UNHCR, ILO, UNESCO, WHO, FAO, ICAO.⁴¹ In 2001 Poland also ratified the Rome Statue of the International Criminal Court (ICC).

In 2001 Poland issued a standing invitation to all UN special procedures.⁴² The country has also been visited by special procedures, e.g.: the Special Rapporteur on violence against women,⁴³ the Special Rapporteur on freedom of

33 Ustawa o Rzeczniku Praw Obywatelskich, 15 July 1987, Dz.U. 2023, item 1058, Art. 1.

34 The Constitution of the Republic of Poland, Art. 191 in connection with 188.

35 The Constitution of the Republic of Poland, Art. 72, para. 4.

36 Abraszewski, 1975, p. 12.

37 During the periods: 1946–1947, 1960, 1970–1971, 1982–1983, 1996–1997, 2018–2019.

38 Egypt, Middle East (Golan Heights), Lebanon, Namibia, Cambodia, the former Yugoslavia, Chad. Polish military observers were in Kuwait, Tajikistan, Georgia, Western Sahara, Angola, the Democratic Republic of the Congo, Ethiopia, Eritrea, Liberia and Sudan; more: Ministry of National Defence, Republic of Poland: Poland – United Nations. [Online]. Available at: <https://www.gov.pl/web/national-defence/poland---united-nations> (Accessed: 13 June 2024).

39 During the periods: 2006–2007, 2010–2013; 2020–2022.

40 During the periods: 1993–1995, 1998–2000, 2001–2003.

41 Abraszewski, 1975, pp. 13–16.

42 United Nations: Standing invitations. [Online]. Available at: <https://spinternet.ohchr.org/StandingInvitations.aspx> (Accessed: 13 June 2024).

43 Report on the mission of the Special Rapporteur to Poland, 1996, E/CN.4/1997/47/Add.1.

expression,⁴⁴ the Special Rapporteur on health,⁴⁵ the Special Rapporteur on trafficking,⁴⁶ the Special Rapporteur on toxics and human rights,⁴⁷ the Special Rapporteur on food,⁴⁸ the Special Rapporteur on independence of judges,⁴⁹ the Special Rapporteur on cultural rights,⁵⁰ the Special Rapporteur on migrants,⁵¹ the Special Rapporteur on violence against women and girls,⁵² and the Working Group on discrimination against women and girls.⁵³ These visits by the special procedures are important for domestic authorities and institutions focused on human rights protection. All special procedures visits have resulted in recommendations, which were not always implemented by the government⁵⁴.

In respect of the Universal Periodic Review (UPR), Poland was reviewed during four cycles. Most recently, the fourth cycle took place in 2022. Poland received 233 recommendations and supported 89 recommendations, which was a decrease of 38.19% in comparison to the third cycle in 2017, when 144 recommendations were adopted out of 185⁵⁵. During the second cycle in 2012, 105 recommendations out of 124 were supported.⁵⁶ Most recent recommendations have concerned the ratifications of treaties, equality and non-discrimination, the freedom of opinion and expression and access to information, the rule of law and

44 Report on the mission of the Special Rapporteur to the Republic of Poland, 1998, E/CN.4/1998/40/Add.2.

45 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2009, A/HRC/14/20/Add.3.

46 Report of the Special Rapporteur on trafficking in persons, especially women and children, 2010, A/HRC/14/32/Add.3.

47 Report of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, 2011, A/HRC/18/31/Add.2.

48 Report of the Special Rapporteur on the right to food on her mission to Poland, 2016, A/HRC/34/48/Add.1.

49 Report of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland, 2018, A/HRC/38/38/Add.1.

50 Report of the Special Rapporteur in the field of cultural rights. Visit to Poland, 2020, A/HRC/43/50/Add.1.

51 Report of the Special Rapporteur on the human rights of migrants, 2023, A/HRC/53/26/Add.1.

52 Special Rapporteur on violence against women and girls visited Poland (from 27 February 2023 to 9 March 2023). The report wasn't published yet.

53 Report of the Working Group on the issue of discrimination against women in law and in practice on its visit to Poland, 2019, A/HRC/41/33/Add.2.

54 Hernandez-Polczyńska, 2018, pp. 141–142.

55 UN OHCHR: Infographic–UPR41 Poland. [Online]. Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/sessions/session41/pl/UPR41-Poland-Infographic.pdf> (Accessed: 13 June 2024).

56 UN OHCHR: Infographic–UPR27 Poland. [Online]. Available at: https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session27/PL/POLAND_Infographic_27th.pdf (Accessed: 13 June 2024).

impunity, sexual and gender-based violence, as well as sexual and reproductive health and rights⁵⁷.

Poland is also a member of regional organisations focused on protection of human rights. Poland has been a member of the Council of Europe (CoE) since 1991, the Organisation for Security and Cooperation in Europe (OSCE) since its establishment and the European Union (EU) since 2004. In 1993 Poland became a state-party to the European Convention on Human Rights (ECHR). The Convention system has become a very important element complimenting domestic human rights protections. The European Court of Human Rights (ECtHR) examined thousands of applications against Poland and delivered hundreds of judgments in which violations of ECHR were discovered.⁵⁸ Some noteworthy cases, such as *Kudła v. Poland*⁵⁹ impacted the domestic legal system and contributed to the crucial development of ECHR jurisprudence. The pilot judgment procedure⁶⁰ was first introduced by ECtHR in relation to cases filed against Poland, namely *Broniowski v. Poland*⁶¹ and *Hutten-Czapska v. Poland*.⁶² A. Wiśniewski stresses that numerous violations of ECHR in cases against Poland revealed a variety of problems in the Polish legal system and practice. As the result of considerable efforts to address these judgments, the Polish system of law is being continuously transformed in order to ensure it stays in line with ECHR's human rights standards.⁶³

The ECtHR jurisprudence had a great impact on the protection of human rights in Poland, especially shortly after accession to the Convention in 1990s, and became an important element influencing domestic law and practice and legal education. This popularity also concerns regional human rights standards of CoE and EU, which are widely implemented. The legal practice and education regarding human rights also focuses mostly on CoE and EU standards. Clearly the popularity of the Convention system and CoE and EU standards contributed greatly to the decrease of interest in UN mechanisms relating to human rights. The main focus on ECHR, CoE mechanisms and the EU is also visible in academic research. I agree with R. Wieruszewski, who stated that the European regional systems have a stronger impact on human rights in Poland than the UN system. For this reason, the impact of the UN human rights framework arguably was more prominent in the 1990s and early 2000s and has gradually been replaced

57 UN HRC: UPR of Poland, Matrix of recommendations. [Online]. Available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/sessions/session41/pl/UPR41_Poland_Thematic_List_of_Recommendations.doc (Accessed: 13 June 2024).

58 Wiśniewski, 2020, p. 181.

59 ECtHR judgment *Kudła v. Poland*, 26.10.2000, app. no 30210/96.

60 Lubiszewski and Czepek, 2016; Czepek, 2015, pp. 80–89.

61 ECtHR judgment *Broniowski v. Poland*, 28.09.2005, app. no 31443/96.

62 ECtHR judgment *Hutten-Czapska v. Poland*, 19.06.2006, app. no 35014/97.

63 Wiśniewski, 2020, p. 153.

by European regional mechanisms.⁶⁴ Unfortunately, this seems to be the case in numerous European states.

The relationship between Poland and the UN should be understood as twofold. On the one hand, Poland is actively participating in UN Organisations, missions, Special Procedures and has ratified most UN human rights treaties. As such, Poland can set an example to numerous UN members. On the other hand, there are certain deficiencies in the implementation of certain recommendations by Treaty Bodies. The ratifications are not necessarily followed by crucial domestic legislation (e.g. definition of torture – CAT, CRPD, CERD, CEDAW). These issues will be subjected to further analysis.

The abovementioned issue also refers to problems with implementation of UN Treaty Bodies' (UN TB) recommendations. Sometimes domestic implementation may seem superficial. In several cases explicit recommendations by UN TB's were not implemented despite numerous notifications. These issues will be further discussed in more detail.

Regarding scientific discussion concerning UN human rights standards within Polish legal system, it should be stressed that this area clearly shows plenty of room for improvement. As stressed above, I completely agree with R. Wieruszewski, who considers that the European regional systems have a stronger impact on human rights in Poland than the UN system.⁶⁵

This statement also greatly impacts academic discussion concerning the UN human rights system. There are very few academics and research institutions focusing on this area. This is the reason why the level of knowledge concerning certain UN standards in Poland – in comparison to EU or CoE standards – is relatively low. As stressed above the reason for this situation is a focus on regional human rights standards. The academic discussion is mostly centred on them. This surely impacts the discussion on UN human rights standards.

3. Poland as a State Party of UN Human Rights Treaties

Poland is a state-party to human right treaties, both within the UN framework and the CoE. Within the universal system Poland has signed and ratified the most important human rights treaties. Currently Poland is state-party to 14 (out of 18) UN human rights treaties. Poland has signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),⁶⁶ the International Covenant on Civil and Political Rights (ICCPR),⁶⁷ the Optional

64 Wieruszewski, interview in Sękowska-Kozłowska et al., 2024, p. 829.

65 Wieruszewski, interview in Sękowska-Kozłowska et al., 2024, p. 829.

66 International Convention on the Elimination of All Forms of Racial Discrimination, 1966, Dz. U. 1969, No. 25.

67 International Covenant on Civil and Political Rights, 1966, Dz. U. 1977, No 38, item 167.

Protocol to the ICCPR,⁶⁸ the Second Optional Protocol to the ICCPR,⁶⁹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁷⁰ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁷¹ the Optional Protocol to the CEDAW,⁷² the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),⁷³ the Optional Protocol to the CAT (OPCAT),⁷⁴ the Convention on the Rights of the Child (CRC),⁷⁵ the Optional Protocol to the CRC on the involvement of children in armed conflict,⁷⁶ the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography,⁷⁷ the Convention on the Rights of Persons with Disabilities (CRPD)⁷⁸ and the International Convention for the Protection of all Persons from Enforced Disappearance.⁷⁹ Poland signed, but did not ratify the Optional Protocol to the CRC on a communications procedure,⁸⁰ Poland did not sign the Optional Protocol to the ICESCR,⁸¹ the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,⁸² and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.⁸³ The scope of the domestic implementation of the most important of those treaties should be examined separately.

68 Optional Protocol to the ICCPR, 1966, Dz. U. 1994, No. 23, item 80.

69 Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, 1989, Dz. U. 2014, No. 891.

70 International Covenant on Economic, Social and Cultural Rights, 1966, Dz. U. 1977, No. 38, item 169.

71 Convention on the Elimination of All Forms of Discrimination against Women, 1979, Dz. U. 1982, No. 10, item 71.

72 Optional Protocol to the CEDAW, 1999, Dz. U. 2004, No. 248, item 2484.

73 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Dz. U. 1989, No. 63, item 378.

74 Optional Protocol to the CAT, 2002, Dz. U. 2007, No. 30, item 192.

75 Convention on the Rights of the Child, 1989, Dz. U. 1991 No. 120, item 526.

76 Optional Protocol to the CRC on the involvement of children in armed conflict, 2000, Dz. U. 2007, No. 91, item 608.

77 Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, 2000, Dz. U. 2007, No. 76, item 494.

78 Convention on the Rights of Persons with Disabilities, 2006, Dz. U. 2012, No. 1169.

79 International Convention for the Protection of all Persons from Enforced Disappearance, 2006, Dz. U. 2025, poz. 457.

80 Optional Protocol to the CRC on a communications procedure, 2011.

81 Optional Protocol to the ICESCR, 2008.

82 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.

83 Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006.

4. National Implementation of UN Human Rights Treaties

■ 4.1. *The 1951 Convention relating to the Status of Refugees*

The Convention relating to the Status of Refugees⁸⁴ is a crucial treaty concerning the definition of the term refugee, granting its status, and providing minimum rights. Poland ratified both the 1951 Convention and the 1967 Protocol⁸⁵ on 27th September 1991.

Polish accession to the Convention took place in 1991 after the collapse of the communist regime in the country. During the communism period, relations between Poland and the UNHCR were far from friendly. The UNHCR was considered a political organ that was aiding enemies of the communist regime.⁸⁶ Even the Communist Constitution provided that refugee status could be introduced for ‘aliens persecuted for acting in the interest of the working masses, struggle for social advancement, initiatives for the defence of peace, the nation’s struggle for independence or scientific activity.’⁸⁷

This is the reason why the 1951 Convention was adopted by Poland 40 years after its emergence. In the 1980s especially, migration and refugee routes did not lead to Poland, but rather in the opposite direction. During that era many Poles fled from the country after the introduction of martial law by the communist regime.⁸⁸ After the collapse of communism, the issue of illegal immigration started to emerge. The issue was coupled with a lack of domestic procedures, regulations and mechanisms.⁸⁹ This led to the adoption of 1951 Convention by Poland on 27 September 1991. Poland ratified both the 1951 Convention and 1967 Protocol. Poland made a reservation, stating that ‘The Republic of Poland does not consider itself bound by the provisions of article 24, paragraph 2, of the Convention.’⁹⁰ The Convention entered into force with regard to Poland on 26 December 1991. At that time the UNHCR opened an office in Warsaw.⁹¹

■ 4.2. *International Covenant on Civil and Political Rights*

Poland accessed the ICCPR as a communist country, shortly after its adoption. The act was signed on 2nd March 1967 and its ratification took place on 18th March 1977.

84 Convention relating to the Status of Refugees, 1951, Dz. U. Dz. U. 1991, No. 119.

85 Protocol relating to the Status of Refugees, 1967, Dz. U. 1991, No. 119, item 517.

86 Kosowicz, 2007, p. 6.

87 Constitution of People’s Republic of Poland, Art. 75.

88 More: Kosowicz, 2007, pp. 5–6.

89 Kosowicz, 2007, pp.13–38.

90 Article 24 relates to the labour legislation and social security. Para. 2 states: ‘The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State’.

91 Kosowicz, 2007, pp. 41 et seq.

Poland also accessed both Optional Protocols to the ICCPR. This happened after the collapse of the communist regime (1989). The first protocol to the ICCPR was signed by Poland in 1967, however it was ratified on 7 November 1991. The lack of interest in the ratification of the Optional Protocol by the communist regime concerned the possibility of submitting individual communications to the Human Rights Committee (HRC).

The second Optional Protocol (OP) to the ICCPR was signed by Poland on 21st March 2000, and ratified on 25th April 2014. The lengthy accession to the Protocol stemmed from the social perception of the abolition of the death penalty in the 1990s. The Second OP was ratified a month before the ratification of Protocol No. 13 to the ECHR concerning the abolition of the death penalty under all circumstances.

Poland made declarations regarding the Covenant and both Protocols. The declaration regarding ICCPR (25th September 1990) confirmed the recognition by The Republic of Poland of ‘the competence of the HRC to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.’ In regard to the First OP to the ICCPR, Poland made a reservation excluding ‘the procedure set out in article 5 (2) (a), in cases where the matter has already been examined under another procedure of international investigation or settlement’. With respect to the Second OP to the ICCPR, Poland objected to the declaration of El Salvador and stressed that ‘[The Republic of Poland] considers the reservation null and void’.

■ 4.3. *International Covenant on Economic, Social and Cultural Rights*

Similarly to the ICCPR, the ICESCR was adopted by Poland during the communist regime. As a socialist state, Poland needed to have a particular focus on economic, social and cultural rights. This explains the swift signature (2nd March 1967) and ratification (18th March 1977) of the Covenant. Poland did not make any declarations or reservations regarding the ICESCR.

Poland does not express interest in accessing the Optional Protocol to the Covenant.⁹² Z. Kędzia explains that during the negotiations of the OP, the Polish delegation was among the group of states that resisted the proposal to establish an individual complaints mechanism for economic, social and cultural rights.⁹³ This approach was continued after the adoption of the OP. According to Sękowska-Kozłowska et al., there are three main reasons for the lack of interest in the ratification of the Protocol: the risk of an overly broad interpretation of the ICESCR provisions by the treaty body, the financial burden of potential settlements, and the reluctance on the part of the government to be subject to external control

92 E.g. CESCR, Replies to the List of Issues in relation to the 6th periodic report of Poland, 2016, E/C.12/POL/Q/6/Add.1, para. 9.

93 Kędzia, Z., former Chair and member of CESCR, interview in Sękowska-Kozłowska et al., 2024, p. 866.

in the area of social policies.⁹⁴ At this point, it does not seem that Poland will be preparing to ratify the OP to the ICESCR in the foreseeable future.

■ **4.4. *International Convention on the Elimination of All Forms of Racial Discrimination***

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was also adopted during the era of communism in Poland. The act was signed on 7th March 1966 and was ratified on 5th of December 1968. Upon accession to ICERD, the Polish People's Republic made a declaration concerning Articles 17 and 18, para. 1, stressing that 'the said Convention should be open for participation by all States without any discrimination or restrictions whatsoever'. After the democratic transition in 1989, on 1st December 1998 the Government of the Republic of Poland recognised the competence of the Committee on the Elimination of Racial Discrimination (CERD) to receive and consider communications from individuals or groups of individuals within jurisdiction of the Republic of Poland.

■ **4.5. *Convention on the Elimination of All Forms of Discrimination against Women***

CEDAW was signed by Poland shortly after its adoption. The signature took place on 29th May 1980 and the ratification on 30th July 1980. Both events occurred during the era of communism in Poland. It is worth mentioning that Poland also accessed the Optional Protocol to the CEDAW. The signature was made upon signing the CEDAW in 1980, but the act was ratified 23 years later, on 22nd December 2003. Poland was among the first 20 states that ratified the Convention, so the CEDAW entered into force in relation to Poland on the very same day it entered into force as a treaty⁹⁵. After ratification, Poland made a declaration concerning Art. 29, para. 1, which regulates disputes between states parties to CEDAW. It did not have any practical impact on the application of the Convention in relation to Poland. Perhaps it was the reason why the withdrawal of the declaration was not recommended by the Committee. The declaration was withdrawn in 1997.⁹⁶

■ **4.6. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment***

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was signed during the communist regime, on 13th January 1986 and the ratification took place during the democratic transition of the country, on 26th July 1989. Poland also accessed the Optional Protocol to the

⁹⁴ Sękowska-Kozłowska et al., 2024, pp. 866–867.

⁹⁵ See more: Sękowska-Kozłowska, 2017a, p. 319.

⁹⁶ Sękowska-Kozłowska, 2017a, p. 323.

CAT (OPCAT), introducing the mechanism of visits in places of detention by the Subcommittee on Prevention of Torture (SPT) and requiring the establishment of the domestic National Preventive Mechanism (NPM). The OPCAT was signed on 5th April 2004 and ratified on 14th September 2005.

■ 4.7. *Convention on the Rights of the Child*

Poland had an important impact on the development of the concept of the rights of the child and played a crucial role in adopting the Convention on the Rights of the Child (CRC). The Polish concept of protection of the rights of the child dates back to Janusz Korczak, a Polish doctor and pedagogue. The Declaration of the Rights of the Child reflected his approach to the notion of the rights of the child, treating a child as a fully-fledged subject of law that deserves protection and respect.⁹⁷ Poland initiated UNICEF⁹⁸ and greatly impacted the debate and adoption of Declaration of the Rights of the Child⁹⁹.

The initial project of the Convention on the Rights of the Child (CRC) was drafted by the Polish Ministry of Foreign Affairs and submitted to consultations to the UN member states.¹⁰⁰ The initial idea was to conclude the works on the Convention in 1979, which was celebrated as the year of the child. Unfortunately, this was not possible. The project required amendments. The revised version was prepared by Tadeusz Smoczyński and Zbigniew Radwański. After the presentation of the revised version of the text in 1979, a working group was established. The Chair of the group was Adam Łopatka.¹⁰¹ Eventually *travaux préparatoires* took 10 years and the Convention was adopted on 20th November 1989.

CRC was signed by Poland shortly after its adoption, on 26th January 1990 and the ratification took place on 7th June 1991. Poland also accessed two Optional Protocols to the CRC: OP on the involvement of children in armed conflict, (signed 13th February 2002, ratified 7th April 2005), and OP on the sale of children, child prostitution and child pornography (signed 13th February 2002, ratified 4th February 2005). Poland signed (30th September 2013), but still did not ratify the OP to the CRC on the communications procedure. The government remains reluctant to ratify it due to concerns about the functioning of the individual communication procedure, and legal and financial implications.¹⁰²

97 See more: Wedeł-Domaradzka, 2017, pp. 459, 441.

98 This was only possible thanks to crucial input of Ludwik Rajchman; More: Balińska, 1991, pp. 456–465.

99 Wedeł-Domaradzka, 2017, pp. 441–445; Declaration of the Rights of the Child, 1959.

100 Wedeł-Domaradzka, 2017, p. 449.

101 Schulz, 2017, p. 179.

102 Rzecznik Praw Obywatelskich: Potrzeba ratyfikowania Protokołu fakultatywnego do Konwencji o Prawach Dziecka. [Online]. Available at: <https://bip.brpo.gov.pl/pl/content/rpo-konwencja-dziecko-prawa-protokol-fakultatywny-ratyfikowanie> (Accessed: 13 June 2024). Sękowska-Kozłowska et al., 2024, p. 882.

■ 4.8. *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) was adopted on 18th December 1990, after the democratic transition in Poland. Despite this fact the document was neither signed nor ratified by Poland. None of the EU member states accessed the treaty. This is due to the shared competences on asylum and migration within the EU.¹⁰³

■ 4.9. *Convention on the Rights of Persons with Disabilities*

The Convention on the Rights of Persons with Disabilities (CRPD) was adopted on 13th December 2006. Poland signed the treaty on 30th March 2007 and the ratification took place on 25th September 2012. Poland did not sign the OP to the CPRD, which enables receiving and considering communications by the Committee on the Rights of Persons with Disabilities (CtRPD).

Upon the ratification, Poland made reservations on Arts. 23.1 (b) and 25 (a). Poland stressed that Art. 23.1 (b) and Art. 25 (a) ‘shall not be interpreted in a way conferring an individual right to abortion or mandating state party to provide access thereto, unless that right is guaranteed by the national law’. Poland also made an interpretative declaration that Art. 12 CPRD will be interpreted ‘in a way allowing the application of the incapacitation, in the circumstances and in the manner set forth in the domestic law, as a measure indicated in Art. 12.4, when a person suffering from a mental illness, mental disability or other mental disorder is unable to control his or her conduct’.

■ 4.10. *International Convention for the Protection of all Persons from Enforced Disappearance*

The International Convention for the Protection of all Persons from Enforced Disappearance (CED) was adopted 20th December 2006. Poland signed the treaty on 25th June 2013, however the ratification process wasn’t accomplished until more than a decade later. Recently, in 2024 the process accelerated and Poland made formal decision about the accession to the CED. The ratification took place on 30th December 2024. On the same day Poland expressed the acceptance of the individual communication procedure and accepted the inquiry procedure under the CED.

103 See more: MacDonald and Cholewinski, 2007, pp. 69 et seq.

5. Obligations Deriving from the UN Human Rights Treaties and their Reflection in Constitution of Poland and other Legal Acts

It should be stressed that the influence of UN human rights treaties and the inclusion of particular human rights protection obligations will differ, depending on the treaty. In this regard, the UN system – in comparison to CoE and EU standards in the field – seems a little underrepresented. This underrepresentation is also visible in focus given by the domestic law and jurisprudence to regional human rights protection. CoE and EU standards seem to be more visible and recognisable than the UN standards.

The 1951 Convention and cooperation with UNHCR had a significant impact on the Polish legal system. The guarantees provided for in the Convention had been reflected in the Constitution. It states that: ‘Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statute. Foreigners who, in the Republic of Poland, seek protection from persecution, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party’¹⁰⁴. With respect to expulsion, the Constitution explicitly prohibits ‘the extradition of a person suspected of the commission of a crime for political reasons but without the use of force’ and the ‘extradition which would violate rights and freedoms of persons and citizens’¹⁰⁵.

Human rights enshrined in the ICCPR were also reflected in the Polish Constitution. At the time of its adoption in 1997, the ICCPR had been operational for 20 years and Poland was already a State-Party to the ECHR. With respect to Poland, both the ICCPR and the ECHR had an important impact on constitutionalising fundamental rights.¹⁰⁶ The text of the Constitution does not mention the Covenant, however the analysis of the text of Chapter 2 of the Constitution, clearly shows that it was widely inspired by the ICCPR. The constitutional catalogue of personal freedoms and rights is very similar to the one enshrined in the Covenant.

Similarly to the ICCPR, the rights enshrined in ICESCR were reflected in the 1997 Constitution.¹⁰⁷ However, the ICESCR did not influence the Constitution to the same extent that the ICCPR did. The ICESCR was an important point of reference during the parliamentary debates of the Constitutional Commission of the National Assembly. Nevertheless, the acceptance of these standards developed by the Committee on Economic, Social and Cultural Rights (CESCR) remains slow and incomplete.¹⁰⁸

¹⁰⁴ The Constitution of the Republic of Poland, Art. 56.

¹⁰⁵ The Constitution of the Republic of Poland, Art. 55, para. 4.

¹⁰⁶ Łętowska, 1996, p. 119.

¹⁰⁷ The Constitution of the Republic of Poland, Chapter 2, section Economic, Social and Cultural Freedoms and Rights.

¹⁰⁸ See: Kedzia, 2017, pp. 335 et seq.

Despite the early ratification of ICERD, some of the important recommendations have been implemented through changes introduced during the democratic transition that began in 1989.¹⁰⁹ A perfect example is the 1997 Constitution, which guarantees equality before the law and prohibits discrimination ‘in political, social or economic life for any reason whatsoever.’¹¹⁰ The influence of the ICERD is also visible regarding the protection of minorities in the Constitution,¹¹¹ and the Law on National and Ethnic Minorities and Regional Language.¹¹²

The 2010 Law on the Implementation of Certain Provisions of the European Union concerning Equal Treatment,¹¹³ despite its title referring directly to EU, has also positively impacted Polish legislation with respect to compliance with ICERD standards. The 2010 Law was noted by CERD, as implementing certain European directives on equal treatment and the adoption of the National Action Plan for Equal Treatment.¹¹⁴

The 1997 Constitution of Poland guarantees equal rights to men and women¹¹⁵ and prohibits discrimination.¹¹⁶ However, it would be difficult to claim that CEDAW had a great influence on those provisions. Sękowska-Kozłowska et al. stress that during the debates of Constitutional Commission of the National Assembly the CEDAW played a rather peripheral role and cannot be recognised as having a direct impact on the Constitutional provisions. Further parliamentary debates included very few references to the CEDAW.¹¹⁷ Similarly, the Polish Parliament has never extensively addressed either the CEDAW, reporting to the Committee on the Elimination of Discrimination against Women (CtEDAW), or its recommendations.¹¹⁸

The adoption of the 1997 Constitution was surely an important step in guaranteeing the CAT standards on combating torture, cruel, inhuman or degrading treatment or punishment, but the provision of Constitution was mostly based on the provision of ICCPR,¹¹⁹ not the CAT. The definition of torture under the ICCPR is wider than the one provided in Art. 1 of CAT. Adopting this provision was

109 Sękowska-Kozłowska et al., 2024, p. 846.

110 The Constitution of the Republic of Poland, Art. 32.

111 The Constitution of the Republic of Poland, Art. 35.

112 Law on National and Ethnic Minorities and Regional Language, 2005 (with further changes), Dz.U. 2005, No. 17, Item 141; Gliszczyńska-Grabias, 2017, pp. 310–311.

113 The Law on the Implementation of Certain Provisions of the European Union concerning Equal Treatment (Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania), 2010, Dz.U. 2010, No. 254, Item 1700.

114 CERD, CO's on the combined twentieth and twenty-first periodic reports of Poland, 2014, CERD/C/POL/CO/20-21, § 4 c.

115 The Constitution of the Republic of Poland, Art. 33.

116 The Constitution of the Republic of Poland, Art. 32.

117 Sękowska-Kozłowska et al., 2024, p. 867.

118 Sękowska-Kozłowska et al., 2024, p. 868.

119 The Constitution of the Republic of Poland, Art. 40.

recognised by the Committee Against Torture (CtAT).¹²⁰ The influence of CAT on the Polish Constitution was also visible with regard to pretrial detention and art 41 of the 1997 Constitution.¹²¹

Despite the fact that the 1997 Constitution clearly prohibits torture, as well as cruel, inhuman or degrading treatment or punishment, including this prohibition in criminal law still remains an issue. The CAT explicitly requires States Parties to 'ensure that all acts of torture are offences under its criminal law'.¹²² This also concerns complicity or participation in torture¹²³. States Parties are also required to 'make these offences punishable by appropriate penalties', which should include their grave nature.¹²⁴

Lack of such legislation remains a concern for the Committee. The recommendations in this regard concern amending criminal law in order to introduce torture as a separate crime and provide for possibilities of the prosecution and punishment of those found guilty¹²⁵. The issue of the lack of criminal law provisions have been raised by the Committee since 1994 and numerous recommendations were made in this regard.¹²⁶ In turn the Polish Government argued that the CAT could be applied directly. The direct application of the Convention is facilitated by the self-executing character of the majority of its norms. Thus, there is no need to implement into the domestic law such provisions of the Convention as, for example, the definition of torture from Article 1 of CAT¹²⁷. The most important elements of the definition of torture are reflected in the provisions of both the Polish substantive and procedural law.¹²⁸ The Committee does not agree with this interpretation of obligations deriving explicitly from CAT.

In 2005, Poland also ratified the OPCAT, which led to the establishment of the Polish National Preventive Mechanism (NPM), *Krajowy Mechanizm Prewencji Tortur*. The Polish NPM was established in 2008 and operates within the NHRI office. The NPM conducts preventive visits to the places of detention, in line with Art. 4 of OPCAT. The existence and functioning of the NPM contributes greatly to the education, practice and raising of standards in places of deprivation of liberty throughout the country.

Currently domestic law provisions are more harmonised with CAT than when the Convention was ratified. This was influenced not only by the Committee,

120 UN General Assembly, Report of the CtAT, A/55/44, §86 b).

121 More: Baranowska, 2017, p. 349.

122 CAT, Art. 4, para. 1.

123 Ibid.

124 CAT, Art. 4, para 2.

125 See: E.g. Report of the CtAT, A/55/44, §87 et seq.

126 UN General Assembly, Report of the CtAT, 1994, A/49/44, § 71-72; CtAT, CO's on the seventh periodic report of Poland, 2019, CAT/C/POL/CO/7, §8; Baranowska, 2017, p. 348.

127 Committee against Torture, Third periodic reports of States parties due in 1998. Addendum. Poland, 1999, CAT/C/44/Add.5, §23.

128 Ibid.

but also by other regional human rights standards (EU, CoE, ECtHR).¹²⁹ The situation in places of detention have been improving due to the functioning of the NPM and by conducting preventive visits. However, there are still certain issues to be addressed such as education and legislative changes introducing crime of torture into criminal law provisions.

Due to the Polish engagement in the process of adoption and drafting of the Convention, the CRC is widely known and has greatly influenced Polish legislation. The 1997 Constitution does not refer to the CRC *expressis verbis*, however the spirit of the Convention is clearly visible in certain provisions.¹³⁰ The Polish Constitution introduces institutional safeguards, by establishing the Commissioner for Children's Rights (Rzecznik Praw Dziecka).¹³¹ Some domestic legal acts refer to CRC directly. Such references were made in law on the entry into, stay in and departure from the territory of the Republic of Poland of nationals of the EU member states and their family members,¹³² the law on foreigners,¹³³ and Preamble to the law on education.¹³⁴ The provisions of CRC were also addressed by the Polish judiciary, especially in rulings of the Constitutional Tribunal and Supreme Court.¹³⁵

Regarding the CPRD, the Constitution provides certain guarantees to persons with disabilities.¹³⁶ It should be mentioned that the Convention was adopted several years after the 1997 Constitution, so no direct influence on the act could be possible. However, certain legal acts introduced improvements for persons with disabilities. Such provisions were made in amendments to the broadcasting act¹³⁷ and electoral law.¹³⁸ The CPRD was also explicitly referred to in the Council of Ministers' resolution on Strategy for Persons with Disabilities.¹³⁹

129 Sękowska-Kozłowska et al., 2024, p. 881.

130 E.g. protection from exploitation (Art. 72, para. 1); Child Participation in Proceedings and the Right to be Heard (Art. 72, para. 3 of 1997 Constitution).

131 The Constitution of the Republic of Poland, Art. 72, para. 4.

132 The law on the entry into, stay in and departure from the territory of the Republic of Poland of nationals of the EU member states and their family members (Ustawa o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin), 16 July 2004 (with further changes), Dz. U. 2024, Item 633, Art. 69; Art. 73b, para. 1.

133 Law on foreigners (Ustawa o cudzoziemcach), 12 December 2013 (with further changes), Dz. U. 2020, Item 35, Art. 187, para. 7; Art. 332, para. 1; Art. 348, para. 3.

134 Education Law (Prawo oświatowe), 14 December 2016 (with further changes), Dz. U. 2017, item 59, Preamble.

135 More: Sękowska-Kozłowska et al., 2024, pp. 884–886.

136 The Constitution of the Republic of Poland, Arts. 68, 69.

137 Law amending broadcasting act and certain other acts (Ustawa zmiana ustawy o radiofonii i telewizji oraz niektórych innych ustaw) 2011, Dz. U. 2011, No. 85, Item 459.

138 Ustawa o zmianie ustawy – Kodeks wyborczy oraz niektórych innych ustaw, 2014, Dz. U. 2011, No. 85, Item 459.

139 Council of Ministers' resolution No. 27 on Strategy for Persons with Disabilities 2021-2030 (Uchwała Nr 27 w sprawie przyjęcia dokumentu Strategia na rzecz Osób z Niepełnosprawnościami 2021-2030), 2021, M.P. 2021, Item 218.

6. Law-making processes in Poland thanks to UN Human Rights Treaties

With regard to the 1951 Convention relating to the Status of Refugees, it should be noted that Poland adopted several legal acts. Crucial changes were introduced in the Law on Foreigners in 2001.¹⁴⁰ At that time, the Office for Repatriation and Foreigners (Urząd ds. Repatriacji i Cudzoziemców), currently the Office for Foreigners (Urząd ds. Cudzoziemców), was established. Currently this matter is regulated by the 2013 Law on Foreigners.¹⁴¹ Poland also adopted the Act on granting protection to foreigners in the territory of the Republic of Poland (Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej).¹⁴² This act enabled foreigners a tolerated stay in Poland. M. Półtorak notes that the constructive dialogue between the government, UNHCR and NGO's enabled an introduction to this act's provisions guaranteeing the protection of unaccompanied minors and victims of torture. This example shows that the UNHCR had an effective influence on shaping Polish legislation and encouraged higher standards of protection.¹⁴³

The ICCPR plays an important role in the Polish legal system. The Covenant was raised on numerous occasions by the Constitutional Tribunal and Supreme Court, as well as by common and administrative courts.¹⁴⁴ According to Sękowska-Kozłowska et al., the ICCPR had a visible impact on the institutionalisation of human rights in the 1997 Constitution. In the past 20 years, references to the Covenant and the HRC have been made by the legislature, the executive and the judiciary. However, as the authors stress, most of these consisted solely of invoking the name of the treaty or provisions stating a particular right or freedom, without an in-depth analysis.¹⁴⁵ In this regard, such references are rather superficial.

Within the sphere of the ICESCR, the main problem is the possibility of exercising economic, social and cultural rights before Polish courts. This issue has raised concerns for a significant period of time. In 2002, the CESCR requested as clarification in the next periodic report, whether individuals could invoke the rights enshrined in the ICESCR before the domestic courts.¹⁴⁶ In its following Concluding Observations (CO) the Committee expressed a deep concern that

140 Ustawa o zmianie ustawy o cudzoziemcach oraz o zmianie niektórych ustaw, 2001, Dz. U. 2003, No.128, Item 1175. The changes concerned Law on Foreigners (Ustawa o cudzoziemcach) of 1997 (Dz. U. 2001, No. 127, Item 1400; see also: Półtorak, 2017, p. 459.

141 Law on Foreigners.

142 Act on granting protection to foreigners on the territory of the Republic of Poland (Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej), 2003 (with further changes), Dz. U. 2003, No. 128, Item 1176.

143 Półtorak, 2017, p. 459.

144 More: Sękowska-Kozłowska et al., 2024, pp. 853 et seq.

145 Sękowska-Kozłowska et al., 2024, p. 861.

146 CESCR, CO's of CESCR. Poland, 19 December 2002, E/C.12/1/Add.82, §33.

Poland viewed the Covenant as programmatic, aspirational and not justiciable and urged it to ensure that the provisions of the Covenant were made justiciable and that effective remedies were available to victims of violations of economic, social and cultural rights.¹⁴⁷ This problem was also raised with respect to the sixth¹⁴⁸ and – most recently – the seventh periodic report of Poland.¹⁴⁹ The government stressed that ICESCR rights were formulated so that States are obliged to undertake measures to progressively guarantee rights. Therefore, there is no possibility for direct applicability and to derive subjective rights from those provisions.¹⁵⁰ In this vein, the government stressed that only two social rights, the right to form unions and the right to education are subjective rights,¹⁵¹ and could be invoked before domestic courts.¹⁵²

In this regard, the law-making processes concerning economic, social and cultural rights are unsatisfactory and unfinished. This is due to a lack of possibility in invoking the rights enshrined in the ICESCR before domestic courts and a lack of ratification of the OP to the ICESCR. The accession to the Protocol would enable receiving and considering individual communications concerning Poland. This would contribute to the wider implantation of the ICESCR standards.

In reference to the CERD, it should be noted that Poland submitted 15 reports to the CERD. The last one was submitted in 2018. In the course of reporting and in particular after the democratic transition of 1989, legislation has overwhelmingly come into line with the ICERD. Most of the Committee's recommendations regarding amending or adopting laws have been substantially realised, and much of the CO's in the recent reporting cycles are devoted to implementation and effective policies.¹⁵³ Naturally, most of the implementation process took place after the 1989 transition. In this regard, the Convention had a visible impact on the Polish legal system.

However, there are also certain areas in which domestic legislation could be improved. On several occasions CERD recommended that Poland amend its Criminal Code with respect to hate speech and make a racist motive of a crime into an aggravating circumstance of a crime¹⁵⁴. In the last CO's CERD recommended that the definition of hate speech enshrined in the Criminal Code should be in line

147 CESCR, CO's of CESCR. Poland, 2 December 2009, E/C.12/POL/CO/5, §8.

148 CESCR, List of issues, 26 April 2016, E/C.12/POL/Q/6, §1-28.

149 CESCR, List of issues in relation to the seventh periodic report of Poland, 2022, E/C.12/POL/Q/7, §2.

150 CESCR, Comments by the Government of Poland on the CO's, 2010, E/C.12/POL/CO/5/Add.1, §4.

151 CESCR, Comments by the Government of Poland on the CO's, 2010, E/C.12/POL/CO/5/Add.1, §6.

152 Ibid.

153 Sękowska-Kozłowska et al., 2024, p. 849.

154 CERD, CO's on the combined twentieth and twenty-first periodic reports of Poland, §8 and 10.

with Article 4 of the Convention, to firmly combat racist hate speech and Intensify its public campaigns to combat hate speech.¹⁵⁵ It should be stressed that Polish law still requires legislation concerning hate speech. The Committee also recommended amending Art. 53 (2) of Criminal Code, in order to make a racist motive of a crime an aggravating circumstance, thus allowing for enhanced punishment to combat the occurrence of such acts.¹⁵⁶

Generally, ICERD had a significant impact on Polish legislation, especially after the collapse of the communist regime. In this regard the Convention had influenced the domestic legal system, however some changes were a result of EU standards in this regard.¹⁵⁷ Despite notable progress there are still issues to be addressed concerning the adoption of legal changes concerning a racist motive, hate speech or situation of Roma people.¹⁵⁸

In reference to the law-making processes that took place after the adoption of CEDAW, it would be difficult to mention a single act. The existing guarantees are fragmented and spread across various legal acts, including labour law,¹⁵⁹ the law on prevention of domestic violence,¹⁶⁰ and the law aiming to implement the EU anti-discrimination directives.¹⁶¹ It seems that knowledge and the reference to CEDAW could be improved. Addressing the issue of the elimination of discrimination of women in Poland focuses mostly on the EU or CoE standards in this regard.

This trend is somewhat visible in the implementation of the CtEDAW recommendations. Polish reports were examined by the Committee six times (in 1987, 1992, 2007 and 2014). In 2007 the Committee issued two COs. Most recently, in the 2014 COs, the Committee focused on amending the domestic legislative framework and recommended ensuring that anti-discrimination legislation contained a definition of discrimination against women in accordance with Art. 1 of the Convention.¹⁶² The Committee proposed wider legislative changes¹⁶³ concerning

155 CERD, CO's on the combined twenty-second to twenty-fourth periodic reports of Poland, 2019, CERD/C/POL/CO/22-24, §16 a)-d).

156 CERD, CO's on the combined twenty-second to twenty-fourth periodic reports of Poland, 2019, CERD/C/POL/CO/22-24, 16 e).

157 E.g. The Law on the Implementation of Certain Provisions of the European Union concerning Equal Treatment.

158 E.g. CERD, CO's on the combined twenty-second to twenty-fourth periodic reports of Poland, §21–22.

159 Labour code (Kodeks pracy), 1974 (with further changes), Dz. U. of 1974, No. 24, Item 141.

160 Law on the prevention of domestic violence (Ustawa o przeciwdziałaniu przemocy domowej) 2005 (with further changes), Dz.U. 2005, No. 180, Item 1493.

161 Law on the implementation of certain provisions of the European Union concerning equal treatment (Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania), 2010, Dz.U. 2010, No. 254, Item 1700; also: Sękowska-Kozłowska et al., 2024, pp. 871–872.

162 CtEDAW, CO's on the combined seventh and eighth periodic reports of Poland, 2014, CEDAW/C/POL/CO/7-8, §11.

163 More: Sękowska-Kozłowska, 2017a, pp. 325–334.

work,¹⁶⁴ health (including reproductive rights),¹⁶⁵ and the economic consequences of divorce.¹⁶⁶ The CtEDAW also referred to domestic procedures stressing the need to ensure access to effective legal remedies for women who have experienced sex- and gender-based discrimination.¹⁶⁷

Despite the significant importance of the CEDAW as the UN treaty focusing on the elimination of discrimination against women, this act is not reflected in Polish law or practice to the extent it deserves. In this regard, it should have more significant impact on Polish law and practice.¹⁶⁸

In relation to CAT, the Polish legal system has still not overcome certain deficiencies. As stressed above (P.5), CAT explicitly requires States Parties to ‘ensure that all acts of torture are offences under its criminal law’. This concerns both complicity or participation in torture.¹⁶⁹ States Parties are also required to ‘make these offences punishable by appropriate penalties’, which should include their grave nature.¹⁷⁰ Poland still did not adopt such regulation within criminal law, which poses certain legal issues and was raised by the Committee since 1994 and numerous recommendations were made in this regard.¹⁷¹

As a human rights treaty, the CRC definitively plays an important role in the Polish legal system. Its status is clearly derived from the Polish approach to the notion of the rights of the child, advocacy for the Convention, and active participation in *travaux préparatoires* of the CRC. The document is also referred to in legal acts and its provisions were reflected in the 1997 Constitution. The CRC has an important place in Polish legal tradition and is well known as a human rights treaty.

Despite this important tradition and substantial awareness of society concerning both the Convention and rights of the child in general, knowledge of the CRC standards seems to be somewhat superficial. Whereas the Convention is well-known, the recommendations regarding communications of the Committee of the Rights of the Child (CtRC), General Comments (GC) or GO seem to be rarely mentioned.¹⁷² The protection of CRC standards could be improved by the

164 CtEDAW, CO's on the combined seventh and eighth periodic reports of Poland, §33.

165 CtEDAW, CO's on the combined seventh and eighth periodic reports of Poland, §37.

166 CtEDAW, CO's on the combined seventh and eighth periodic reports of Poland, §43.

167 CtEDAW, CO's on the combined seventh and eighth periodic reports of Poland, §13.

168 Sękowska-Kozłowska et al., 2024, p. 873.

169 CAT, Art. 4, para. 1.

170 CAT, Art. 4, para. 2.

171 UN General Assembly, Report of the CtAT, 1994, A/49/44, §71-72; CtAT, CO's on the seventh periodic report of Poland, 2019, CAT/C/POL/CO/7, §8; Baranowska, 2017, p. 348; see also section 5 of this chapter.

172 Ibid., p. 890.

ratification of the OP on communications procedure, which was voiced i.a. by the Commissioner for Citizens' Rights.¹⁷³

The CPRD is a relatively new treaty and Poland has not had too many opportunities to receive the CtPRD CO's. That is due to the substantial workload of the Committee.¹⁷⁴ The CtPRD reviewed Poland only once in 2018 (The State Party's report was submitted in 2014). The next State Party report is due in 2026.

One of the issues raised in the CO's was the national implementation and monitoring (Art. 33). Art. 33 of the Convention, requires 'designating one or more focal points within government for matters relating to the implementation of the CRPD'. The Commissioner for Citizens' Rights is the body responsible for monitoring the implementation of the provisions of the Convention.

The CtPRD recommended designating a cross-sectoral authority to coordinate and lead the implementation of the rights of persons with disabilities across all sectors and at all levels, strengthening the capacity of the Office of the Commissioner for Citizens' Rights as the independent authority responsible for the promotion, protection and monitoring of the implementation of the CRPD and ensuring comprehensive and effective involvement of organisations of persons with disabilities in monitoring tasks.¹⁷⁵ In July 2024, the Ombudsperson appointed the Council of Persons with Disabilities. It has advisory and consultative functions and was designed to support the NHRI in monitoring the implementation of the CPRD.¹⁷⁶ However, further relevant actions from the government are required to fully realise the CtPRD recommendation in this regard.

In its initial COs, the Committee also recommended developing a strategy and action plan for the implementation of obligations under the Convention;¹⁷⁷ enacting legislation that defines and recognises reasonable accommodation in all areas of life,¹⁷⁸ and establishing judicial and quasi-judicial mechanisms to ensure the protection of persons with disabilities against discrimination.¹⁷⁹ The CtRPD also recommended withdrawing interpretative declarations on Art. 12 of the Convention¹⁸⁰ and the reservation to Art. 25 (a) of the Convention.¹⁸¹

Generally, Sękowska-Kozłowska et al. note that despite the fact that CRPD is a relatively new document it seems to be more visible and influential in

173 Rzecznik Praw Obywatelskich: Potrzeba ratyfikowania Protokołu fakultatywnego do Konwencji o Prawach Dziecka. [Online]. Available at: <https://bip.brpo.gov.pl/pl/content/rpo-konwencja-dziecko-prawa-protokol-fakultatywny-ratyfikowanie> (Accessed: 13 June 2024).

174 Sękowska-Kozłowska, 2017b, p. 390.

175 CtRPD, CO's on the initial report of Poland, 2018, CRPD/C/POL/CO/1, §56.

176 See more: Rzecznik Praw Obywatelskich, no date.

177 CtRPD, CO's on the initial report of Poland, § 6 (a).

178 CtRPD, CO's on the initial report of Poland, § 8 (a).

179 CtRPD, CO's on the initial report of Poland, § 8 (c).

180 CtRPD, CO's on the initial report of Poland, § 20.

181 CtRPD, CO's on the initial report of Poland, § 44.

comparison to other anti-discrimination treaties such as CEDAW and CERD. As an argument, the authors stress presence in political debate, undertaking activities to establish an institutional framework, and efforts made by the civil society and NHRI to promote CRPD and monitor its implementation.¹⁸² Despite all progress made there are still certain actions to be undertaken by the government in this regard, especially concerning the legislation and procedural requirements.

7. Jurisprudence: Polish cases before the UN Treaty Bodies

The number of cases brought before the UN Treaty Bodies against Poland does not seem to be very impressive. This is due to the Polish membership of the EU and CoE. Being party to the ECHR greatly impacted Polish legal traditions and jurisprudence. For comparison, in 2023 the ECtHR dealt with 2,648 applications concerning Poland.¹⁸³ The choice of the ECtHR by victims of human rights violations is natural. The Court judgment offers payment for damage and – if the violation stems from legal deficiencies – a change of domestic regulations.

While the popularity of ECtHR in Poland is unquestionable, this tendency also concerns other European States.¹⁸⁴ A. Mężykowska notes that there are two main arguments in favour of bringing individual cases to the HRC. Those are less restrictive regulations concerning admissibility, and a difference in shaping the material scope of certain rights and freedoms.¹⁸⁵ Individual communication to the HRC is characterised by less formal requirements. In this regard, the Committee does not provide any temporal restriction for filing an individual case (in contradiction to 4-month term at the ECtHR) or significant disadvantage criteria.¹⁸⁶ The lack of interest in filing individual cases to the HRC also, to some degree, stems from a lack of knowledge about possible avenues. This concerns both applicants and their representatives.¹⁸⁷

Within the UN Treaty Body system individuals may bring individual cases against Poland to the HRC, CtERD, CtEDAW and CAT. To this day there were 12 cases brought before UN Treaty Bodies in total. Ten cases were brought before the HRC and two before the CtEDAW. In eight of the cases the HRC and CtEDAW decided on their inadmissibility. The HRC decided on the merits of four cases. These cases will be subject to further examination.

182 Sękowska-Kozłowska et al., 2024, pp. 896–897.

183 ECtHR: Analysis of Statistics. Overview 2023. [Online]. Available at: https://public.tableau.com/app/profile/echr/viz/Analysis_statistics/Overview (Accessed: 13 June 2024).

184 See more: Mężykowska, 2017, pp. 488–490.

185 Mężykowska, 2017, p. 490.

186 Mężykowska, 2017, pp. 490–491.

187 Mężykowska, 2017, p. 490.

The case of *Kall v. Poland* concerned a former Civic Militia employee who was retroactively reclassified as a security police officer and dismissed from his post, pursuant to the Protection of State Office Act, which dissolved Security Police and replaced it by a new department.¹⁸⁸ The author claimed that he was dismissed without justification. He also claimed that he was denied access to public service because of his political opinions (he was an active member of Polish United Workers' Party). According to the applicant this constituted the violation of Art. 25 (c) of the ICCPR.¹⁸⁹

The HRC noted that Art. 25 (c) of the ICCPR provides every citizen with the right and the opportunity to public service in his own country. This right however does not entitle every citizen to obtain guaranteed employment in the public service. The HRC also noted that the author was not singled out for reclassification of his post, but different regional districts were reclassified in the same manner. Posts of all members of the Security Police were abolished without distinction or differentiation. The Committee also noted that the applicant was eligible for a post in the police, so he was not precluded from access to public service. The HRC decided that the facts of the case did not disclose any violation of the ICCPR¹⁹⁰.

Three members of the HRC disagreed and expressed dissenting opinions. They considered that in this case issuing a ministerial order was needed, hence the author was not dismissed from his post *ex lege*. This led them to a conclusion that Art. 2.3 was applicable and that it was violated in regard to the applicant¹⁹¹.

In *Fijałkowska v. Poland*, the HRC examined the communication of the author, who had been suffering from schizophrenic paranoia.¹⁹² She was committed to the Provincial Psychiatric Therapeutic Centre, by order of the Court on 5th February 1998. On 29th April 1998, the author was permitted to leave the psychiatric institution. She lodged an appeal against the Toruń District Court's decision of 5th February 1998. The Regional Court dismissed her appeal as she had missed the statutory deadline. The author applied to the Regional Court to establish a new time-limit to lodge her appeal. On 16th September 1998, the Regional Court refused her request.¹⁹³

The author claimed that her committal to a psychiatric institution against her will amounted to a violation of Art. 7 of the Covenant. In particular, she claimed that the provisions of the Mental Health Protection Act, under which the decision to confine her was taken, are incompatible with Art. 7 of the Covenant.

188 HRC *Kall v. Poland*, 29.09.1997, Comm. No. 552/1993, §2.1.

189 HRC *Kall v. Poland*, 29.09.1997, Comm. No. 552/1993, §3.

190 HRC *Kall v. Poland*, 29.09.1997, Comm. No. 552/1993, §13–14.

191 Ibid.; Individual opinion by HRC members E.Evatt, C.Medina Quiroga, cosigned by C.Chanet, §1–3.

192 HRC *Fijałkowska v. Poland*, 2005, Comm. No. 1061/2002.

193 HRC *Fijałkowska v. Poland*, 2005, Comm. No. 1061/2002, § 2.1–2.6.

She also claimed that during her detention the treatment she received amounted to cruel, inhuman or degrading.¹⁹⁴

The HRC examined whether Art. 9 of the ICCPR was violated. The Committee noted that the deprivation of liberty was carried out in accordance with the relevant articles of the Mental Health Protection Act and was carried out lawfully.¹⁹⁵ The Committee stressed that circumstances may arise in which an individual's mental health is so impaired that so as to avoid harm to the individual or others, the issuance of a committal order, without assistance or representation sufficient to safeguard her rights, may be unavoidable. In this case, no such special circumstances have been advanced. For these reasons, the HRC decided that the author's committal was arbitrary under Art. 9, para. 1 of the ICCPR.¹⁹⁶

The HRC also noted that the author, who had not even been served with a copy of the committal order, nor been assisted or represented by anyone during the hearing who could have informed her of such a possibility, had to wait until after her release before becoming aware of the possibility of, and actually pursuing, such an appeal. In the circumstances of the case, the HRC also found a violation of Art. 9, para. 4 of the ICCPR.¹⁹⁷

In *Tatyana v. Poland*, the HRC examined the case of the author's nephew who was detained by Polish border guards at the border between Poland and Belarus.¹⁹⁸ He was not informed of the charges against him. After six days he appeared before a court. He was informed that he was a suspect in a robbery and murder, and his detention prolonged. His contact with a lawyer lasted for five minutes and he met with the lawyer twice. His lawyer decided not to file a cassation appeal, arguing that the prerequisites for such an appeal were not met. He did not inform his client of this decision, and, as a consequence, the author's nephew missed the deadline to lodge a cassation appeal.¹⁹⁹

The Author claimed that detaining her nephew for six days without informing him of the charges against him, constituted a violation of Art. 9, para 2. She also stated that during that time he was subjected to inhuman treatment since he was kept unaware of the reasons for his detention, which amounted to a violation of Art. 7. Her nephew was brought before a judge after six days, which allegedly amounted to a violation of Art. 9, para. 3. With regard to his access to a lawyer, who spoke only Polish, the applicant raised a violation of Art. 14, para. 3 (b) of the ICCPR. She also raised allegations of discrimination on the basis of Art. 14, para. 1 and Art. 26 of the ICCPR.²⁰⁰

194 HRC *Fijałkowska v. Poland*, 2005, Comm. No. 1061/2002, §3.

195 HRC *Fijałkowska v. Poland*, 2005, Comm. No. 1061/2002, §8.2.

196 HRC *Fijałkowska v. Poland*, 2005, Comm. No. 1061/2002, §8.3.

197 HRC *Fijałkowska v. Poland*, 2005, Comm. No. 1061/2002, §8.4.

198 HRC *Tatyana v. Poland*, 2011, Comm. No. 1517/2006.

199 HRC *Tatyana v. Poland*, 2011, Comm. No. 1517/2006, §2.1–2.6.

200 HRC *Tatyana v. Poland*, 2011, Comm. No. 1517/2006, §3.1–3.3.

The Committee stated that the information available to the HRC did not contain indications that the lawyer's conduct in the appeal process was contrary to the interests of justice. Mr. Rastorguev was duly informed about the refusal and advised to find another lawyer to submit the cassation appeal. It further observed that a cassation appeal with the Supreme Court was submitted on his behalf by a lawyer of his own choice, and was dismissed as manifestly ill-founded. In sum the HRC did not encounter any violations of the ICCPR in this case.²⁰¹

The case of A.B. and B.D. v. Poland concerned two authors of Chechen origin, who were fearing persecution in Russia. They applied for asylum in Poland. When they returned to Russia they were apprehended by men in camouflage uniforms. The first author was beaten and subjected to torture and the second author was raped. After that, the applicants showed up at the Polish border and applied numerous times for asylum, but their claims were rejected.²⁰²

The authors claimed that their rights under Art. 13 of the ICCPR had been violated, as their asylum claims were not acknowledged. They also raised allegations concerning their right Article 13 in conjunction with Articles 2 and 7. The applicants stressed that returning them to Belarus, without any assessment of their claims, ran the risk of refoulement to Russia, where they would face torture or inhuman or degrading treatment.²⁰³

The HRC stated that the refusal to recognise the authors' requests for asylum, and the authorities' consequently denying them the opportunity to have the merits of their claims assessed in good faith, amounted to a failure by the State party to discharge its obligations under Article 7.

The HRC also stressed that the decision on granting a status as asylum-seekers was taken arbitrarily, which violated Art. 13 of the ICCPR. Since there was no possibility to legally challenge this arbitrary decision, this was also a violation of their rights under Art. 2 (3), read in conjunction with Art. 13 of the Covenant.²⁰⁴

8. Summary

As a founding member of the UN, Poland has been very active regarding the universal human rights system. Poland ratified 14 (out of 18) UN human rights treaties and accessed to several individual communications systems. Currently, within the UN Treaty Body system individuals may bring cases against Poland to the HRC, CtERD, CtEDAW, CAT and CED.

²⁰¹ HRC *Tatyana v. Poland*, 2011, Comm. No. 1517/2006, §9.1–10.

²⁰² HRC *A.B. and B.D. v. Poland*, 2023, Comm. No. 3017/2017, §2.1–2.9.

²⁰³ HRC *A.B. and B.D. v. Poland*, 2023, Comm. No. 3017/2017, §3.1–3.4.

²⁰⁴ Ibid.

The ratification of these treaties during the communist regime was strictly propagandistic and very little effective actions followed such ratifications. After the democratic transition in 1989, UN human rights treaties became important element of domestic law. They were reflected in the 1997 Constitution and in numerous legal acts. In this regard the influence of UN standards after 1989 cannot be underestimated. However, a direct impact of those treaties is not that clear.²⁰⁵

Poland is a member of the EU and CoE. These regional organisations have greatly impacted the Polish legal system, jurisprudence and legal education. The gigantic influence that the EU and CoE's standards have had on emerging Polish human rights protections after 1989, has somehow put aside relevant standards deriving from UN treaties. On the one hand it stems from the specificity of the UN system, which is based on cooperation and continuous dialogue with states, but on the other hand more concrete procedural obligations deriving from the EU and CoE standards might have contributed to their prioritisation.

Following their ratification some of the treaties became important elements of domestic law and practice, while others – despite ratification – do not seem to have had an impressive impact on the Polish legal system. A lack of implementation of certain obligations – such as adding crime or torture to the penal code – raises certain doubts and concerns on UN treaty bodies. It is clear that the UN human rights protection system cannot be underestimated and Poland should focus on the implementation of obligations stemming from treaties. Further ratifications and greater education in the sphere of the UN human rights system would surely contribute to a better understanding and wider implementation of those standards.

205 Sękowska-Kozłowska et al., 2024, p. 897.

Bibliography

- Abraszewski, A. (1975) *Polska w Organizacji Narodów Zjednoczonych*. Warszawa: Interpress.
- Balińska, M. A. (1991) 'Ludwik Rajchman, international health leader', *World Health Forum*, 12(4), pp. 456–465.
- Baranowska, G. (2017) 'Funkcjonowanie procedury sprawozdawczej do Komitetu Przeciwko Torturom w odniesieniu do Polski' in Wieruszewski, R. (ed.) *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa*. Warszawa: C.H.Beck.
- Czartoryski, P. (1963) *Wczesna recepcja „Polityki” Arystotelesa na Uniwersytecie Krakowskim*. Wrocław–Warszawa–Kraków: Zakład Narodowy im Ossolińskich.
- Czepek, J. (2015) 'Problem systemowy i strukturalny w orzecznictwie Europejskiego Trybunału Praw Człowieka', *Państwo i Prawo*, 9(835), pp. 80–89.
- Czepek, J. (2018) 'The Application of the Pilot Judgment Procedure and Other Forms of Handling Large-Scale Dysfunctions in the Case Law of the European Court of Human Rights', *International Community Law Review*, 20(3-4), pp. 347–373; <https://doi.org/10.1163/18719732-12341379>.
- Ehrlich, L. (1955) *Polski wykład prawa wojny XV wieku. Kazanie Stanisława ze Skarbimierza «De bellis iustis»*. Warszawa: Wydawnictwo Prawnicze.
- Ehrlich, L. (1968a) 'Przedmowa' in Ehrlich, L. (ed.) *Pisma Wybrane Pawła Włodkowica. Works of Paul Wladimiri (a Selection)*. Warszawa: Instytut Wydawniczy PAX.
- Ehrlich, L. (1968b) *Pisma Wybrane Pawła Włodkowica. Works of Paul Wladimiri (a Selection)*. Warszawa: Instytut Wydawniczy PAX.
- Gliszczynska-Grabias, A. (2017) 'Funkcjonowanie procedury sprawozdawczej do Komitetu do Spraw Likwidacji Dyskryminacji Rasowej w odniesieniu do Polski' in Wieruszewski, R. (ed.) *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa*. Warszawa: C.H.Beck, pp. 305–318.
- Hernandez-Polczyńska, A. (2018) 'Wizyty specjalnych sprawozdawców ONZ w Polsce', *Problemy Współczesnego Prawa Międzynarodowego*, Europejskiego i Porównawczego, 16, pp. 130–142.
- Jasudowicz, T. (1995) *Śladami Ehrlich: Do Pawła Włodkowica po naukę o prawach człowieka*. Toruń: Comer.
- Jasudowicz, T. (1997) *Administracja wobec Praw Człowieka*. Toruń: TNOiK.
- Jasudowicz, T. (2010) 'Geneza ochrony praw człowieka' in Gronowska, B., Jasudowicz, T., Balcerzak, M., Lubiszewski, M., Mizereski, R. (eds.) *Prawa Człowieka i ich Ochrona*. Toruń: TNOiK.
- Jasudowicz, T. (2018) 'Człowiek, jego prawa i obowiązki w nauczaniu Pawła Włodkowica' in Belch, S., Domański J., Graff, T., Jasudowicz, T., Krzyżanowski, S., Niesiołowski, A., Ożóg, K., Wielgus, S. (eds.) *Paweł Włodkowic i Polska Szkoła Prawa Międzynarodowego*. Warszawa: Narodowe Centrum Kultury/Teologia Polityczna, pp. 139–167.

- Kedzia, Z. (2017) 'Funkcjonowanie procedury sprawozdawczej do Komitetu Praw Gospodarczych, Socjalnych i Kulturalnych w odniesieniu do Polski' in Wieruszewski, R. (ed.) *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa*, Warszawa: C.H.Beck, pp. 335–342.
- Kosowicz, A. (2007) *Working Together: 15 lat UNHCR w Polsce*. UNHCR.
- Lankosz, K. (2000a) 'Paweł Włodkowic' in Stelmach, J., Uruszczak, W. (eds.) *Złota księga Wydziału Prawa i Administracji*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, pp. 57–65.
- Lankosz, K. (2000b) 'Stanisław ze Skarbimierza' in Stelmach, J., Uruszczak, W. (eds.) *Złota księga Wydziału Prawa i Administracji*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, pp. 51–56.
- Lubiszewski, M., Czepek, J. (2016) *Procedura wyroku pilotażowego w praktyce Europejskiego Trybunału Praw Człowieka*. Warszawa: Wolters Kluwer.
- Łętowska, E. (1996) 'O znaczeniu praw człowieka dla polskiego systemu prawa' in Jasudowicz, T., Mik, C. (eds.) *O prawach człowieka. W podwójną rocznicę Paktów*. Księga Pamiątkowa w hołdzie Profesor Annie Michalskiej. Toruń: Dom Organizatora TNOiK, pp. 115–125.
- Łopatka, A. (1980) 'Polskie tradycje w dziedzinie praw człowieka' in Łopatka, A. (ed.) *Prawa Człowieka w Polsce*. Warszawa: Interpress.
- MacDonald, E., Cholewinski, R. (2007) 'The Migrant Workers Convention in Europe. Obstacles to the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: EU/EEA Perspectives', *UNESCO Migration Studies*, Paris: UNESCO.
- Mężykowska, A. (2017) 'Część V, Rozdział 6. Skargi indywidualne przeciwko Polsce do Komitetu Praw Człowieka. Niewykorzystana droga?' in Cała-Wacinkiewicz, E., Menkes, J., Nowakowska-Małusecka, J., Przyborowska-Klimczak, A., Staszewski, W.S. (eds.) *System Narodów Zjednoczonych z Polskiej Perspektywy*. Warszawa: C.H.Beck, pp. 487–498.
- Michalski, J. (1996) 'Jeszcze o Konstytucji Sejmu 1776 roku „Konwikcje w sprawach Kryminalnych”', *Kwartalnik Historyczny, Rocznik*, 103(3), pp. 89–10.
- Płotka, M. (2020) 'Wojna sprawiedliwa i prawo naturalne w refleksji Pawła Włodkowica', *Mysł Polityczna, Political Thought*, 2(3)/2020, pp. 37–49.
- Półtorak, M. (2017) 'Część V Rozdział 3. Małżeństwo z rozsądku. Z doświadczeń UNHCR w Polsce' in Cała-Wacinkiewicz, E., Menkes, J., Nowakowska-Małusecka, J., Przyborowska-Klimczak, A., Staszewski, W.S. (eds.) *System Narodów Zjednoczonych z Polskiej Perspektywy*. Warszawa: C.H.Beck, pp. 453–464.
- Schulz, A.N. (2017) 'Komitet Praw Dziecka' in Wieruszewski, R. (ed.), *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa*. Warszawa: C.H.Beck, pp. 177–218.
- Sękowska-Kozłowska, K., Baranowska, G., Grygiel-Zasada, J., Szoszkiewicz, Ł. (2024) 'Chapter 14. The Impact of the United Nations Human Rights Treaties on the Domestic Level in Poland' in Heyns, C., Viljoen, F., Murray, R. (eds.) *The Impact of the United Nations Human Rights Treaties on the Domestic Level: Twenty Years On*. Second Revised Edition. Leiden-Boston: Brill-Nijhoff, pp. 823–989; https://doi.org/10.1163/9789004377653_016.

- Sękowska-Kozłowska, K. (2017a) 'Funkcjonowanie procedury sprawozdawczej do Komitetu do spraw Likwidacji Dyskryminacji Kobiet w odniesieniu do Polski' in Wieruszewski, R. (ed.) *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa*. Warszawa: C.H.Beck, pp. 319–334.
- Sękowska-Kozłowska, K. (2017b) 'Rozdział XVII. Funkcjonowanie procedury sprawozdawczej do Komitetu do spraw Praw Osób Niepełnosprawnych w odniesieniu do Polski' in Wieruszewski, R. (ed.) *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa*. Warszawa: C.H.Beck, pp. 389–394.
- Wedeł-Domaradzka, A. (2017) 'Część V Rozdział 2. Wkład Polski w rozwój ochrony praw dziecka w ramach systemu Organizacji Narodów Zjednoczonych' in Cała-Wacinkiewicz, E., Menkes, J., Nowakowska-Małusecka, J., Przyborowska-Klimczak, A., Staszewski, W.S. (eds.) *System Narodów Zjednoczonych z Polskiej Perspektywy*. Warszawa: C.H.Beck, pp. 441–452.
- Wieruszewski, R. (2017) *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa*. Warszawa: C.H.Beck.
- Wiśniewski, A. (2020) 'The Impact of the European Convention of Human Rights on the Polish Legal System', *Polish Review of International and European Law*, 9(1), pp. 153–184; <https://doi.org/10.21697/priel.2020.9.1.06>.