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ARTICLES

DOINA CAZACU*

The Universal Protection of Human Rights and Eastern Europe: Moldova

ABSTRACT: *This research explores the universal protection of human rights with a focus on its application and challenges in Eastern Europe, particularly in Moldova. The universal protection framework, established through international treaties and organisations such as the United Nations, aims to ensure that all individuals, regardless of nationality, enjoy fundamental rights and freedoms. In Eastern Europe, the post-Soviet transition has posed unique challenges to the implementation and enforcement of these rights. Moldova, a country striving towards European integration, faces complex issues such as corruption, political instability, and systemic inefficiencies that hinder the full realisation of human rights protections. This paper examines Moldova's progress in aligning with international human rights standards, the obstacles it faces, and the role of both national and international actors in promoting and safeguarding these rights. In analysing Moldova's human rights landscape, this paper will contribute to a broader understanding of the challenges and opportunities in ensuring universal human rights in the context of Eastern Europe's evolving political and social dynamics.*

KEYWORDS: *human rights, protection, equality, non-discrimination, international law*

1. The historical development of human rights in The Republic of Moldova

In recent decades, human rights research has acquired the proportions of a political and legal phenomenon, in this process all subjects of public international law are involved. The problem of fundamental human rights and freedoms stands

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alongside that of international peace and security, being one of the major problems of both international political life and the national political life of each state.[1]

The Republic of Moldova is a relatively young state, and its territory was previously a part of the Soviet Union under the name The Moldovan Soviet Socialist Republic (RSSM). On 27th April 1990, the Supreme Soviet of the Moldavian Soviet Socialist Republic (MSSR) adopted the Law on the State Flag, and on 23rd June 1990 – the Declaration on the Sovereignty of the Moldovan SSR.[2]

On 4th July 1991 the Law on Citizenship of the Republic of Moldova,[3] one of the most liberal states in Eastern Europe, was adopted.

On 27th August 1991 the Parliament of the Republic of Moldova, convened in an extraordinary session, adopting the text of the Declaration of Independence of the Republic of Moldova.[4] The Republic of Moldova was solemnly declared, by virtue of the peoples' right to self-determination, in the name of the entire population of the Republic of Moldova and in front of the whole world: a 'sovereign, independent, democratic, sovereign state, free to decide its present and future, without any outside interference, in accordance with the sacred aspirations of the people in the historical and ethnic space of its national development'.

This declaration also 'guarantees the exercise of the social, economic, cultural rights and political freedoms of all citizens of the Republic of Moldova, including persons belonging to national, ethnic, linguistic and religious groups, in accordance with the provisions of the Helsinki Final Act and the documents adopted later, of The Paris Charter for a New Europe'.[5]

On 3rd September 1991, the President of the Republic of Moldova signed the Decree on the creation of the Armed Forces of the Republic of Moldova,[6] with the primary objective of ensuring the sovereignty and territorial integrity of the state. On the same day, the Decree on the subordination of customs institutions located on the territory of the Republic of Moldova was signed.

With the adoption of the Declaration of Independence, the Republic of Moldova became a subject of public international law.[7] This meant that Moldova acquired the ability to enter into legal relations with other states and international organisations, being recognised as a sovereign state by the international community. International recognition was essential to securing global support in the

1 Ciobanu, 2007, p. 94.
2 Declaration of the Sovereignty of the Soviet Socialist Republic of Moldova No. 148-XII of 23.06.90.
3 Law No. 596-XII of 5 June 1991. On the citizenship of the Republic of Moldova.
4 Law No. 691 from 27 August 1991 regarding the Declaration of Independence of the Republic of Moldova.
5 Ibid.
6 Decree of the President of the Republic of Moldova No. 193 of 3 September 1991. [Online]. Available at: https://www.army.md/?lng=2&action=show&cat=154 (Accessed: 15 August 2024).
7 Smochină, 2011, p. 154.

process of political, economic and social development. Joining the United Nations (UN), the most important international organisation, was a priority objective for the new state.

Resolution 46/223 is a significant document that officially marks the Republic of Moldova's admission to the United Nations as a full member.[8]

The Constitution of the Republic of Moldova, adopted by Parliament on 29th July 1994, is the principal political-legal instrument that established the final separation from the totalitarian regime. It provided the country with a new constitutional order that connects Moldova to the values of the civilised world, based on respect for and the promotion of citizens' rights and freedoms, political pluralism, a market economy, the rule of law, justice, social solidarity, equality, and social justice. In this way, the essential political aspirations of the national liberation movement at the end of the 1990s were realised[9], although, the change of the state language, from 'Moldovan' to 'Romanian' according to the Declaration of Independence in the Constitution of the Republic of Moldova, was only carried out in 2023.

In addition to this, a new institution was established – the Constitutional Court[10] – the only authority of constitutional jurisdiction in the Republic of Moldova, also invested with the function of guarantor of the state's responsibility towards the citizen (Art. 134, para. (3) of the Constitution). The constitutional provisions were developed in the Law on the Constitutional Court.[11]During the course of the three decades since its adoption, constitutional norms were modified that targeted various areas: incompatibilities, immunity and the independence of the people's representatives, the institution of citizenship, the judicial system, the administrative-territorial organisation, the status of village and town authorities, and the election and competence of the President of the country (from Parliament to popular vote). Some changes were determined by the integration of the Republic of Moldova into international structures and the commitment to adjust domestic legislation to international human rights standards, amongst which can be mentioned: the abolition of capital punishment, the issuance of the mandate of the court, the implementation of additional guarantees in order to preserve the secrecy of correspondence, and the regulation of cases of restriction of the exercise of the rights and freedoms of citizens, etc.[12]

8 Admission of the Republic of Moldova to membership in the United Nations: Resolution No. 46/233 adopted by the General Assembly. [Online]. Available at: https://moldova.un.org/sites/default/files/2019-10/UNDAF%20Moldova%20EN.pdf (Accessed: 15 August 2024).

9 The Constitutional Court, 20 years since the adoption of the Constitution of the Republic of Moldova. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=142462&lang=ro# (Accessed: 30 September 2024).

10 Constitutional Court of the Republic of Moldova.

11 Law on the Constitutional Court No. 317-XIII of 13.12.1994, Official Journal of the Republic of Moldova, No. 8 of 07.02.95 Art. 86.

12 Zaporojan and Crigan, 2019, p. 78.

Today, more than twenty resident and non-resident UN specialised agencies, funds, and programs operate in Moldova.[13]

The Republic of Moldova acceded to the Universal Declaration of Human Rights, adopted in New York on 10 December 1948, through Parliament Decision No. 2174-XII on 28 July 1990.

2. The relationship between the Republic of Moldova and the UN from a human rights perspective

The Republic of Moldova joined the United Nations on 2nd March 1992 by the adoption of the UN General Assembly Resolution AG A/RES/46/223.[14]Considering the universal character of the United Nations, the Republic of Moldova recognises the important role of the Organisation for the promotion of democracy and human rights, peace keeping and international security, economic and social development, good governance and respect for the rule of law.

Currently, over 20 specialised agencies, funds and programmes have their representation or project based offices in Chisinau.

UN activity in Moldova is carried out in accordance with the UN-Moldova Partnership Framework for Sustainable Development for the period 2018-2022,[15] signed in Chisinau on 16th May 2017, by the Prime Minister of the Republic of Moldova, the UN Resident Coordinator and the representatives of the organisations of the UN system in the Republic of Moldova. The final evaluation concerning the implementation of the UN-Moldova Partnership Framework for Sustainable Development for the period 2018-2022, mentioned that the United Nations has provided significant contributions in the respective outcome areas of governance, human rights and gender equality; sustainable, equitable and inclusive economic growth; environmental sustainability and resilience; and inclusive and equitable social development.[16]

On 13th May 2010, following elections in the UN General Assembly, the Republic of Moldova was elected for the first time as a member of the Human Rights Council for the period 2010-2013, with the support of 175 member countries[17].

13 The United Nations in Moldova.

14 UN-Moldova Partnership Framework for Sustainable Development for the Period 2018-2022. [Online]. Available at: https://moldova.un.org/sites/default/files/2019-10/UNDAF%20Moldova%20EN.pdf (Accessed: 25 August 2024).

15 UN-Moldova Partnership Framework for Sustainable Development for the Period 2018-2022.

16 Bajbaktari and Hadârcă, 2022, p. 109.

17 Letter dated 10 March 2010 from the Permanent Representative of the Republic of Moldova to the United Nations addressed to the President of the General Assembly. [Online]. Available at: https://documents.un.org/doc/undoc/gen/n10/294/09/pdf/n1029409.pdf, (Accessed: 15 September 2024).

As the Republic of Moldova is a party to UN Treaties , which are monitored by the relevant UN Committees, it is obliged to participate and take part in the monitoring rounds which are broadly divided into two main categories, initial and periodic monitoring procedures. Thus, so far the Republic of Moldova has participated in 46 monitoring rounds for all UN Conventions to which the Republic of Moldova is a party.

Currently, most monitoring rounds (14) have been spent on behalf of the UN Committee on the Elimination of All Forms of Racial Discrimination. The UN Committee noted that the progress of the State in the recent period is indicated, but issues such as the protection of persons belonging to ethnic and national minorities, the protection of persons belonging to vulnerable groups, and stereotypes and prejudices do not allow the full integration of these persons into the community to remain valid. Thus, the Committee has highlighted the fact that people belonging to ethnic or national minorities continue to be under-represented in decision-making bodies and do not fully participate in society. Key limitations have also been noted on the right to receive and disseminate information. Thus, the Committee points out that the State has not provided sufficient resources for the dissemination of information in the mother tongue of minorities. The Committee also notes the lack of television and radio broadcasts in the mother tongue of minorities.

The UN Committee against Torture, Inhuman and Degrading Treatment has carried out four rounds of monitoring in the Republic of Moldova since 2003. Over the years, the Committee has highlighted the fact that the Republic of Moldova has considerable problems with the conditions of detained prisoners. Committee members have repeatedly called for the situation to be remedied with a view to improving detention conditions. The problem of Prison No. 13 remains valid to this day.

State monitoring under the International Covenant on Civil and Political Rights was already carried out in six rounds in 2002, during which the Committee alerted the Committee to the necessity of ensuring civil rights and freedoms. The Committee draws particular attention to the implementation of civil rights and freedoms by the Republic of Moldova. In addition to the reminders on the respect of civil rights and freedoms, the Human Rights Committee also made specific recommendations for the Republic of Moldova , targeting the following areas. 1. Freedom of expression: The Committee called for measures to protect journalists and ensure a free media environment free from censorship or intimidation. 2. Minority rights: The specific needs of vulnerable groups such as ethnic minorities, persons with disabilities, and the LGBTQ+ community were highlighted, with the aim of ensuring the protection and promotion of their rights. 3. Independence of the judiciary: The importance of strengthening the independence of the judiciary in order to guarantee a fair trial and to prevent abuses of power was emphasised. 4. Prevention of torture and abuse: The Committee insisted on the implementation

of effective measures to prevent torture and inhuman or degrading treatment in detention facilities 5 Civic participation. It was recommended that citizens' participation in decision-making be supported, including by promoting transparency and accountability of authorities.

3. The UN Treaties to which the Republic of Moldova is a party

Since becoming a member of the United Nations in 1992, the Republic of Moldova has ratified numerous core international human rights treaties. These include the Universal Declaration of Human Rights (1990)[18], the International Covenant on Civil and Political Rights (ICCPR) in 1993, the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1993, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1994, the Convention on the Rights of the Child (CRC) in 1993, and the Convention on the Rights of Persons with Disabilities (CRPD) in 2010, as well as 45 Conventions adopted in the field of labour law protection, under the auspices of the International Labour Organisation.[19] By ratifying these instruments, Moldova has committed to implementing the provisions contained therein and reporting on its progress to UN treaty bodies. Moldova has not yet ratified the UN Convention on the Protection of Persons from Enforced Disappearance and the UN Convention on the Protection of the Rights of Migrant Workers and Members of their Families.

Starting from the fundamental principle of international law – *pacta sunt servanda*[20], it is up to the states parties to the conventions to respect the assumed obligations in good faith. States are obliged to act with sincerity and loyalty during negotiations and to respect the terms and conditions of the agreements they have signed. The provisions of the UN conventions to which the Republic of Moldova is a party are mandatory.[21]

■ *3.1. The United Nations treaty in the field of human rights*

The United Nations Convention on the Status of Refugees, concluded in Geneva on 28th July 1951, entered into force for the Republic of Moldova with the adoption

18 Parliament Decision of Republic of Moldova Nr. 217-XII of 28 July 1990. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=115562&lang=ro (Accessed: 11 September 2024).

19 International Conventions of the International Labor Organization to which the Republic of Moldova is a party. [Online]. Available at: https://social.gov.md/informatie-de-interes-public/colaborare-internationala/tratate/conventii-internationale/ (Accessed: 11 September 2024).

20 Vienna Convention on the Law of Treaties, 1969, Art. 26. [Online]. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (Accessed: 18 October 2024).

21 Burian et al., 2021, p. 75.

of Law No. 677 on 23rd November 2001.[22]Through this law, the Parliament of the Republic of Moldova committed to implementing the provisions established in the Convention. It is important to note that, in accordance with Article 1, point 1 of Law No. 677/2001, the state reserved the right to apply the Convention only within the territory actually controlled by the constitutional authorities, thereby excluding the separatist region of 'Transnistria'. In addition to this territorial reservation, the Republic of Moldova made six other reservations, including a specific reservation concerning Article 21 of the Convention, which excludes the obligation to provide housing to refugees.

At the national level, the protection of foreigners is ensured primarily by the Constitution of the Republic of Moldova.[23] Article 19 of the Constitution stipulates that foreign citizens and stateless persons have the same rights and duties as citizens of the Republic of Moldova, with exceptions provided by law. The Constitution also specifies that the right to asylum is granted and withdrawn in accordance with the law and in compliance with the international treaties to which the Republic of Moldova is a party.

Following the ratification of the 1951 Convention, the Republic of Moldova obliged to establish a legislative framework regarding the status of refugees. Accordingly, on 25th July 2002, the Parliament of the Republic of Moldova adopted Law no. 1286 regarding the status of refugees,[24] which aimed to ensure the alignment of national standards regarding the protection of refugees with international standards in the field. It is important to note that one of the positive aspects that was instituted by the national legislator at that time, but which was not preserved over time with the repeal of this law, were the provisions stipulated in Art. 6, para. (2) which provided for the prohibition of return or expulsion from the territory of the Republic of Moldova until all ordinary avenues of appeal had been exhausted. However, this provision was not included in the new Law No. 270 of 18th December 2008, regarding asylum in the Republic of Moldova.

Another impact on the protection system established by the Geneva Convention arose with the onset of the armed conflict between the Russian Federation and Ukraine. In the early stages of the conflict, particularly in February 2022, many specialists, including representatives from several local NGOs, called for the activation of specific protection mechanisms under the Geneva Convention on the Status of Refugees,[25] namely the granting of refugee status. In this context, while

22 Law No. 677, 23 November 2001 for the Accession of the Republic of Moldova to the Convention on the Status of Refugees. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=61722&lang=ro (Accessed: 30 September 2024).

23 Constitution of the Republic of Moldova.

24 Law No. 1286, 25 May 2022 Regarding the Status of Refugees. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=29710&lang=ro# (Accessed: 15 August 2024).

25 Geneva Convention on the Status of Refugees, 1951. [Online]. Available at: https://www.unhcr.org/ro/wp-content/uploads/sites/23/2016/12/1951_Convention_ROM.pdf (Accessed: 15 August 2024).

we acknowledge the need to provide necessary protection to individuals affected by the conflict, regardless of their origin, we believe that granting refugee status may not always be the most appropriate form of protection. According to Article 1, paragraph (2) of the UN Convention on the Status of Refugees, to qualify for refugee status, an individual must meet specific criteria. This includes having a well-founded fear of persecution due to race, religion, nationality, membership in a particular social group, or political opinion. Additionally, the individual must be outside their country of citizenship or habitual residence and be unable or unwilling to seek protection from their country of origin due to such fear. Alternatively, if the person lacks citizenship, they must find themselves outside their habitual residence due to such events and be unable or unwilling to return because of that fear.

Moreover, it should be noted that Law No. 270/2008 establishes a separate form of protection for individuals who do not meet the criteria for refugee status. This form of protection is termed 'humanitarian protection' and is granted when there are serious and well-founded reasons to believe that the individual would face a real risk of harm if returned to their country of origin. Humanitarian protection is provided when the individual is unable or unwilling to obtain protection from their country of origin due to this risk.

Pursuant to Art. 21 of Law no. 270/2008 regarding asylum in the Republic of Moldova, the Government of the Republic of Moldova adopted Decision no. No. 21/2023 regarding the granting of temporary protection to displaced persons from Ukraine.[26] In this regard, the conditions for granting temporary protection to displaced persons from Ukraine, and the action plan for granting temporary protection to displaced persons from Ukraine, were established.

Another important treaty in terms of the evolution of the human rights protection system in the Republic of Moldova is the International Covenant on Civil and Political Rights ratified by the Republic of Moldova on 26th January 1993.[27] At that stage, the national legislator made a reservation that prevented the Human Rights Committee from examining individual complaints received from citizens. Subsequently, the Parliament of the Republic of Moldova ratified two Optional Protocols: the first, concerning the abolition of the death penalty, was ratified in 2006, and the second, on individual communications, was ratified in 2007. For both ratified protocols, the national authorities maintained a reservation regarding their applicability in the territory on the left bank of the Dniester River. This

26 Government Decision No. 21, 18 January 2023 regarding the granting of temporary protection for people displaced from Ukraine, Official Journal, No. 21–22. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=135260&lang=ro (Accessed: 15 July 2024).

27 UN Human Rights, Reporting Status for Republic of Moldova. [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=MDA&Lang=EN (Accessed: 15 October 2024).

reservation was due to the inability of the constitutional authorities to exercise effective control over the separatist region of Transnistria.

The first initial Report on the implementation of the International Covenant on Civil and Political Rights was presented by the Republic of Moldova only eight years after its ratification in 2001, for the meeting of the Human Rights Committee for the seventy-fifth meeting in 2002. The UN Human Rights Committee noted this delay in its Concluding Observations[28] at the end of the hearing. The Committee also pointed out the fact that the State party did not provide – in its report or in its oral presentation – more detailed information regarding the situation in the Transnistrian region. Although the Committee acknowledged that the Moldovan authorities have limited control over the Transnistrian region and that parallel governance structures have been established there, it stressed the importance of assessing the exercise of rights under the Covenant across the entire territory under the State party's jurisdiction. Nonetheless, the Committee welcomed the State party's commitment to seek durable solutions to this issue, which would help it better fulfil its responsibilities under the Covenant in that region.

One of the most significant recommendations from the Committee, at the stage of the initial evaluation of the state in 2002, was dedicated to the independence of the judicial system where it is mentioned that 'The Committee is concerned with the short initial appointments of judges after which they must fulfil certain criteria to obtain an extension of their mandate'.[29] Unfortunately, this recommendation managed to be implemented by the state only 19 years later, when Law no. 120 of 23rd September 2021, for the amendment of the Constitution of the Republic of Moldova[30], by which Art. 116 of the Constitution of the Republic of Moldova and it was specified that the judges of the courts are appointed, according to the law, until reaching the age limit.

At the same time, the UN Committee for Human Rights highlighted legislative limitations that restricted the right to assembly and demonstration. While the reduction of the prior notification period for public events from 15 days to 5 days was achieved with the adoption of Law No. 26 on 22nd February 2008, many other recommendations have not been fully addressed. This delay in implementation indicates a broader problem with prioritising and effectively executing reforms that align with international human rights standards.

The continued failure to meet the Committee's recommendations underscores the need for a more robust and sustained effort by the Republic of Moldova

28 International Covenant on Civil and Political Rights, 1966. [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCO%2F75%2FMDA&Lang=en (Accessed: 25 July 2024).

29 International Covenant on Civil and Political Rights, 1966.

30 Law No. 120, 23 September 2021 for amending the Constitution of the Republic of Moldova. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=127960&lang=ro (Accessed: 25 July 2024).

to enhance its human rights framework. This includes addressing legislative gaps, improving the independence of the judiciary, and removing restrictive measures that hinder fundamental freedoms. Until these issues are comprehensively addressed, the country's commitment to human rights will remain under scrutiny, and its ability to meet international obligations will continue to be challenged. Since the ratification of the Optional Protocol on the communication of complaints, four individual communications have been submitted to the UN Human Rights Committee against the Republic of Moldova. Of these four requests, three were declared inadmissible. This outcome reflects that these cases did not meet the criteria for admissibility set out by the Committee, such as issues of procedural requirements, lack of substantiation, or other reasons as determined by the Committee's guidelines. The remaining case, which was not declared inadmissible, highlights the on-going scrutiny and challenges faced by the Republic of Moldova in the area of human rights compliance and enforcement. The handling of these communications underscores the importance of the country's continued efforts to align its practices with international human rights standards and address any shortcomings in its legal and institutional frameworks.[31]

The Republic of Moldova ratified the International Covenant on Economic, Social and Cultural Rights on 26th January 1993,[32] thereby committing to uphold economic, social, and cultural rights alongside the civil and political rights guaranteed by the International Covenant on Civil and Political Rights. Moldova only accepted the communication procedure for this Covenant in 2013. Despite this acceptance, there have been no requests or communications submitted to the Committee for examination to date.

Notably, Moldova did not formulate any reservations regarding the territorial application of the Covenant. This means that the obligation to ensure respect for the rights guaranteed by the Covenant extends to all citizens of Moldova, including those residing in the region to the left of the Dniester, which is effectively outside the control of the constitutional authorities.

In response to this situation, the UN Committee on Economic, Social and Cultural Rights recommended that Moldova establish mechanisms to protect the rights of citizens living in regions not effectively controlled by the central government. This recommendation underscores the need for Moldova to develop strategies and frameworks to ensure that economic, social, and cultural rights are upheld even in areas where its authority is limited.

The Republic of Moldova, upon ratifying the International Covenant on Economic, Social and Cultural Rights on 26th January 1993, did not make any reservations regarding the territorial application of the treaty. This absence of

31 Communications no: CCPR/C/133/D/3278/2018, CCPR/C/135/D/3050/2017, CCPR/C/139/D/2870/2016, CCPR/C/139/D/4097/2022. [Online]. Available at: https://documents.un.org/doc/undoc/gen/g23/250/53/pdf/g2325053.pdf (Accessed: 25 October 2024).

32 UN Human Rights, Reporting Status for Republic of Moldova.

reservations means that the government is obligated to uphold the rights guaranteed by the Covenant across the entire territory, including areas such as the region to the left of the Dniester, which is not effectively controlled by the constitutional authorities.

In light of this, the UN Committee on Economic, Social and Cultural Rights has recommended that Moldova establish mechanisms to ensure the protection of citizens residing in regions where the central government's authority is limited. This recommendation highlights the need for Moldova to develop and implement measures to safeguard the economic, social, and cultural rights of all its citizens, regardless of their geographical location, thereby ensuring compliance with the Covenant's provisions even in areas with restricted government control.

For this purpose, the government authorities established the Reintegration Policy Office,[33] which aims to establish bilateral dialogue between the constitutional authorities and the self-proclaimed authorities of the separatist region. However, it should be noted that the authorities failed to achieve considerable progress in ensuring economic, social and cultural rights not only on the left side of the Dniester but also on the right side, where the government authorities exercise their constitutional control.

One significant impediment to realising the rights outlined in this treaty is the broad discretion granted to governmental authorities in implementing its provisions. Phrasings used in the Pact and by the Committee, such as 'the state will progressively ensure economic, social, and cultural rights' or 'the state will, to the extent possible, ensure the stipulated rights,' provide authorities with leeway to evade fulfilling their obligations.

The most pressing challenges in implementing this treaty are evident in areas such as housing, employment, and social assistance. National authorities struggle to enforce these provisions, with a key argument being the lack of financial resources.

Ratified by the Republic of Moldova on 26th January 1993, the UN Convention on the Elimination of All Forms of Discrimination remains a cornerstone for ensuring equality in the country. Despite the Convention's ratification in 1993, the first specialised national legislation addressing equality was only adopted through Law No. 121 on 25 May 2012, which is focussed on ensuring equality. Prior to this, protection against discrimination was only provided in the Constitution and in various sectorial laws, such as the Audiovisual Law (later replaced by the Code of Audiovisual Media Services of the Republic of Moldova), which did not fully meet the Convention's requirements.

33 Government of the Republic of Moldova, Bureau of Reintegration Policies, Chisinau: Government of the Republic of Moldova. [Online]. Available at: https://gov.md/ro/advanced-page-type/biroul-politici-de-reintegrare (Accessed: 22 July 2024).

According to the Art. 2, lit. (d) of the Convention, the state party is obliged to undertake appropriate means, including if the circumstances require it, through legislative measures, to prohibit racial discrimination practiced by individuals, groups or organisations and to put an end to it. It is important to mention that following the adoption by the Parliament of Law no. 2 of 2nd February 2023, a set of changes were introduced to the entire regulatory framework regarding the field of non-discrimination and ensuring equality. As a result, Law no. 121 of 25th May 2012 on ensuring equality, has become a more effective and operative tool in preventing and combating discrimination, as well as ensuring equality. Thus, the aforementioned law was supplemented with a series of criteria on the basis of which discrimination is prohibited, such as: social origin, national origin and social status, health status and HIV status, gender identity, sexual orientation, political opinions or any other opinions, wealth, birth or any other criterion. Likewise, changes and additions were introduced in Law 121/2012 to detail the meaning of direct and indirect discrimination, as well as positive measures. New notions of continuous discrimination[34] and prolonged discrimination[35] were also introduced. Provisions have also been introduced prohibiting discrimination regarding access to services and goods available to the public and regarding their provision.[36] In this sense, people are protected from any form of discrimination in the process of offering medical, social, banking, transport, cultural or other available services.

We also wish to draw attention to the changes made to Article 9 of the Law, which have significantly revised the mechanism for prohibiting discrimination in the field of education.

Specifically, the revised article addresses issues such as limiting access to education across institutions of any level and type. It also covers restrictions or the undermining of equality within the educational process, including the assessment of knowledge. The updated provisions extend to ensuring equality in scientific and pedagogical activities, combating harassment, and preventing racial segregation. Furthermore, the amendments encompass any other actions that contravene legal provisions aimed at safeguarding equal treatment in education. These changes enhance the legal framework and aim to create a more inclusive and equitable educational environment.[37] The same article was com-

34 Law 121/2012 on Ensuring Equality, Art. 2 – continuous discrimination – any act of discrimination that is characterized by the continuous commission, during an indefinite period, of the discriminatory action or inaction and which is consumed at the moment of their termination or at the moment of the occurrence of some events that prevent this act. Law 121/2012 on Ensuring Equality. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=144448&lang=ro# (Accessed: 29 August 2024).

35 Ibid. Prolonged discrimination – any act of discrimination characterized by two or more identical actions and/or inactions committed with a single purpose, making up a whole.

36 Law 121/2012 on Ensuring Equality, Art. 8.

37 Law 121/2012 on Ensuring Equality, Art. 9.

pleted with the measures that educational institutions must undertake to ensure the principle of non-discrimination, such as: ensuring accessibility in the field of education, the development of didactic materials in the field, the training of teaching staff and management regarding the application of methods and means of preventing facts of discrimination and reporting to the competent authorities; the inclusion in the internal regulations of the provisions on the prohibition of discrimination and ensuring equality. Additionally, in order to more effectively protect victims of harassment by applying liability for harassment in all spheres of life depending on the seriousness of the actions committed, amendments were introduced to the Criminal Code by introducing Art. 70/2 – Harassment[38] and Art. 70/3 – Victimization.[39]

In accordance with General Recommendation No. 35 of 2013, the Committee on the Elimination of All Forms of Racial Discrimination recommended that states adopt comprehensive legislation to criminalise hate crimes, including racial criteria as an aggravating circumstance. In light of recent socio-political developments both nationally and globally, which have seen a rise in the use of hate speech, legislative updates have been made to address these issues.

In response, the legislator has revised Article 346 of the Criminal Code to specifically address incitement to violent actions based on prejudice. This amendment aims to tackle hate speech more effectively. Furthermore, Article 77 of the Criminal Code now recognises the commission of an offense on the grounds of prejudice as an aggravating circumstance.

Additionally, Article 134/21 of the Criminal Code has been introduced to define prejudiced motives. This article encompasses the perpetrator's preconceived notions based on factors such as race, colour, ethnicity, national or social origin, and other related criteria. These changes aim to strengthen the legal framework against hate crimes and provide a more robust response to prejudiced actions.

The aggravating circumstance related to prejudice has been incorporated into specific categories of offenses within the Criminal Code. This includes offenses against life, health, liberty, honour, and dignity, as well as those related to sexual life, political and constitutional rights, property, public health, and social

38 Harassment, i.e. the manifestation of physical, verbal, non-verbal behaviour or other actions that lead to the creation of an intimidating, hostile, degrading, humiliating or offensive environment, with the aim or effect of harming the dignity of a person based on the criteria of race, colour, national origin , ethnic and social status, citizenship, language, religion or belief, age, sex, gender identity, marital status, sexual orientation, disability, health status, HIV status, opinion, political affiliation, wealth, birth or any other criterion.

39 Any action or inaction resulting in negative consequences for the person who filed a complaint or brought an action in court for the purpose of ensuring the principles of equality and non-discrimination or for the purpose of providing information, including testimonies, that refer to the complaint or action brought by to another person.

coexistence. This incorporation aims to ensure that crimes motivated by prejudice are met with more severe penalties.

Similarly, this aggravating circumstance has been introduced into the Contravention Code, with its definition provided in Article 46/3. The Contravention Code has also been updated to include penalties for incitement to discrimination based on prejudice, as outlined in Article 70/1 and incorporating Article 52. Notably, the code now specifically addresses hate speech and incitement to discrimination by electoral competitors during the election period and within campaign materials, recognising these actions as punishable offenses.

In addition to these legislative changes, Law No. 148 of 9th June 2023, has been enacted to address the right to access information of public interest. This law is crucial for upholding human rights and freedoms within the state. It governs the exercise and protection of this right, delineates the obligations of information providers, establishes legal liabilities for non-compliance, and sets up a monitoring and control mechanism to ensure enforcement.

In the context of providing information of public interest upon request, Article 21 of Law No. 148/2023 stipulates that such information should be communicated in the language in which it is available. This provision has raised concerns among several experts, who argue that access to information should be provided in a manner that is both equal and comprehensible to all individuals.

During the public consultations on the draft law regarding access to information of public interest, expert groups highlighted Article 10, paragraph (1) of the Framework Convention for the Protection of National Minorities No. 94/1995. This article asserts that individuals belonging to national minorities have the right to use their minority language freely, without interference, in both private and public contexts, and in both oral and written forms. Furthermore, it guarantees the right to use mimetic-gestic language and other alternative means of communication.

Additionally, Article 7 of the Law on the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations No. 382/2001 emphasises that individuals from national minorities have the right to freely use their mother tongue in both written and oral forms. This law also provides for the right to access, disseminate, and exchange information in their own language.

In light of these considerations, it is recommended that the State revise the legislative provisions to ensure that all national minorities have equal access to information of public interest in a manner that accommodates their linguistic needs.

Under certain circumstances, Article 2 of the Convention, States Parties must implement specific and concrete measures in the social, economic, cultural, and other domains to ensure the adequate development or protection of certain racial groups or individuals belonging to such groups. This aims to guarantee them the full enjoyment of human rights and fundamental freedoms on equal terms.

These measures must not,[40] perpetuate unequal or special rights for the various racial groups once the goals for which they were adopted have been achieved. To fulfil this provision, the Government of the Republic of Moldova enacted Decision No. 576 on 3rd August 2022, approving the Program for the support of the Roma population in the Republic of Moldova for the years 2022-2025.

The Program for the Support of the Roma Population for 2022-2025 has been approved and is included in Chapter 9 of the Action Plan for the implementation of the measures proposed by the European Commission in its Opinion on the application for accession of the Republic of Moldova to the European Union. This demonstrates the Republic of Moldova's commitment to creating an inclusive environment that promotes diversity, intercultural dialogue, linguistic integration, and the integration of the Roma group into various aspects of state life.

Also, the program is designed to address the multifaceted challenges and constraints faced by the Roma population and aims to bring about fundamental changes to improve their situation. The document outlines 9 priority areas, encompassing objectives and actions related to education, health, employment, social protection, Roma participation in public life and decision-making processes, anti-discrimination efforts, Roma migrant rights and the combating of human trafficking, the role of community mediators, and cultural and media initiatives.

Consequently, we consider that the partial state has succeeded in implementing the provisions of the Convention on the Elimination of All Forms of Racial Discrimination.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified in 1996, along with its Optional Protocol, ratified in 2006,[41] have laid the groundwork for establishing a human rights-oriented justice system in the country. These instruments form the basis for the prohibition of violent behaviour by state agents against individuals. They underscore Moldova's commitment to ensuring that justice is administered in a manner that respects and protects human dignity, and they provide a framework for addressing and preventing acts of torture and ill-treatment by state authorities.

The UN Convention served as the foundation for establishing mechanisms to protect against abuses by authorities. One such mechanism is the National Mechanism for the Prevention of Torture, created under Law No. 52/2014, concerning the People's Advocate. This mechanism is designed to ensure compliance

40 Program for supporting the Roma population in the Republic of Moldova for the years 2022-2025, 217/MEC/2022. Chisinau: Government of the Republic of Moldova. [Online]. Available at https://gov.md/ro/content/cu-privire-la-aprobarea-programului-pentru-sustinerea-populatiei-de-etnie-roma-din-republica (Accessed: 14 July 2024).

41 The General Assembly resolution 39/46 of 1984, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. [Online]. Available at: https://legal.un.org/avl/ha/catcidtp/catcidtp.html#:~:text=The%20Convention%20against%20Torture%20and,been%20ratified%20by%2020%20States (Accessed: 14 October 2024).

with the Convention's standards and to safeguard individuals from torture and ill-treatment by state authorities (Ombudsman).[42] The Council for the Prevention of Torture was established in accordance with the provisions of Law No. 52 on the People's Advocate (Ombudsman).[43]This council plays a crucial role in monitoring and preventing torture and ill-treatment, in line with the legal framework set out by the People's Advocate Law.

The Council for the Prevention of Torture, established as a collaborative effort between civil society and the Office of the Ombudsman, was formed through a competitive selection process. The Ombudsman and the Children's Rights Ombudsman serve as ex-officio members, contributing to the Council's diverse composition and ensuring a broad perspective in its operations.

The Council functions as a national mechanism for the prevention of torture, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Its primary objective is to protect individuals from torture and other forms of cruel, inhuman, or degrading treatment or punishment.

Since its establishment in 2007, the National Mechanism for the Prevention of Torture (NPM) in the Republic of Moldova has been actively engaged in its mission. Under two previous mandates, the NPM has conducted over 1,200 visits to places where individuals may be held. These visits aim to prevent ill-treatment and propose improvements to the conditions of those in custody.

Recently, the Ministry of Justice and the General Prosecutor's Office have undertaken initiatives to amend various legislative frameworks, including executive-criminal, criminal, and procedural-criminal legislation, as well as certain government decisions and Joint Order 77/2013. These efforts, supported by civil society organisations and public administration bodies, seek to enhance the legal and procedural mechanisms related to the prevention of torture and the protection of human rights.

One of the most significant recent amendments is the addition of Article 276, paragraph 12, to the Criminal Procedure Code. This provision states: 'Criminal prosecution shall be initiated in the absence of a complaint by the victim if the offense referred to in Article 152, paragraph (1), or Article 155 of the Criminal Code No. 985/2002 was committed in places of detention.'

This amendment, supported by the Public Prosecutor, aims to enhance public confidence in the justice system, particularly for those individuals who are victims of abuse in detention facilities. It addresses situations where victims may be unable to report abuse due to justified fear, ensuring that such offenses are prosecuted even in the absence of a formal complaint.

42 Law No. 52, 3 April 2014 on the People's Advocate. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=141519&lang=ro# (Accessed: 15 August 2024).

43 Ibid.

However, although these provisions resolve conflicts between detainees and enable the authorities to investigate them 'more effectively'.(...) This practice could create uncertainty and vagueness in researching and documenting specific concrete facts. From the rule mentioned above, not only is the process of registration and initiation of criminal prosecution unclear, but also the manner of referral to the prosecuting authority. In this case, however, a 'conflict of jurisdiction' would arise, where any statement, complaint or other information that provides grounds to assume that the person has been subjected to torture, inhuman or degrading treatment, as provided for in Article 166^1 of the Criminal Code or other cruel punishment or treatment while in State custody, is to be submitted or forwarded immediately to the prosecutor for examination by Article 274 paragraph (3^1) of the CPC[44], and only after the prosecutor finds that the act does not contain the elements of the offense referred to in Article 166^1 of the CPC. Still, there are reasonable grounds to assume that the offense referred to in Article 152 paragraph (1) or Article 155 of the CPC may have been committed. Shall the prosecutor forward the information to the prosecuting body to decide on initiating criminal proceedings. This situation will also have an impact on the reasonable time limit for examining complaints, as they will be received late for examination by the prosecution body. This creates the danger of destruction or disappearance of evidence, and the potential influence of the victim or witnesses, which can compromise the objectivity and transparency of the evidence. This can have a general impact on criminal proceedings and the rights of the parties involved. If all the information from places of detention is examined and investigated, the prosecuting body will be overburdened, and the quality of investigations into cases where the victim complains about the unlawful actions of another person will be undermined. However, the position of the victim in such cases is crucial. The course of the criminal prosecution and the decision to convict a person, based on Articles 152 and 155 of the Criminal Code, must be solely supported by the victim's statements, which will attest to and claim the physical injury caused. These offenses fall under the category of crimes against the life and health of the person.

On 28th December 2023, amendments were made to the Criminal Code. Article 149 was amended to include paragraph (1^2), which states, 'Deprivation of life by the imprudence of a public figure or by an official on duty,' and Art. 157 was amended to include paragraph (2) which provides 'Serious or moderate harm to bodily integrity or health due to imprudence of a public figure or an official on duty.' Although the legislator introduced a separate norm for 'agents of the State,' we believe it created legal uncertainty regarding the absolute right 'Prohibition of torture' as punished by Art. 166/1 CC. Thus, 'public agents' could face less severe penalties under this provision, potentially circumventing the stricter punishments

44 Criminal Code of the Republic of Moldova. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=140290&lang=ro# (Accessed: 15 July 2024).

associated with 'acts of torture, including injury and deprivation of life while exercising one's duties.' This situation undermines the international commitment to effectively combat 'torture.' As of the time of preparing the Annual Report, this provision has not yet been published in the Official Gazette[45]. Other changes approved at the end of the year were, according to the original text, some military offenses (Art. 366 Criminal Code (contempt against the officer), Art. 371 Criminal Code (desertion). Thus, the responsibility for such offenses was transposed in Art. 56^2 and Art. 56^3 of the Contravention Code. The People's Advocate believes these are positive amendments because they will facilitate the situation of conscripts, including because the cancelled military offenses do not present a high degree of danger by their nature. The last necessary amendment to the relevant criminal legislation concerns supplementing Art. 90, para. (4) of the Criminal Code. The new rule will ban sentencing with conditional suspension of punishment for individuals who committed acts of torture according to Art. 166^1, paras.(2)-(4) of the Criminal Code.

Another vital act in terms of human rights protection in the Republic of Moldova is the 1989 UN Convention on the Rights of the Child. Thus, the Convention was ratified by the Republic of Moldova on 26 January 1993[46]. Subsequently, in 2004 the Optional Protocol on the involvement of children in armed conflict was ratified;[47] in 2007 the Optional Protocol on the sale of children, child prostitution, and child pornography was ratified,[48] and in 2022 the Optional Protocol on the communication procedure was ratified.[49]

Subsequently, the Republic of Moldova adopted Law No 338 /994[50], on the Rights of the Child, which was subsequently repealed by Law No 370/2023[51]. This law brought national standards into line with international regulations, and

45 Parliament of the Republic of Moldova. The draft law for the amendment of some normative acts (amendment of the Criminal Code and the Offenses Code). Chisinau: Parliament of the Republic of Moldova. [Online]. Available at: https://www.parlament.md/ProcesulLegislativ/Proiectedeactenormative/tabid/61/LegislativId/6497/language/ro-RO/Default.aspx (Accessed: 15 August 2024).

46 Convention on the Rights of the Child in International Treaties No. 1, Art. 52.

47 Law No. 15, 2 June 2004 for the Ratification of the Optional Protocol on the Involvement of Children in Armed Conflict. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=26126&lang=ro (Accessed: 15 August 2024).

48 Law No. 29, 22 February 2007 for the ratification of the Optional Protocol to the Convention on the Rights of the Child regarding the Sale of Children, Prostitution, and Child Pornography. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=7303&lang=ro (Accessed: 15 August 2024).

49 Law No. 117, 5 May 2022 for the ratification of the Optional Protocol to the United Nations Convention on the Rights of the Child on a communications procedure. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=131326&lang=ro (Accessed: 29 August 2024).

50 Law No. 338, 15 December 1994.

51 Law No. 3701, 30 November 2023.

thus national legislation became compatible with the provisions of the international treaty.

The Republic of Moldova has participated in the reporting procedures before the UN Committee on the Rights of the Child since 2002, and the last round of monitoring was spent in 2017. In total there were only three rounds of reporting on the Convention. The Committee has on several occasions drawn the attention of the State party to the need to comply with the provisions of the Convention, but the recommendations forwarded by the Committee have remained largely unimplemented. The UN Committee on the Rights of the Child has emphasised the importance of protecting children's rights to life and development in accordance with the UN Convention on the Rights of the Child. Recent reports highlight progress but also shortcomings in ensuring this right in the Republic of Moldova. Public health problems, including limited access to health services in rural areas and the lack of an adequate support system for families, are critical issues.

The reports of the Moldovan Ombudsman for the Rights of the Child reflect concerns about poor living conditions and unequal access to essential development resources. There are signs of the need to improve health and education infrastructures to support the proper development of children, particularly in disadvantaged communities. The Ombudsman has reported that administrative procedures for birth registration can sometimes be complicated and can affect children from vulnerable families. It is essential to simplify these processes to prevent social exclusion.

The UN Committee has acknowledged that while Moldova has made progress in expanding access to education, significant inequalities persist. The quality of education varies considerably between different regions and social groups, and children from disadvantaged backgrounds continue to encounter obstacles in accessing education.

Civil society organisations have highlighted disparities in educational access between urban and rural areas, as well as among different socio-economic groups. They stress the need for systemic reforms to ensure that all children, including those with disabilities and from marginalised communities, receive quality education. The Ombudsman's reports reveal that, despite the introduction of policies aimed at combating violence against children, there are gaps in their implementation and insufficient resources for effective intervention. Additionally, there is a pressing need for increased education and awareness-raising efforts among both the community and authorities to prevent violence.

It is also noteworthy that, as of the writing of this report, no communications have been filed against the Republic of Moldova under Optional Protocol No. 3.

The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[52]adopted on 18th December 1979, was ratified by the Republic on 28th April 1994 through a decision of its Parliament, No. 42-XI. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was ratified by Law no. 318-XVI of 15th December 2005, which entered into force on 28th February 2006. The seventh periodic report submitted by the Republic of Moldova under Article 18 of the Convention, was due in 2024.[53]

Since ratifying the CEDAW Convention, Moldova has submitted its initial report to the Committee (2000), combined periodic reports – 2 and 3 in 2006, 4 and 5 in 2013 – an interim report on preventing and combating domestic violence (DV) in 2015, and the 6th periodic report in 2018.[54]

The Constitution of the Republic of Moldova states in Art. 16 that 'all citizens of the Republic of Moldova are equal before the law and public authorities, without distinction of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin'.

The basic normative framework that promotes the principle of gender equality in the Republic of Moldova is Law no. 5/2006 on ensuring equal opportunities between women and men,[55] and Law no. 121/2012 on equality.[56]

Law No. 121/2012 on Ensuring Equality guarantees the prevention and combating of discrimination and ensures equality for all individuals under the jurisdiction of the Republic of Moldova. It applies across various spheres of life, including political, economic, social, cultural, and others. The law prohibits discrimination based on race, colour, national origin, ethnicity, social status, citizenship, language, religion or belief, age, sex, gender identity, marital status, sexual orientation, disability, health status, HIV status, opinion, political affiliation, wealth, birth, or any other criterion.

The authorities vested with attributions in the field of equality between women and men are: a) Parliament; b) The Government; c) Government Commission for equality between women and men; d) Ministry of Labour and Social Protection (specialized body); d1) State Labour Inspectorate; e) Ministries and other central administrative authorities (coordinating groups in the gender field);

52 Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979. [Online]. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women#:~:text=27(1).-,Introduction,twentieth%20country%20had%20ratified%20it (Accessed: 15 August 2024).

53 United Nations, Human Rights, Treaty's Body.

54 Ibid.

55 Law No. 5, 9 February 2006, regarding ensuring equality of chances between women and men, Art. 1. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=144448&lang=ro# (Accessed: 8 August 2024).

56 Law 121/ 2012 on Ensuring Equality, Art. 1.

f) Local public administration authorities (gender units); g) National Bureau of Statistics; h) Equality Council.[57]

The Equality Council is an autonomous, impartial and independent public authority, created in 2013.[58]

Law No. 343/2022 extends and specifies the competences of the Equality Council. Key enhancements include the expansion of non-discrimination criteria to encompass gender identity, marital status, sexual orientation, health status, and HIV status. The law also aims to improve data collection on equality, non-discrimination, and diversity, enhance monitoring, evaluation, and annual reporting; strengthen the institutional framework for better implementation of the principles of equality and non-discrimination; and refine complaint examination procedures.

Gender-based violence remains one of the most pervasive and severe forms of discrimination against women, with lasting impacts on victims, their children, families, communities, and society at large. Recognising the gravity and prevalence of this issue is crucial for effective prevention and intervention. However, victims of gender-based violence often struggle to identify their situation or seek help due to various objective and subjective barriers. The development of a strong human rights protection framework highlights the need for universal, regional, and national regulations that prohibit gender-based discrimination and violence as a form of discrimination.

According to the Report on the Gender Equality Index for 2022, the level of gender equality in the Republic of Moldova has shown a notable improvement compared to previous years. The average level of equality between women and men, assessed across six strategic areas, was estimated at 62 points. This represents a 3-point increase from the previous year.[59]

Violence against women and girls can manifest itself in various forms throughout different stages of life, each with distinct characteristics and impacts. At the prenatal stage, violence can include sex-selective abortions, where the sex of the unborn child influences the decision to terminate the pregnancy. Physical abuse directed at pregnant women also falls into this category, as does the coercion of women into forced pregnancies, often under duress or through societal pressure.

As women and girls grow older, the forms of violence they encounter can become increasingly varied and severe. In adolescence and adulthood, intimate partner violence is a prevalent issue, encompassing physical, emotional, and

57 Law No. 5, 9 February 2006, Art. 15.

58 Equal Council of the Republic of Moldova. [Online]. Available at: https://egalitate.md/en/ (Accessed: 12 July 2024).

59 Report on the Gender Equality Index, 2022 – What is the level of equality between women and men in Moldova?, p. 4. [Online]. Available at: https://progen.md/wp-content/uploads/2022/03/CPD_Indexul-Egalitatii-de-Gen-2022.pdf (Accessed: 30 August 2024).

psychological abuse within relationships. Sexual violence, including rape and sexual harassment,[60] also represents significant and pervasive problems that affect women across different environments, including workplaces, educational institutions, and public spaces.

In the later stages of life, violence can continue to affect women through physical abuse and neglect, particularly in contexts where women may be vulnerable due to age or dependency. This ongoing violence highlights the need for comprehensive strategies and protections to address and prevent abuse at every stage of a woman's life, ensuring safety and dignity for all.

Law No. 45/2007, concerning the prevention and combatting of violence in the family, is a crucial legislative measure in addressing violence and discrimination against women and girls.[61] This law has undergone multiple amendments and updates to respond to emerging forms of violence, such as online abuse, and to meet evolving challenges. The law aims to provide a comprehensive, multidisciplinary, and professional approach to handling cases of violence against women. These amendments have been designed to enhance the effectiveness of the legal framework in combating various forms of domestic violence and ensuring that appropriate support and protection mechanisms are in place for victims.

Law No. 196, the emergency restriction order was introduced by amending Law No. 45-XVI regarding the prevention and combating of family violence in 2016.

The Republic of Moldova has progressively strengthened its legal framework to address domestic violence and violence against women, integrating specialised services at various levels, from prevention to intervention. The legislation includes the following key regulations:

- Law on Social Services, no. 123/2010[62]: This law establishes the foundation for social services aimed at supporting vulnerable groups, including victims of domestic violence.
- Government Decision no. 998 of 28th December 2014: This decision approves the Regulation on the organisation and operation of the National Council for the Accreditation of Social Service Providers, ensuring that service providers meet specific standards and are properly accredited.
- Government Decision no. 95 of 7th February 2014: This decision approves the Regulation on the accreditation procedure of social service providers, further ensuring that those offering support services are qualified and meet the necessary criteria.

60 Pădureand Țurcan-Donțu, no date, p. 15.

61 Law No. 45 of 1 March 2007 regarding prevention and combat of domestic violence. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=141510&lang=ro# (Accessed: 15 July 2024).

62 Law No. 123, 18 July 2010.

- Government Decision no. 129 of 22nd February 2010: This decision approves the Framework Regulation for the organisation and operation of rehabilitation centres for victims of domestic violence, providing a structured approach to supporting those affected by such violence.
- Government Decision no. 1200 of 23rd December 2010: This decision approves the Minimum Quality Standards for social services provided to victims of domestic violence, ensuring that the services offered meet essential quality requirements.
- Government Decision no. 575 of 19th July 2017: This decision approves the Regulation on the organisation and operation of the free telephone assistance service for victims of domestic violence and violence against women, as well as the minimum quality standards for this service, providing an accessible support line for those in need.
- Law no. 198/2007 on State Guaranteed Legal Aid (SGLA).

According to the Report of the National Council for Legal Assistance Guaranteed by the State, in July 2008, the number of cases saw significant fluctuations, the highest being recorded in 2017 with 65,322 cases. The second highest was recorded in 2022, with 64,132 cases, marking a 5% increase in beneficiaries compared to 2021. In 2023, 2,642 cases had the status of victim/injured party of the crime (about 6% of the total volume), of which 1,690 were victims of domestic violence and 144 were victims of human trafficking.[63] These statistics underscore the essential role of the State Guaranteed Legal Assistance (SGLA) system in providing access to justice for marginalised and at-risk populations, ensuring that vulnerable individuals receive the legal support they need.[64]

These regulations collectively aim to offer comprehensive support to victims of domestic violence and violence against women. They address various aspects, including prevention, immediate assistance, rehabilitation, and ongoing support. The goal is to ensure that essential services are not only available but also accessible to those in need, providing a robust framework for protecting and assisting victims throughout their recovery process.

Starting on 1st January 2024, a new governmental structure was established – the National Agency for the Prevention and Combating of Violence against Women and Domestic Violence – which operates on the basis of a regulatory framework approved by the Government, with specific functions to ensure comprehensive and effective efforts to combat of violence against women.

63 National Council for Legal Assistance Guaranteed by the State, 2023.
64 National Council for Legal Assistance Guaranteed by the State, 2022.

■ ***3.2. National regulations concerning the equal pay between women and men***

Article 43 of Constitution provides the right to work and labour protection 'Everyone has the right to work, to freely choose work, to fair and satisfactory working conditions, as well as to protection against unemployment.'[65]

According to Article 1 of the Labour Code, 'equal work' refers to work performed in the same positions under identical requirements related to education, professional training, skills, efforts, responsibility, the nature of the activities, objectives, and working conditions. On the other hand, 'work of equal value' pertains to work performed in different positions or roles that are recognised as equivalent based on similar requirements related to education, professional training, skills, efforts, responsibility, the nature of the activities, objectives, and working conditions.[66]

The Labour Code has been amended, mainly by LP107 from 21st April 2022, and MO141-150 from 13th May 2022 (Art. 254), in effect since 13 May 2022. The amendments are in many regards progressive and complete legal definitions of remuneration, equal work and work of equal value.[67]

Remuneration is defined as monetary compensation that includes a basic salary (tariff salary, salary of the position), as well as all additions, increments, awards and other incentives and payments granted to the employee by the employer based on the individual employment contract for the work performer.

According to the Global Gender Gap Index Ranking of 2023, the Republic of Moldova held 19th position.[68]

The ratification of the International Labour Organisation (ILO) Convention no. 190 on the Elimination of Violence and Harassment at the Work Word in December 2023 is also an important step towards eliminating violence and harassment in the workplace.[69]

Since ratifying the optional protocol, the Committee for the Elimination of Discrimination against Women has examined three communications submitted against the Republic of Moldova.[70]

65 Constitution of the Republic of Moldova.

66 Labour Code of the Republic of Moldova, Art. (1).

67 Law No. 107 of 21 April 2022, for the modification of some normative act. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=131234&lang=ro (Accessed: 25 October 2024).

68 World Economic Forum, 2023, Global Gender Gap Index Ranking, Table 1.1. Geneva: WEF. [Online]. Available at: https://www3.weforum.org/docs/WEF_GGGR_2023.pdf (Accessed: 15 June 2024).

69 Law No. 440, 28 December 2023 for the ratification of ILO Convention No. 190 regarding violence and harassment in the world of work. [Online]. Available: https://www.legis.md/cautare/getResults?doc_id=141320&lang=ro (Accessed: 15 September 2024).

70 Communication to CEDAW vs Republic of Moldova (CEDAW/C/76/D/105/2016; CEDAW/C/66/D/58/2013; CEDAW/C/66/D/58/2013). [Online]. Available at: https://juris.ohchr.org/SearchResult (Accessed: 25 July 2024).

The United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol were adopted by the United Nations General Assembly on 13th December 2006. They were open for signature at the United Nations Headquarters in New York on 30th March 2007. On the opening day, an unprecedented 81 countries signed the Convention. This international human rights treaty aims to protect the rights and dignity of persons with disabilities, serving as a crucial and effective pillar for promoting and safeguarding their rights.

Using Law No. 166/2010[71], the Republic of Moldova ratified the UN Convention on the Rights of Persons with Disabilities (CRPD), signalling its commitment to align national legislation and practices with the Convention's standards. This ratification highlights the significant role played by civil society, disability organisations, and individuals with disabilities in advocating for and advancing the ratification process.

Additionally, using Law No. 162/2021, Moldova ratified the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.[72] The Optional Protocol introduces an individual communications procedure, enabling individuals or groups from ratifying states to submit complaints directly to the Committee on the Rights of Persons with Disabilities. This mechanism provides an important avenue for addressing violations of disability rights and further strengthens Moldova's commitment to upholding the rights of persons with disabilities.

The ratification of the Convention on the Rights of Persons with Disabilities (CRPD) by the Republic of Moldova represents a significant shift in how the country addresses disability issues. Prior to this ratification, the focus was primarily on social protection and health concerns related to individuals with disabilities. However, the CRPD emphasises a human rights-based approach, highlighting the importance of viewing persons with disabilities as equal citizens with the same civil, political, social, and cultural rights as others.

A key aspect of the CRPD is its commitment to ensuring independent living for people with disabilities. This includes individuals with intellectual and psychosocial disabilities. The Convention advocates for the de-institutionalisation of these individuals, aiming to transition them from residential institutions to community-based settings. This approach promotes greater social inclusion and provides support through community-level social services, reflecting a broader recognition of the rights and human value of individuals with disabilities.

The Convention reaffirms 'the universality, indivisibility, interdependence, and interrelatedness of all human rights and fundamental freedoms and the need to guarantee to persons with disabilities the right to their full enjoyment without

71 Law No. 166, 9 July 2010.

72 Law No. 162, 4 November 2021 regarding the ratification of the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=128616&lang=ro (Accessed: 15 July 2024).

discrimination'[73]and recognises that 'disability is an evolving concept resulting from the interaction between persons with impairments and attitudinal and environmental barriers which hinder their full and effective participation in society on an equal basis with others.'[74]

An important aspect of the protection of human rights is also to ensure equal opportunities and equal treatment of all persons irrespective of any criteria, thereby guaranteeing respect towards the principle of non-discrimination. The Constitution of the Republic of Moldova Art. 16 (2) states that 'All citizens of the Republic of Moldova are equal before the law and the public authorities, without any discrimination as to race, nationality, ethnic origin, language, religion, sex, political choice, personal property or social origin'. According to Art. 20, paras. 1 and 2 of the Constitution, 'Every citizen has the right to obtain effective protection from competent courts of jurisdiction against actions infringing on his/her legitimate rights, freedoms and interests. No law may restrict the access to justice'.

Initially Law no. 821-XII from 24th December 1991, regarding the social protection of the disabled, and then Law No. 60 from 30th March 2012 on the social inclusion of persons with disabilities[75] contain provisions on equality and non-discrimination of persons with disabilities, banning all forms of discrimination on grounds of disability (Art. 8), and provisions for the protection of the rights of persons with disabilities, and liability for their breach, including legal aid on an equal basis with other citizens in all areas of life (Art. 10).

Law No. 60/2012 introduces an important concept of 'reasonable accommodation', which aims to ensure the right of persons with disabilities to exercise, on an equal basis with others, all the human rights and fundamental freedoms (Art. 2). The law also sets out provisions on the promotion of equality and the elimination of discrimination against persons with disabilities in various areas of life (Art. 6, para. 2; Art. 8, para. 8; Art. 19, para. 2; Art. 27, para. 6a; Art. 29 para. 2; Art. 33, para. 7a; Art. 35, para. 2). Under these provisions, the State is responsible for developing national policies for the prevention, treatment, rehabilitation, reasonable accommodation and social inclusion of persons with disabilities, and promoting reasonable accommodation measures for social facilities in the fields of education, health, employment[76], etc.

The Republic of Moldova, with its initial report due in 2012, has been continuously working to align its legislation and policies with the provisions of the UN Convention on the Rights of Persons with Disabilities. This ongoing process

73 Convention on the Rights of Persons with Disabilities, 2006.
74 Convention on the Rights of Persons with Disabilities, 2006, Preamble.
75 Law No. 60, 30 March 2012 on Social Inclusion of Persons with Disabilities. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=22959&lang=ro (Accessed: 5 August 2024).
76 Ibid.

reflects a significant shift in how the country approaches disability issues, moving from a medical model to a social model of disability.

The medical model traditionally views disability as a condition that resides within the individual and focuses on diagnosis and treatment. In contrast, the social model, which the Republic of Moldova is increasingly adopting, emphasises the role of societal barriers and attitudes in creating and perpetuating disability. It asserts that disability arises from the interaction between individuals with impairments and an environment that fails to accommodate their needs, rather than solely from the impairments themselves.

As part of this transition, Moldova has been adjusting its legal and policy frameworks to address disability more comprehensively. This includes efforts to enhance accessibility, ensure inclusion in various aspects of life, and uphold the rights and dignity of persons with disabilities. The aim is to create an environment where persons with disabilities can fully participate in society and enjoy their rights on an equal basis with others.

The country's commitment to these changes demonstrates its alignment with international human rights standards and its efforts to foster a more inclusive and supportive environment for persons with disabilities.

In the combined second and third periodic reports submitted by the Republic of Moldova under Article 35 of the Convention, pursuant to the optional reporting procedure, due in 2020,[77] Republic of Moldova reported that it reported significant progress in its efforts to enhance the social inclusion of persons with disabilities. Notably, the Republic of Moldova approved the National Program on Social Inclusion of Persons with Disabilities for the years 2017–2022[78]. This program represents a comprehensive, cross-sectorial approach to the social inclusion of individuals with disabilities. It aims to ensure that their fundamental rights are upheld on par with those of other citizens across all areas of social life. The program is designed to facilitate the full participation of persons with disabilities in society by addressing barriers and promoting accessibility and inclusion in various sectors, such as education, employment, and public services.

The approval and implementation of this program underscored Moldova's commitment to integrating the principles of the Convention into national policies and practices, reflecting a holistic and inclusive approach to supporting persons with disabilities.

In the third cycle of the Universal Periodic Review (UPR 2022), the Republic of Moldova accepted 186 out of 209 recommendations received, a decrease of 2.11% compared to the second cycle. The majority of the accepted recommendations concerned improving the policy and institutional regulatory framework, reducing

77 Convention on the Rights of Persons with Disabilities.

78 Government Decision No. 723, 8 September 2017 regarding the approval of the National Program for Social Inclusion of Persons with Disabilities for the years 2017-2022. Official Journal, No. 335–339.

inequalities, civil and political rights, economic, social, and cultural rights, gender equality, children's rights, and the rights of other vulnerable groups and persons.[79]

In 2023, an evaluation of the implementation of the National Human Rights Action Plan for 2018-2022[80] was finalised, which showed that this public policy document was achieved at an average level. The evaluation report PNADO of 2018-2022 showed that, on the one hand, the rate of institutionalisation of persons with disabilities was reduced, and on the other hand, the rate of persons with disabilities who were deprived of the right to make decisions on their own was not achieved.

To monitor the implementation of the UN Convention on the Rights of Persons with Disabilities, the Government has approved a Set of Indicators for Monitoring the UN Convention on the Rights of Persons with Disabilities. This framework encompasses structure indicators, process indicators, and outcome indicators. Structure indicators evaluate the availability and adequacy of resources and institutions responsible for implementing the Convention, including policies, programs, and organisational structures. Process indicators assess the effectiveness of the activities and processes involved in ensuring compliance with the Convention, such as the execution of policies and initiatives. Outcome indicators measure the tangible results and impacts of these measures on the rights and well-being of persons with disabilities, including improvements in accessibility, inclusion, and participation in society.

Governmental Decision No. 421/2024, on the approval of the Matrix of Statistical Indicators on Persons with Disabilities, introduced a comprehensive set of indicators aimed at improving the collection and analysis of data related to both adults and children with disabilities. This matrix includes statistics on various aspects such as employment status, unemployment, and pension beneficiaries among persons with disabilities[81]. The decision also amends Governmental Decision No. 357/2018,[82] concerning the determination of disability. The new matrix is designed to enhance the centralised system for collecting statistical data on

79 UN Human Rights Council. Universal Periodic Review – Republic of Moldova. [Online]. Available at: https://www.ohchr.org/en/hr-bodies/upr/md-index (Accessed: 25 August 2024).

80 Evaluation Report of the National Action Plan in the Field of Human Rights for the Years 2018-2022. Chisinau: Government of the Republic of Moldova. [Online]. Available at: https://cancelaria.gov.md/sites/default/files/raport_de_evaluare_pnado_2018-2022.pdf (Accessed: 3 July 2024).

81 Governmental Decision No. 421, 30 March 2024. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=143753&lang=ro (Accessed: 3 November 2024).

82 Government Decision No. 357/2018 concerning the Determination of Disability, Annex 1. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=119169&lang=ro (Accessed: 3 November 2024).

disability, thereby facilitating more effective analysis and the utilisation of the data to support and benefit individuals with disabilities.

A new plan, the National Program for the Advancement of Disability and Other (PNADO) for 2024-2027, is set to be adopted. This program aims to align itself with several key sectorial policy documents to ensure a cohesive approach across various areas. It integrates with the National Strategy 'Health 2030,' the National Strategy 'Education 2030' and the Youth Sector Development Strategy 'Youth 2030.' Additionally, it aligns with the Strategy for Strengthening Interethnic Relations in Moldova for 2017-2027 and its implementation program for 2023-2025, the National Program for Child Protection for 2022-2026, and the Program for the Support of the Roma Population for 2022-2025. The PNADO also supports the Employment Program for 2022-2026, the Strategy for Ensuring the Independence and Integrity of the Justice Sector for 2022-2025, and the Program for Promoting and Ensuring Gender Equality for 2023-2027. Furthermore, it complements the National Program for Preventing and Combating Violence against Women and Domestic Violence for 2023-2027, the National Program for Preventing and Combating Trafficking in Human Beings for 2024-2028,[83] and the Program for the Development of Civil Society Organizations for 2024-2027. This comprehensive approach is designed to ensure synergistic consistency and effective implementation of policies and programs across these various sectors.

In conclusion, the Republic of Moldova has demonstrated a robust commitment to advancing the rights and inclusion of persons with disabilities through significant legislative and policy reforms. The ratification of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol marks a pivotal moment in Moldova's human rights landscape, reflecting the country's dedication to aligning its national practices with international standards. This commitment is further underscored by the adoption of Law No. 166-XVIII, which marked a shift from a medical to a social model of disability, emphasising human rights and social inclusion.

The extensive amendments to national legislation, including the Civil Code and the establishment of the National Agency for the Prevention and Combating of Violence against Women and Domestic Violence, highlight Moldova's proactive approach to addressing discrimination and violence. The National Program on Social Inclusion of Persons with Disabilities for 2017-2022, alongside ongoing and future initiatives, illustrates a holistic and integrated strategy for supporting persons with disabilities across various dimensions of social life.

The Republic of Moldova's engagement with international monitoring mechanisms, such as the UN Committee on the Rights of Persons with Disabilities,

83 The National Program for Preventing and Combating Trafficking in Human Beings for 2024-2028. [Online]. Available at: https://gov.md/sites/default/files/document/attachments/subiect-08-nu-714-cs-2023_0.pdf (Accessed: 3 November 2024).

and its response to the Committee's recommendations, reflect a sincere effort to tackle the challenges faced by persons with disabilities. The commitment to deinstitutionalisation, improved access to justice, and the implementation of comprehensive action plans, underscores Moldova's resolve to foster an inclusive and supportive environment for all its citizens.

Moreover, the introduction of Government Decision No. 421/2024,[84] which includes a matrix of statistical indicators, represents a crucial step towards enhancing data collection and analysis. This initiative will strengthen the centralised system for tracking disability-related data, thereby facilitating more informed decision-making and policy development.

As Moldova prepares to implement the National Program for the Advancement of Disability and Other (PNADO) for 2024-2027, its alignment with key sectorial strategies promises a synergistic approach to addressing the multifaceted needs of persons with disabilities. The integration of this program with national strategies on health, education, youth, interethnic relations, child protection, and gender equality ensures a comprehensive and coordinated effort to promote the rights and well-being of persons with disabilities.

In summary, Moldova's legislative reforms, strategic planning, and active engagement with international human rights mechanisms reflect a significant and ongoing commitment to improving the lives of persons with disabilities. The country's efforts in advancing disability rights and ensuring inclusive policies will be instrumental in fostering a more equitable and just society, where all individuals, regardless of their abilities, can participate fully and equally in all aspects of life.

■ *3.3. International treaties and the Constitution of The Republic of Moldova*

The Republic of Moldova, as a sovereign state, is committed to the observance and implementation of international treaties to which it is a party. These treaties profoundly influence the domestic legal framework, resulting from the principle of *pacta sunt servanda* and the supremacy of international law under national law.[85]

A brief look at international law or universal or regional treaties reveals that there is no document that would regulate the model and forms of constitutional litigation. Constitutional review derives from the principles of law, to defend human rights and to ensure a remedy against unconstitutional acts of Parliament, thus establishing legislation adequate to the constitutional provisions and international treaties to which a state adheres[86].

84 Government Decision No. 421 of 16 July 2024, Annex 1.

85 Judgement of Constitutional Court of Moldova, Nr. 12 of 7 May 2020. [Online]. Available at: https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=738&l=ro (Accessed: 30 December 2024).

86 Tanchef et al., no date, p. 4.

The Constitution of the Republic of Moldova is considered the state's supreme law, which means that any rule that contradicts the Constitution cannot be applied.

The Constitution of the Republic of Moldova on Article 4 of Human Rights and Freedoms, establishes:

'Constitutional provisions on human rights and freedoms shall be interpreted and are enforced in accordance with the Universal Declaration of Human Rights, with the conventions and other treaties to which the Republic of Moldova is a party'. It also states that, 'wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party, and its domestic laws, priority shall be given to international regulations.[87]

According to Article 8 of the Constitution, entitled 'Respect for international law and international treaties'. 'The Republic of Moldova undertakes to respect the Charter of the United Nations and the treaties to which it is a party, to base its relations with other states on the principles and norms of international law unanimously recognised.'[88]

Compliance with international commitments by the Republic of Moldova is provided by Art. 8 of the Constitution, according to which the Republic of Moldova undertakes to respect the Charter of the United Nations Organisation and the treaties to which it is a party, to base its relations with other states on the unanimously recognised principles and norms of international law. According to the theory and practice of international law, by unanimously recognising the principles and norms of international law, the established principles and norms of international law will be understood to have a general and universal character. The unanimously recognised norms and principles of international law are enforceable for the Republic of Moldova to the extent that it has expressed its consent to be bound by the respective international acts.[89]

Furthermore, concerning the operative part of the Decision, the Court concluded that Article 4 of the Constitution guarantees fundamental human rights and freedoms that are constitutionally enshrined, as well as the universally recognised principles and norms of international law, meaning those principles and norms are of a general and universal nature.[90]

Regarding the issue of non-compliance between internal legislation and human rights protection standards, the Constitutional Court established that in cases of inconsistencies between international pacts and treaties concerning

87 Constitution of the Republic of Moldova, Art. 4.

88 Ibid.

89 Decision No. 55, 1999 of the Constitutional Court of the Republic of Moldova. [Online]. Available at: https://www.constcourt.md/public/ccdoc/hotariri/ro_1999_h_55.pdf (Accessed: 3 September 2024).

90 Ibid.

fundamental human rights and the internal laws of the Republic of Moldova, legal bodies are obliged to apply international regulations.

The Constitutional Court of the Republic of Moldova has issued numerous decisions that reflect its approach to the correlation between international and national legislation. In Decision No. 22 of 2007, the Constitutional Court was required to issue an opinion on the compatibility of the constitutional provisions with the provisions of the Rome Statute of the International Criminal Court, adopted on 17th July 1998, within the diplomatic conference of the United Nations. The complaint concerned the immunities enjoyed, according to national legislation, by high state dignitaries, judges and deputies. The Court concluded that the provisions of the Rome Statute of the International Criminal Court were compatible with the provisions of the Constitution of the Republic of Moldova.[91]

In Decision no. 6 of 2017,[92] the Court ruled that if national legislation contravenes an international obligation, the courts must give priority to international norms. This principle is essential for ensuring respect for fundamental rights, guaranteed by both the Constitution and international treaties. Also, the Court emphasised the importance of interpreting national legislation in accordance with international standards, thereby demonstrating the Republic of Moldova's confidence in its alignment with global norms.

This alignment is particularly evident in the Republic's obligations to respect UN conventions, a commitment that promotes democracy, the rule of law, and the protection of human rights.[93]

■ *3.4. Legislative process according to the United Nations treaties*

The Republic of Moldova is firmly committed to the protection of human rights and the alignment of its national legislation with international treaties. The Constitution of Moldova guarantees that foreign citizens and stateless individuals possess rights comparable to those of Moldovan citizens, with the right to asylum being governed by applicable laws and international agreements. However, recent asylum law lacks a provision that prohibits expulsion until all legal appeals have been exhausted, which stands in contradiction to the 1951 Convention on Refugees. In the realm of civil and political rights, Moldova has made significant strides toward judicial independence.

91 Decision No 22, 2007 of the Constitutional Court of the Republic of Moldova. [Online]. Available at: https://www.constcourt.md/public/ccdoc/hotariri/ro_2007_h_22.pdf (Accessed: 23 September 2024).

92 Decision on the Inadmissibility of Reports No. 9g/2017 and No. 9g-1/2017 of the Constitutional Court of the Republic of Moldova. [Online]. Available at: https://constcourt.md/public/ccdoc/decizii/ro-dcc6201701199g2017roca72d.pdf (Accessed: 30 September 2024).

93 Judgement of Constitutional Court Nr. 27 of 13 November 2020. [Online]. Available at: https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=748&l=ro (Accessed: 30 December 2024).

A noteworthy amendment in 2021 permits judges to be appointed until they reach a specified age limit. Nevertheless, limitations on the right to peaceful assembly persist, as the required notification period for demonstrations has only been reduced from 15 to five days, following recommendations from the United Nations Committee. Moldova's approach to economic and social rights has evolved, particularly with the introduction of laws aimed at combating discrimination.

While the UN Convention on the Elimination of All Forms of Discrimination against women was ratified in 1993, specialised legislation aimed at promoting equality was not established until 2012. Recent amendments in 2023 have broadened the non-discrimination framework, incorporating additional criteria and enhancing protections in education and public services.

The implementation of the Convention against Torture has resulted in the establishment of the National Mechanism for the Prevention of Torture, which is designed to safeguard individuals from ill-treatment by the authorities. Significant revisions to the Criminal Procedure Code now allow for the prosecution of torture allegations without the necessity of a victim's complaint in detention settings.

Concerning children's rights, Moldova ratified the Convention on the Rights of the Child in 1993 and has since enacted legislation to align national standards with international mandates. This commitment has continued with the ratification of optional protocols pertaining to issues such as armed conflict and child exploitation. In relation to women's rights, the Constitution guarantees equality, supported by laws aimed at combating gender-based violence and promoting gender equality across various sectors.

In alignment with the principles outlined in the UN Convention on the Rights of Persons with Disabilities, significant legislative adjustments were made in the Republic of Moldova. Referring to Law No. 201/2016, various existing legislative acts were amended to conform with the Convention's requirements. This law marked a substantial step toward integrating the Convention's human rights approach into national legislation.

Additionally, Government Decision No. 592 of 24th July 2017, further supported this integration by amending and supplementing 49 normative acts across different sectors. These modifications aimed to harmonise national regulations with the Convention's standards, ensuring that the rights of persons with disabilities are fully recognised and protected in various areas of public life, including social services, education, employment, and accessibility.

In 2018, amendments were made to Articles 50 and 51 of the Constitution of the Republic of Moldova, replacing the words 'persons with handicap' with the words 'persons with disabilities'.[94]

94 Report no. 35c/2018, Opinion on the draft law to amend articles 50 and 51 of the Constitution of the Republic of Moldova (Persons with Disabilities). [Online]. Available at: https://www.constcourt.md/public/ccdoc/avize/ro-ACC3201835c2018b7fb2.pdf (Accessed: 30 September 2024).

In 2016, the set of indicators for monitoring the implementation of the Convention was approved.

The actions undertaken by the Republic of Moldova, following the ratification of the Convention, can be listed as follows:

- The regulation and development of different types of social services for people with disabilities (Community Houses, Sheltered Housing, Personal Assistance, Mobile Team, Respiro, Adult Foster Care, Free Telephone Assistance, Day Centre for People with Disabilities, etc.), for the period 2010-2019.
- The approval of the National Program for Social Inclusion of Persons with Disabilities (for the years 2017-2022).
- The reform of the institution responsible for determining disability and work capacity, from 2013.
- The approval of the National De-institutionalisation Program and the Residential Institutions Transformation Plans, for the period 2018-2026.[95]
- The increase of social allowances, valorisation and indexation of disability pensions.
- The regulation of the minimum package of social services and allocation of financial means to the local public administration for the social services 'Personal assistance', 'Monetary support', 'Support for families with children', starting from 2018.
- The approval of provisions for subsidising employers who create or adapt jobs for people with disabilities and improve access to employment services, starting from 2019.
- The approval of mechanisms for granting facilities for the import of means of transport intended for the transportation of persons with locomotor system disabilities, as well as tax exemptions for road use, etc.

The National Program for the Deinstitutionalisation of Persons with Intellectual and Psychosocial Disabilities, developed and approved by the National Agency for Social Assistance (NASA) for the period 2018-2026, represents a pivotal initiative in Moldova's efforts to align with the UN Convention on the Rights of Persons with Disabilities. This program is a direct response to the challenges identified by the UN Special Rapporteur on the Rights of Persons with Disabilities following their September 2015 monitoring visit to Moldova.

During its visit, the UN Special Rapporteur highlighted several critical issues related to the deinstitutionalisation process, including the persistence of residential institutions and the insufficient availability of community-based social services for individuals with intellectual and psychosocial disabilities.

95 Government Decision No. 893/2018, 12 September 2018 regarding the approval of the National Program for the Deinstitutionalization of Persons with Intellectual and Psychosocial Disabilities for the years 2018-2026 and its Action Plan. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=109067&lang=ro (Accessed: 3 October 2024).

The Program aims to address these challenges by promoting the transition from institutional care to community-based services, thereby enhancing the autonomy and inclusion of persons with disabilities in society.

The overarching goal of the program is to provide support and services in community settings, thereby reducing reliance on institutional care and improving the quality of life for individuals with disabilities. This initiative aligns with the Convention's emphasis on independent living and social inclusion, marking a significant step towards achieving comprehensive and sustainable reform in the field of disability rights in Moldova.[96] These issues were also extensively analysed during the hearing in Geneva (March 2017) of the First Country Report on implementing the UN Convention on the Rights of Persons with Disabilities.

Following the presentation of the Report, the Committee on the Rights of Persons with Disabilities, in its Concluding Observations at paragraph 37, recommended to the Republic of Moldova: (a) to accelerate the deinstitutionalisation process and ensure the implementation of the moratorium; (b) to develop and execute, without delay, an action plan on the implementation of deinstitutionalisation reforms, indicating deadlines and periods for the closure of all residential institutions (c) to adopt legal measures providing for people with disabilities to be able to live independently, including personal assistance, and to clarify the responsibilities and allocation of financial resources for the development of services by central and local authorities; (d) to involve people with disabilities, through their representative organisations, in all stages of the deinstitutionalisation process (planning, implementation, evaluation, and monitoring).

The Republic of Moldova is committed to ensuring adequate access to justice for persons with disabilities on an equal basis with other persons, by providing age-appropriate procedural accommodations to facilitate their influential role as direct and indirect participants, including as witnesses, in all judicial proceedings, including at the investigative and other preliminary stages.[97]

Until 2nd June 2017, the Civil Code of the Republic of Moldova[98] provided a framework for declaring an adult natural person legally incapable. This process was applicable to individuals with mental disorders, such as mental illness or mental deficiency, who were unable to understand or direct their actions.

A court could declare such an individual legally incapable if it was determined that their mental condition impaired their ability to manage their own affairs. Once declared incapable, the person was placed under guardianship. A guardian was appointed to make legal decisions and act on behalf of the incapacitated individual, handling their financial and personal matters.

96 Ibid.

97 Cazacu, 2018, p. 9.

98 Civil Code of the Republic of Moldova, No. 1107 of 06.06.2002. Title III, Chapter I. Official Journal of the Republic of Moldova, No. 82–86. [Online]. Available at: http://www.legis.md/cautare/getResults?doc_id=143668&lang=ro# (Accessed: 30 August 2024).

If the individual's mental condition improved or was resolved, they could petition the court to reassess their capacity. If the court found that the person had regained the ability to understand and manage their actions, the declaration of incapacity would be lifted, and guardianship would be terminated.

During the period of incapacity, the individual was unable to legally enter into contracts or make decisions independently. The guardian was responsible for managing their legal and personal affairs.

This approach, while intended to protect individuals with severe mental health issues, faced criticism for potentially undermining their autonomy and rights. In response to international standards, such as those outlined in the UN Convention on the Rights of Persons with Disabilities, Moldova has been revising its legal framework to better respect and uphold the rights of persons with disabilities.

Compliance with the Convention's commitments after signing was not achieved in the short term, nor in time for the legislative change in the matter of legal capacity of the natural person. Decision of the Constitutional Court No. 33 of 17 November 2016, which declared Article 24 of the Civil Code of the Republic of Moldova No. 1107-XV of 6 June 2002 unconstitutional, and the declaration of incapacity to act is no longer applicable. Protective measures in the form of guardianship are aimed only at persons who are completely lacking in discernment, against whom the application of other less restrictive protective measures proves to be ineffective. In the current version of the Civil Code, Chapter I, new sections were introduced, which regulate both the legal status of the natural person and the legal capacity of the natural person, but also the measures to be taken to protect the natural person. These revolutionary changes introduced new concepts and visions regarding the acting capacity of the adult natural person.[99]

Fundamental human rights and freedoms are regulated, mainly by the following normative acts: Civil Code no. 1107/2002, Criminal Code no. 985/2002, Civil Procedure Code no. 225/2003, Criminal Procedure Code no. 122/2003, Education Code no. 152/2014, Law no. 514/1995 regarding judicial organisation, Law no. 158/2008 regarding public office and civil servant status, Law no. 1349/1997 regarding parliamentary lawyers, Law no. 382/2001 regarding the rights of persons belonging to national minorities and the legal status of their organisations, Law no. 5/2006 ensuring equal opportunities between women and men, Law no. 45/2007 regarding the prevention and combating of family violence, Law no. 105/2008 regarding the protection of witnesses and other participants in the criminal process, Law no. 241/2005 preventing and combating human trafficking, Law no. 1585/1998 regarding mandatory health care insurance, Law no. 23/2007 regarding the prevention of HIV/AIDS infection, Health Protection Law no. 411/1995, Law no. 105/2018 regarding the promotion of employment and unemployment insurance,

99 Cazacu, 2018, p. 10.

Law no. 133/2008 regarding social assistance, Law no. 270/2008 regarding asylum in the Republic of Moldova, Law no. 274/2011 regarding the integration of foreigners in the Republic of Moldova, Law no. 125/2007 regarding religious cults and their component parts, Law no. 338/1994 regarding the rights of the child, Law 60/2012 regarding the social inclusion of persons with disabilities, etc.

The Ombudsman's legal status, mandate, duration, and powers are regulated by Law No. 52/2014 on the People's Advocate (Ombudsman).[100] In February 2023, the regulatory framework was updated to align with the latest international trends and standards, enhancing the effectiveness of the Ombudsman institution. This update included improvements in the procedures for selection, appointment, and dismissal, as well as an expansion of the Ombudsman's competencies.

In 2019, the National Council for Human Rights was established. The Council serves an advisory body of the Government, designed to provide an efficient mechanism for the development and evaluation of policy documents related to human rights, in the context of implementing international commitments.

The self-proclaimed region of Transnistria remains largely outside the reach of effective human rights monitoring, and the government in Chișinău continues to make efforts to implement projects and oversee human rights observance in the region. In its country report, the US State Department, drawing on various sources, highlighted several serious human rights violations, including: forced disappearances; torture and cases of cruel, inhuman, or degrading treatment or punishment by the authorities; harsh and life-threatening prison conditions; arbitrary arrest or detention; political prisoners or detainees; significant issues with the independence of the judiciary; arbitrary or unlawful interference with privacy; serious restrictions on free expression and media, including criminal libel laws; serious limitations on internet freedom; substantial interference with the freedom of peaceful assembly and association, including overly restrictive laws on the organisation, funding, or operation of nongovernmental and civil society organisations; severe restrictions on the freedom of movement; serious and unreasonable restrictions on political participation; high levels of government corruption; significant government restrictions or harassment of domestic and international human rights organisations; lack of investigation and accountability for gender-based violence, including domestic or intimate partner violence.[101]

100 Law No. 52, 3 April 2014 on the People's Advocate.

101 Moldova 2022 human rights report, 2022, p. 15. [Online]. Available at: https://md.usembassy.gov/wp-content/uploads/sites/210/415610_MOLDOVA-2022-HUMAN-RIGHTS-REPORT.pdf (Accessed: 30 September 2024).

According to Government Decision No. 164, dated 6th March 2024, the National Program for Ensuring Compliance with Human Rights for the period 2024-2027 was approved.[102]

The purpose of the program is to enhance the quality of life in the Republic of Moldova, so that every person lives their life with dignity, and people's aspirations and activities are the basis of development efforts at both national and local level.

In the third cycle of the Universal Periodic Evaluation (UPU 2022), the Republic of Moldova accepted 186 out of 209 recommendations received, registering a decrease of 2.11%, when compared to the 2nd evaluation cycle. Most of the accepted recommendations aim to: improve the institutional and policy normative framework; reduce inequalities; increase civil and political rights; balance economic, social and cultural rights; increase gender equality; protect the rights of the child; reach and protect other vulnerable groups and people.[103]

Enumerating these international mechanisms, we mention that the Republic of Moldova is not a party to two fundamental conventions in the field of labour migration (the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families and ILO Convention no. 143).[104] Several limitations of labour rights faced by migrant workers who are citizens of the Republic of Moldova were identified, in particular limitations regarding: the right to free movement, professions that can be exercised by migrant workers in the destination states and access to trade union rights, restrictions imposed by sponsorship requirements, the need to leave the country after dismissal or termination of the employer's activity, etc. Emerging from the latest events that shook the whole of Europe, the general recommendation to ratify the fundamental conventions in the field of labour migration is presented.[105]

102 Government Decision No. 164, 26 March 2024 for the approval of the Regulation regarding the activity of border representatives. [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=91107&lang=ro (Accessed: 30 September 2024).

103 UN Human Rights Council. Universal Periodic Review – Republic of Moldova.

104 International Labour Organisation, no date.

105 Cebotari, 2023, p. 164.

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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 became 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*

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1 Abraszewski, 1975, p. 12.

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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 Wlodkowic'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 Czartoryski, 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 Warszwska*) 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 courts[28] 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 Council[39] (Previously also UN Commission on Human Rights[40]). 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 government[54].

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 185[55] 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-Połczyńska, 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 rights[57].

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 procedure[60] 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 Refugees[84] 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 Protocol[85] 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 treaty[95]. 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 UNICEF[98] and greatly impacted the debate and adoption of Declaration of the Rights of the Child[99].

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 Tadusz Smyczyński 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 women[115] 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 thev 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 that 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 torture[123]. 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 guilty[125]. 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 CAT[127]. 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 Prewecji 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 act[137] 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 he 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 sixth[148] 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 crime[154]. 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 changes[163] 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 Convention[180] 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 ICCPR[190].

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 applicant[191].

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.

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REBECCA LILLA HASSANOVÁ*

Universal Protection of Human Rights and Central Europe: Slovakia

ABSTRACT: *The protection of human rights is a fundamental principle that underlies democratic societies and international law. This article examines the universal protection of human rights through the lens of the Slovak Republic, analysing its commitment to international standards. The perspective of domestic human rights law established mainly by the Constitution will be completed by the research concerned with the implementation of human rights documents. The focus will be on the position of the most influencing human rights conventions, such as The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights.*

KEYWORDS: *Slovak Republic, human rights protection, UN treaty system, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights*

1. Introduction

Human rights are essential to the dignity of every individual and form the bedrock of democratic governance. The Slovak Republic, as a member of the European Union and the United Nations, recognises the necessity of safeguarding these fundamental human rights. Since its creation achieved by the dissolution of Czechoslovakia in 1993, Slovakia has made significant strides in aligning its legal framework with international human rights standards. Its commitment to universal human rights is reflected in its constitutional provisions, legal statutes, and

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its participation in international human rights treaties. This article explores the multi-layered approach Slovakia employs in safeguarding human rights, guided by international treaties, national legislation, and societal engagement.

The concept of human rights, which emphasises dignity, freedom, and equality, has been articulated and evolving over centuries. In Slovakia, the journey towards recognising and institutionalising human rights is multifaceted, influenced by historical events, cultural contexts, and international frameworks. The evolution of human rights reflects the region's sociopolitical transformations through various historical periods. The key phases in the historical development of human rights in Slovakia were strongly influenced by the interplay between domestic and international factors. From its origins in the medieval era to contemporary developments following independence in 1993, Slovakia's human rights framework has been shaped by European influences, national movements as well as the demands arising from global human rights norms.

Generally until the 1920s a complex human rights framework was missing in the region of Slovak republic.[1] Nonetheless, the roots of human rights in Slovakia can be traced back to medieval practices and local customs that emphasised individual rights within community structures. During the medieval era, various laws and charters promoted certain rights related to land ownership, personal liberties, and local governance. The first records of Slavic law show an approximate view of the first human rights on the territory of Slovakia. The so-called *Zakon sudnyi lyudem*, which is the result of the work of the Christian believer Method, is one of the first that can be considered an indication of human rights. The eclogue with 33 articles regulated property and marital relations. Later on in the 16th century, the more well known historical document was created, known today as István Werböczy's Opus Tripartirum, through which several rights were codified that today can be considered the predecessors of human rights.[2] The Hungarian legal tradition, under which Slovakia was governed for centuries, also included codifications that provided some protection for individual rights. Concretely, the Golden bull from 1222 is today understood as bringing development and new rights to the region.[3] Later on, in the Renaissance era, ideas of individual liberty began to blossom, influenced by the humanist way of thinking that was permeating across Europe. Slovak thinkers contributed to discussions on rights and governance, culminated in the need for societal structures that respected basic human dignity.[4]

1 A more complex catalogue of human rights was first introduced by the Constitutional document of Czechoslovak republic in 1920, which was inspired by natural law theories, the Constitution of USA and the Declaration of rights of Man and of the Citizen.
2 See Beňa and Gábriš, 2008.
3 Gábriš and Švecová, 2009, pp. 35–36.
4 Beňa and Gábriš, 2008, p. 41.

The period following World War II, was characterised by the socialistic system including frequent human rights violations. Even though Czechoslovakia emerged from the conflict as a winner country, after the Communist party won in the 1946 parliamentary elections, the new party has dramatically altered the human rights framework. The new regime prioritised state control, often at the expense of individual freedoms. A new constitution was adopted in 1948, stipulating rights in a theoretical fashion. The emphasis seen in the text was put on equality between citizens, social and economic rights. However, in practice, the repression of dissent, censorship, and violations of human rights became prevalent.[5]

Attempts at regime change were occasionally visible on the rise of some civil movements. The most well-known being the Charter 77 movement which emerged in the 1970s and advocated for respect of human rights as outlined in international agreements. This civic initiative called for the government to uphold its commitments derived from international human rights instruments. Although faced with severe repression, it played a critical role in raising awareness and fostering a culture of human rights advocacy.[6]

The Velvet Revolution in 1989 marked a turning point for human rights in Slovakia and Czechoslovakia. Mass protests against the authoritarian regime led to a peaceful transition to democracy. The new government emerged with a renewed focus on human rights, reinstating civil liberties and aligning itself with European human rights standards. By the constitutional amendment n. 23/1991, in 1991 the country created the charter of fundamental rights and freedoms including fundamental rights such as basic political rights, the rights of minorities, economic, social and cultural rights and the right to a fair trial.[7]

Following the fall of the socialist regime, the idea was to recreate the former constitutional scheme of Czechoslovakia. Nevertheless, the aftermath on a political level was proven to be clouded in conflict, which was represented by an absurd "hyphen war", dealing with the name of the new country. However, the conflict starting with the fight for a proper name of the country presented a clash of priorities. The peaceful dissolution of Czechoslovakia into the Czech Republic and the Slovak Republic defined the birth of the Slovak human rights framework.[8]

2. Legal framework for human rights in Slovakia

The constitutional catalogue of human rights and freedoms in the Slovak Republic is abstract and general, thus it is able to cover a variety of situations and the social

5 Wagnerova, 2009, pp. 330–362.
6 Bure et al., 2012, pp. 141–146.
7 See Dančák and Šimíček, 2001.
8 Lukáš, 2013, p. 126.

realities of society. It can be assumed that a situation will not arise in society where it would not be possible to subsume part of the new social reality under the existing law or freedom enshrined in the constitution. This is done through the interpretation of law, which does not understand the catalogue of rights as closed and static, but as a dynamic and constantly developing and changing system together with social reality and the progress of society.[9] The wide interpretation of the rights and freedoms enables to recognise rights which are not explicitly mentioned in the Constitution as well as to derive other new rights from the existing wording of the text.[10]

Slovakia's Constitution, adopted in 1992, lays the groundwork for the protection of human rights. It guarantees fundamental rights, such as the right to life, personal freedom, and equality before the law. These rights are further supplemented by international treaties which were ratified and became part of the Slovak legislative framework. Generally, the Constitution in Art. 1(2) acknowledges and adheres to the general rules of international law, the international treaties by which it is bound, and its other international obligations.[11] The first article is further supplemented by the wording in Art. 7, which sets the basic understanding of the relationship between the Slovak legal order and international law, by stipulating that international treaties enjoy the power of precedence over the domestic law ('zákony') of the country, i.e. there is no general prevalence over the Constitution. The power to prevail over domestic laws is possible only in cases of ratified and properly promulgated international treaties on human rights and fundamental freedoms, international treaties that do not necessitate exercising a law, and international treaties that directly confer rights or impose duties on natural or legal persons.[12]

The Constitution of the Slovak Republic belongs to the constitutions that refer to the modification of a part of defined basic rights and freedoms into laws. Therefore, for its application and interpretation, it is important that the founder of the constitution committed the legislator to a rule-making activity, from which laws would emerge, enabling the subjects of constitutional rights and freedoms to realistically exercise even those basic rights and freedoms that they could claim only within the limits established by the law authorised by the constitution to implement them.[13]

According to the Constitution of the Slovak Republic, two categories of international treaties on human rights and fundamental freedoms are distinguished,

9 Ľalík, 2010, p. 1307.
10 Cibulka, 2014, p. 83.
11 Art. 1(2) of the Constitution of the Slovak republic. Law n. 460/1992.
12 According to Art. 7(4) the validity of different international treaties for whose exercise a law is necessary or for which directly confer rights on persons, require the approval of the National Council of the Slovak Republic (Parliament) before their ratification.
13 Drgonec, 1997, p. 57.

which have been ratified and declared in the manner established by law and have priority over the law, respectively by the laws of the Slovak Republic. In both categories, these are legally binding documents, such as international treaties on human rights and fundamental freedoms, which were ratified and declared in the manner established by law after 1st July 2001 and are assessed in accordance with Art. 7, para. 5 of the Constitutions of the Slovak Republic. These have priority over the laws of the Slovak Republic, regardless of the extent of constitutional rights and freedoms they grant. International treaties on human rights and fundamental freedoms, which were ratified and declared in the manner established by law before 1st July 2001, are assessed in accordance with Art. 154c of the Constitution of the Slovak Republic, i.e. they have priority over the law, only if they ensure a greater range of constitutional rights and freedoms.[14] Art. 154 c included in the 'big amendment process', and concluded before the country's accession to European Union treaties claims that those international treaties on human rights and fundamental freedoms, that have been ratified and promulgated in the manner laid down by law, hold prevalence over the Slovak legislation. Nevertheless, they are equally part of the legal order.[15]

Nevertheless, in addition to the domestic legislation, Slovakia is a party to several key international human rights instruments. On the web page of the Ministry of foreign affairs it is stated that the country ratified more than 50 human rights treaties including their protocols.[16] Understood as the most important are the following:

- The Universal Declaration of Human Rights (UDHR): The principles stemming from the Declaration are fully accepted and after the creation of new democratic states in 1989 they were explicitly part of the Constitutional Act no. 23/1991, known as the Charter of Fundamental Rights and Freedoms. Later the text of the Charter was introduced as part of the Constitution of the Slovak Republic.
- The International Covenant on Civil and Political Rights (ICCPR): Ratified by the socialist predecessor by notification n. 120/1976. Later on, succeeded by the Slovak Republic.
- The International Covenant on Economic, Social and Cultural Rights (ICESCR): Ratified as the ICCPR, reinforces its obligation to uphold civil and political rights.

14 Document of the Ministry of Education, Research, Development and Youth of the Slovak Republic. Generally binding legal regulations in the field of human rights in Slovakia, Annex 2., p. 1.

15 Art. 154 c of the Constitution of the Slovak republic. Law n. 460/1992. See Šmigová, 2023, p. 285.

16 Ministry of Foreign and European Affairs of the Slovak Republic, no date.

- The Convention relating to the Status of Refugees: The Federal Assembly of the Czech and Slovak Federal Republic ratified the document on 26th November 1991.
- The International Convention on the Elimination of All Forms of Racial Discrimination: On behalf of the Czechoslovak Socialist Republic, the convention was signed in New York on 7th March 1966.
- The Convention on the Elimination of All Forms of Discrimination against Women: On behalf of the former Czechoslovakia, the Convention was signed in Copenhagen on 17th July 1980. After the approval of the Federal Assembly of the Czechoslovak Republic, it was ratified by the President of the Republic with the exception of Art. 29, para. 1 The reservation was later revoked in 1991.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Federal Assembly of the Czechoslovak Republic signed the treaty in 1988 and implemented it into its legal order under No. 143/19788 Coll.
- The Convention on the Rights of the Child: On behalf of the Czech and Slovak Federative Republics, the Convention was signed in New York on 30th September 1990.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: Not signed by the Slovak Republic.
- The Convention on the Rights of Persons with Disabilities: The Convention was approved and signed by the National Council of the Slovak Republic (Parliament) on 9th March 2010. The document is implemented into national law under no. 317/2010 Coll.

Together with numerous other human rights agreements[17] this framework creates a robust mechanism for the protection and promotion of human rights in Slovakia. The following chapters will be devoted to the analysis of the application of these treaties. Several regional human rights instruments require states to file periodic reports on the measures taken to fulfil its obligations including their success and difficulties they had during the process. The subchapters will cover the most influencing elements in this respect, i.e. the mentioned reports and/ or existing landmark cases tied to Slovakia.

17 The author deemes it necessary to mention in the European Convention on Human Rights, which was signed on 21 February 1991, in Madrid on behalf of the Czech and Slovak Federative Republic. Slovakia succeeded to this agreement and implements the decisions of the European Court of Human Rights thoroughly. The Convention and the jurisprudence of its court has a tremendous impact on the human rights framework of the country.

2.1. The Universal Declaration of Human Rights

The starting point and the most important internationally valid human rights document are the Universal Declaration of Human Rights of 10th December 1948. Slovakia fully accepts the principles stemming from the Declaration, and after the fall of the socialist regime in 1989 it defined the rights enhanced in the Declaration in more detail in the Constitutional Act No. 23/1991 Coll, known as the Charter of Fundamental Rights and Freedoms. Later on, with the creation of an independent country these articles were integrated to the Constitution of the Slovak republic.[18]

Nevertheless, when the Declaration was being created, representatives of the predecessor country Czechoslovakia were present and active during discussions. Mr. Nosek the representative of Czechoslovakia claimed that the key element of Article 24 was its definition of the right to a standard of living. The representation that was regarding the discussion of the wording of Art. 24 lobbied for the approval of the amendment proposed by the USSR regarding social insurance. The reason behind this was the country's Constitution of that time, which included an article with the right to rest and leisure, guaranteed through holidays with pay and regulated working hours. Hence, Mr. Nosek declared, that if the mentioned amendment had been included, the article would have been more comprehensive and progressive, and better aligning with the spirit of Article 55 of the UN Charter. He also pointed out the work of the International Labour Organization, which interpreted the standard of living as aspects including consumption level, social services, education, recreation, health facilities as well as rest and leisure.[19]

The Czechoslovak representation was likewise active during the drafting in the later stages. Mr. Augenthaler, a Czech Diplomat, openly articulated his sadness and regret that the proclamation of the Declaration would not be a grand event, acclaimed by the masses as it would be anticipated and in place. He declared that all contemporary declarations of human rights reflect the aspirations of a truly progressive society, they are forward-looking and unambiguously highlight the shortcomings of declining powers. However, the declaration before the Assembly lacked that revolutionary spirit and had been surpassed by the constitutions of numerous other member and non-member States. The representative then referenced a passage from the preamble of the Czechoslovak Constitution, which asserted that Czechoslovakia was a popular democratic State where the people enacted laws of their own choosing, and where the national economy was designed to promote public wellbeing, prevent economic crises, and ensure the equitable distribution of national income, ultimately aiming to eliminate the exploitation of individuals. The Czechoslovak delegation had consistently advocated for the first universal declaration of human rights to include commitments for its immediate

18 See Korn, 2015.
19 Schabas, 2013, p. 2713.

and progressive implementation, yet it claimed that the majority seemed primarily focused on declarative aspects.[20] Generally, while the representatives of the predecessors of the current countries (Slovak Republic and Czech Republic) discussed and also criticised decisions during the drafting process, even then some concerns had arisen regarding internal matters within Czechoslovakia.[21]

Today, according to the decision of the CC of SR, from 1997, the Declaration has the nature of a political document. It was not declared according to Art. 11 of the Constitution of the Slovak Republic and § 1 and § 4(3) of the Act of the National Council of the Slovak Republic No. 1/1993 Coll. on the Collection of Laws of the Slovak Republic. Hence, this declaration does not grant persons the rights and freedoms guaranteed by the constitution. Therefore, even though the rights enshrined in the Declaration were included in the Constitution during its drafting process, it is not expressly part of the legislative framework of Slovakia. Accordingly, a petition or part of a petition of a person objecting to a violation of the right recognised by the relevant Declaration cannot be accepted for proceedings before the CC of SR.[22]

■ *2.2. The International Covenant on Civil and Political Rights*

At a universal level (ie: The United Nations) Slovakia is bound by key international treaties in the field of human rights, to which it succeeded on 28th May 1993 with effect from 1st January of 1993. Slovakia's ratification of this covenant reinforces its obligation to uphold civil and political rights.

Decisions of UN treaty bodies in the position of quasi-judicial bodies play an important role in enforcing measures aimed at further support and protection of human rights. The Slovak Republic currently recognises the jurisdiction of seven UN treaty bodies (the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Persons with Disabilities, the Committee on Economic, Social and Cultural Rights and the Committee on rights of the child) to receive and assess complaints from individuals, groups of individuals or non-governmental organisations under its jurisdiction, who object to the violation of the rights stipulated in the conventions by the Slovak Republic.[23]

The Human Rights Committee presented its concluding observations on the fourth report of Slovakia in 2016. Firstly, it emphasised the necessity to draw

20 Ibid. Continuation of the discussion on the draft universal declaration of human rights: report of the Third Committe (A/777), pp. 3045–3046.

21 While the proposals concerning the protection of minorities were on the table some concern in the subject matter were raised regarding the Czechoslovak minorities, namely the Sudeten Germans.

22 ÚS SR Decision of the Constitutional Court of the Slovak Republic, no. II. ÚS 18/97 of 25 March 1997.

23 See Kráľ, 2004.

attention of legal professionals to have the immense knowledge about the Convention as such, including the need to ensure its application on domestic courts.[24] Furthermore, the Committee recommended that its concerns connected to multiple discrimination as a form of discrimination should be addressed. This was advised to be done by raising awareness and enforcing the existing legal framework established mainly by the Anti-Discrimination Act, as well as undertaking the analysis of the small number of disputes and small amount of compensation issued.[25] The Committee issued a warning regarding the existence of hate speech, adding the need to develop and implement procedures which would be compatible with the provisions of the Covenant.[26] In its further points there are mentions of necessity to strengthen the effort to adopt measures which fight against the discrimination of Roma children and proper inclusion of the members of the Roma community or of persons with disabilities.[27] Additionally, the Committee feels the need to emphasise the country's obligations with regard to the prohibition of torture and cruel, inhuman or degrading treatment connected to the excessive use of force. The mentioned recommendation was based on the Committee's concerns regarding allegations of the use of excessive force by Slovak law enforcement officials.[28]

The Working Group on the Universal Periodic Review presented its report regarding Slovakia in 2024. During the review the working group performed interactive dialogue, where 88 delegations made statements. Several recommendations were included as part of the countries' statements, such as: to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; to further consider the possibility of ratifying the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, or to consider withdrawing the reservation to Article 27 of the 1954 Convention relating to the Status of Stateless Persons, as well as to consider the development of the National Plan of Action on Statelessness.[29]

The Human Rights Committee has dealt with numerous cases concerning the violation of rights by Slovakia. In the case of Drobek v Slovakia the applicant, an Australian citizen who was born in Slovakia, made the complaint that he was ineligible for the restitution of property removed from his ethnic German family

24 Human Rights Committee. Concluding observations on the fourth report of Slovakia. CCCPR/S/SVK/CP/4. 22 November 2016, paras. 6–7.
25 Human Rights Committee. Concluding observations on the fourth report of Slovakia. CCCPR/S/SVK/CP/4. 22 November 2016, paras. 10–11.
26 Human Rights Committee. Concluding observations on the fourth report of Slovakia. CCCPR/S/SVK/CP/4. 22 November 2016, para. 15.
27 Human Rights Committee. Concluding observations on the fourth report of Slovakia. CCCPR/S/SVK/CP/4. 22 November 2016, paras. 16–21.
28 Human Rights Committee. Concluding observations on the fourth report of Slovakia. CCCPR/S/SVK/CP/4. 22 November 2016, paras. 28–29.
29 Human Rights Council. 57th session. Report of the Working Group on the Universal Periodic Review. Slovakia. A/HRC/57/13, 2024, agenda item 6.

by the Czechoslovak government after the Second World War. He was claiming that his rights arising from Arts. 2, 17 and 26 of the ICCPR were violated. At the time of his complaint, Slovak law only provided for the restitution of property removed by the Communist government. Hence, the law applied only to individuals whose property was confiscated after 1948 and thus excluded the applicant from compensation with respect to property taken from ethnic Germans by a 1945 decree of the pre-Communist regime. The Committee has consistently held that not every distinction or differentiation in treatment amounts to discrimination and decided that there was no violation of the articles.[30]

Another landmark case based on the individual complaint is from the year 2002, when the Committee dealt with the indictment of István Mátyus v Slovakia. The case concerned a complaint regarding the passive voting rights of Mr. Mátyus in the Town Council of the city of Rožňava. He claimed that based on the Slovak Law no. 346/1990 Coll. on elections to municipal bodies, "in every town, multi-mandate voting districts shall be established in which representatives shall be elected to the village or town council proportional to the number of inhabitants in the town, and at most 12 representatives in one electoral district". The applicant failed to acclaim a seat at the council based on his failure to properly follow the rule of proportionality to the number of inhabitants. After several failed attempts to seek justice through domestic courts, the applicant filed a complaint claiming that Art. 25 (a) and (c) of the ICCPR were violated, as he was not given an equal right to take part in the conduct of public affairs. The Committee observed that the CC of Slovakia determined that the establishment of election districts for the same municipal council, which resulted in significant disparities in the number of inhabitants per elected representative, violated the equality of electoral rights mandated by the State party's constitution. This occurred despite the election law's requirement that voting districts be proportional to the population. In light of this ruling, which referenced a constitutional principle akin to the equality requirement in Article 25 of the Covenant, and given that the State party did not provide any explanation for the variations in the number of inhabitants or registered voters per elected representative in different areas of Rožňava, the Committee concluded that the State party infringed upon the author's rights under Article 25 of the Covenant.[31]

However, the Committee recognised that cancelling elections after they have occurred may not always be the most suitable solution in cases of electoral inequality, particularly when such inequality stems from laws and regulations established prior to the elections, rather than from irregularities during the elections themselves. Additionally, in the context of this specific case and considering

30 Human Rights Committee. Peter Drobek v. Slovakia, Communication No. 643/1995, 31 May 1994, CCPR/C/60/D/643/1995.

31 Human Rights Committee. Istvan Matyus v Slovakia, Communication No. 923/2000, CCPR/C/75/D/923/2000, para. 9.2.

the time that had elapsed since the elections in December 1998, the Committee believed that its determination of a violation serves as a sufficient remedy on its own. The State party has a duty to prevent similar violations from occurring in the future. Electoral systems should avoid allowing significant disparities in the number of voters across different constituencies. Such disparities suggest that States should not implement positive discrimination measures that aim to enhance political representation for disadvantaged groups or minorities. For example, Scottish and Welsh voters benefit from less populated constituencies in elections for the Westminster Parliament, while electoral boundaries in Western Australia have been designed to favour rural populations.[32] General Comment 25[33] indicates that such measures are not permissible. Although some form of positive discrimination may be allowed under Article 25, the language of General Comment 25 does not appear to permit it regarding the value of an individual's vote.[34]

In conclusion it was unavoidable to address the question of the acceptance of the Committees resolutions in the country. Since recently the questions regarding the applicability of the opinions of certain respected committees had arisen, it was necessary to sum up with the current point of view of the Slovak CC. The CC of SR had in its decision in 2018 explicitly dealt with the nature of those resolutions which were created by the UN Human Rights Committee, as an example of a quasi-judicial international body. In the pertinent ruling the Court stipulated that these resolutions have a non-binding character even though they may be well respected. The aforementioned non-binding force is additionally supported by the interpretation of scholars which generally agree with such nature of the resolutions.[35] Hence, even though the outcomes of the work of the Committee are generally understood, as well as respected, Slovakia reserves its right to turn to different solutions.

■ *2.3. The International Covenant on Economic, Social and Cultural*

The Slovak Republic is a State party to the International Covenant on Economic, Social and Cultural Rights, which was signed on behalf of the Czechoslovak Socialist Republic on 7th October 1968. As the legal successor to the Czech and Slovak Federal Republic, the country became a State party to the Covenant on 28th May 1993, with a retroactive effect from 1st January 1993. In its capacity as a State party to the Covenant, it submits periodic reports to the Committee on Economic, Social

32 See McGinty v Western Australia, 1996, 186 CLR, p. 140.
33 ICCPR General Comment 25, 1996.
34 See Partsch, 1981, p. 240.
35 Decision of the Constitutional Court of the Slovak republic. N. II. Ús 319/2018 from 30 August 2018.

and Cultural Rights regarding the implementation of the Covenant in accordance with Articles 16 and 17.[36]

By ratification of the Covenant the country reflected its commitment to ensure not only civil liberties but also socio-economic rights. In connection with the adoption of the legislation necessary to ensure its obligations arising from its text, several questions arose during the Slovak constitutional discourse. The primary concern was regarding whether the legislator was obliged or only authorised to accept legal regulation according to Art. 51, para. 1 of the constitution, which mainly concerns economic, social and cultural rights. The reasoning of the CC of SR, as well as a large part of the doctrinal statement, expressed itself clearly, namely that it is a constitutional obligation of the legislator to adopt a law, the fulfilment of which can be assessed by the Constitutional Court. Thus, the legislator would violate the constitution if they did not adopt the legislation. The legislator's obligation to adopt legal regulations applies to the area of substantive as well as to the area of procedural law. That is, the positive commitment of the state to adopt an adjustment in both matter and form.[37]

Regarding the latest report of the Committee on Economic, Social and Cultural Rights performed in 2019 the Committee had several recommendations based on its principal subjects of concern. First of all, it reiterated its previous recommendation from 2012 demanding to increase the knowledge of numerous law professionals related to the Covenant, as it observed the lack of its application in domestic court decisions.[38] Furthermore, it expressed its concern regarding the functioning of the Slovak National Centre for Human Rights. The Committee claimed that the Centre was not appropriately independent as required, according to the Paris Principles, that it was not fully transparent regarding the recruitment processes, and that it lacked proper funding. The main concern was the effective cooperation of the national human rights protection bodies, such as the mentioned Centre, the Public Defender of Rights, the commissioner for persons with disabilities and commissioner for children.[39] Moreover, the Committee suggested the amendment of the anti-discrimination act from 2004, by removing the obstacles for a judicial remedy for victims, and drawing attention to the possibilities of protection provided by the act towards numerous minority groups.[40] With regards to discrimination based on gender identity and sexual orientation, the

36 Economic and Social Council. Implementation of the International Covenant on Economic, Social and Cultural Rights. Second periodic reports submitted by States parties under articles 16 and 17 of the Covenant. N. E/C.12/SVK/2. 14 January 2011. paras. 1–2.

37 Drgonec, 1996, p. 10.

38 Committee on Economic, Social and Cultural Rights. Concluding observations on the third periodic report of Slovakia, n. E/C.12/SVK/CO/3, 14 November 2019, paras. 4–5.

39 Committee on Economic, Social and Cultural Rights. Concluding observations on the third periodic report of Slovakia, n. E/C.12/SVK/CO/3, 14 November 2019, paras. 6–7.

40 Committee on Economic, Social and Cultural Rights. Concluding observations on the third periodic report of Slovakia, n. E/C.12/SVK/CO/3, 14 November 2019, para. 13.

Committee suggested to develop legal institutions, such as registered partnerships or civil unions, as Slovakia did not recognise these forms of cohabitation and provided no legal background for same-sex relationships.[41] The Committee observed that a small number of men took paternity leave, which correlates with the lack of appreciation regarding unpaid care work. Lastly, it is necessary to mention that the Committee sounded a warning with regards to issues related to violence against women, by recommending the ratification of the Istanbul Convention and emphasised that it was necessary to ensure a national strategy preventing and resolving several issues concerning the Roma minority, including homelessness, preschool education, segregation and reproductive health.[42]

3. Slovakia's relationship with other conventions

The notification of succession to numerous UN human rights multilateral conventions took place on 28th May 1993 with a retroactive effect from the creation of the country on 1st January 1993. The notification of succession is published in the Collection of Laws under number 53/1994 Coll.

■ *3.1. The 1951 Convention on the Legal Status of Refugees*

The Convention on the Legal Status of Refugees from 1951 (signed in Geneva) together with its Protocol from 1967 (signed in New York) are considered the main sources of refugee law. Both documents reflect basic human values and are the first and only instruments at global level that specifically regulate the treatment of those forced to leave their homes due to the severance of ties with their country of origin. The Federal Assembly of the Czech and Slovak Federal Republic ratified the document on 26th November 1991, and it entered into force for the mentioned predecessor country on 24th February 1992. The Slovak Republic assumed these international obligations as part of the succession immediately after the division of Czechoslovakia.[43]

The most important law regulating the stay of foreigners in Slovakia, which implements the articles of the Convention, is Act No. 48/2002 Coll. on the residence of foreigners. According to the Act on the residence of foreigners, a foreigner is anyone who is not a citizen of the Republic. However, the stay of citizens of the European Union and the European Economic Area, who are also foreigners from the point of view of the law, is governed by a special regime. A foreigner can apply

41 Committee on Economic, Social and Cultural Rights. Concluding observations on the third periodic report of Slovakia, n. E/C.12/SVK/CO/3, 14 November 2019, paras. 15.
42 Committee on Economic, Social and Cultural Rights. Concluding observations on the third periodic report of Slovakia, n. E/C.12/SVK/CO/3, 14 November 2019, paras. 29–51.
43 Pyteľová, 2009, p. 149.

for a permit for one of three types of residence: permanent residence, temporary residence or tolerated residence.[44]

More recently, in 2024, the country celebrated the 30th anniversary of the Office of the United Nations High Commissioner for Refugees in Slovakia, where the Ministry of Foreign Affairs emphasised that over the past three decades the UNHCR has supported significant activities at the national level to protect refugees and other persons in need. The agreement regarding the legal status, immunities and privileges of UNHCR and its staff in the Slovak Republic was signed on 1st March 1994. For 30 years, UNHCR has worked closely with state authorities, including local and self-governing authorities, UN agencies and national partners.[45]

■ *3.2. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination*

The International Convention on the Elimination of All Forms of Racial Discrimination was initially promulgated on behalf of the former Czechoslovak Socialist Republic in 1966. The National Assembly expressed its agreement with the text of the convention and the president of the republic ratified it on 29th December 1966. The instrument of ratification was deposited with the Secretary-General of the United Nations, depositary of the Convention, on 29th December 1966. It entered into force on 4th January 1969, and on that date, it also became valid for former Czechoslovak Socialist Republic (publication in the collection of laws under No. 95/1974 Coll.). As a result of the succession, Slovak Republic became a party to the convention on 28th May 1993, with retroactive effect from 1st January 1993.[46]

The effectiveness of the Convention can be seen on the implementation of several laws, such as the amendment to the Education Act in 2021, which among other things, requires pre-school attendance for all children from the age of five, and hence has had an effect on the Roma minority, as well as the adoption of the Strategy for Roma Equality, Inclusion and Participation for the years 2021-2030. Since the Convention has been in force, the Committee on the Elimination of Racial Discrimination made thirteen reports regarding the circumstances in

44 Pyteľová, 2009, p. 147.

45 See Report of the Ministry of Foreign Affairs, The Office of the United Nations High Commissioner for Refugees has been helping in Slovakia for 30 years, 2024.

46 Presentation report on the proposal to change an article of an international convention. International Convention on the Elimination of All Forms of Racial Discrimination – Art. 8, 2006.

the country and decided upon two individual complaints on merit.[47] In the latest report, published in 2022, the Committee articulated its satisfaction with the amendments of acts, such as the Schools Act or the Act on Census of Population, Housing and Dwellings in 2021, introducing items such as mother tongue, nationality and ethnicity, which can provide reliable statistics on the composition of the population. Nevertheless, it also expressed its concerns and recommendations with regard the effective implementation of the Anti-Discrimination Act and the efforts of the Slovak Centre for Human Rights.[48]

■ *3.3. The 1979 Convention on the Elimination of All Forms of Discrimination against Women*

Similarly, the Federal Assembly of the Czechoslovak Socialist Republic had been the original country to agree to the Convention on the Elimination of All Forms of Discrimination against Women. Nonetheless, the President had accepted with a reservation that the Republic, in accordance with paragraph 2 of Article 29 of the Convention, does not consider itself bound by paragraph 1 of its Article 29. The Socialist Republic was of the opinion that any disputes regarding the interpretation or implementation of this Convention should be resolved by possible negotiation between the parties to the dispute, or by any other method agreed upon by the parties to the dispute. The instrument of ratification was deposited with the Secretary-General on 1982. The Convention entered into force for the Czechoslovak Socialist Republic on 1982, to which Slovakia have succeeded.[49]

The country has implemented the obligations stemming from the Convention on different levels of legal regulations. The most influential are the constitutional rights of employees (both women and men) to freely choose a profession and to prepare for it, the right to start a business and perform other economic activities, the right to work and obtain adequate material security in the event of a job loss or the impossibility of employment, and the right to fair and satisfactory working conditions, which are regulated by laws such as Act NR SR no. 387/1996 Coll, The Labor Code, the Act on safety and health protection at work, the Act on wages, remuneration for work readiness and average earnings, as amended or the

47 The first decision on merits is from 2003 where the Committee decided upon communication No. 31/2003, regarding the complaint of Ms. L.R. et. al., Roma ethnicity citizens residing in Dobšiná, claimed that Slovakia had violated their rights stemming in Art. 2, Art. 4, Art. 5 and Art. 6 of the Convention. The Committee in the present case found violation of several mentioned articles. The second merital decision is from 2016, where the Committee decided upon communication No. 56/2014, regarding the complaint of V.S. where a Roma origin national claimed to be a victim of violation by Slovakia of Art. 2 read in conjunction with Arts. 5 and 6 of the Convention. The Committee claimed that the State have violated Art. 2. of the Convention.

48 Committee on the Elimination of Racial Discrimination. Concluding observations on the thirteenth periodic report of Slovakia, N. CERDPC/SVK/CO/13, 2022.

49 See Decree of the Minister of Foreign Affairs from 13 May 1987 on the Convention on the Elimination of All Forms of Discrimination against Women, 1987.

Act on salary and remuneration for on-call work in budgetary, and certain other organisations and bodies, as amended.[50]

The body of the Convention, The Committee on the Elimination of Discrimination against women, has until today made seven reports on the situation in Slovakia and one decision on the merits of the individual complaint mechanism.[51] The last report from 2023 recommends the implementation of further measures to redress inequalities between men and women, such as the revision of the Anti-Discrimination Act in order to eliminate any form of discrimination. The Committee in the report promotes the necessity to improve the effectiveness of judicial proceedings to ensure adequate and timely judicial remedies in sex-based and gender-based discrimination cases. Additionally, it recommends the implementation of temporary special measures to achieve the equality of women and men in fields where there is a visible underrepresentation of women. Here, the Committee refers to leadership positions in political and economic life, where there is an obvious gender gap in Slovakia.[52]

The latest survey of the Statistical office of Slovakia from 2019 claimed that women generally earn a fifth less than men in the country. The smallest wage differences are in sectors such as education, social services and healthcare, whereas the biggest wage disparities appear in financial intermediation, trade and industrial production.[53] Besides the UN international treaty, Slovakia has adapted into its legal system all the European Union directives regarding equal opportunities for women and men, including Council Directive no. 75/11/EEC, which concerns the principle of equal pay for men and women. However, the application of this principle in practice and the absence of control and institutional mechanisms at various levels remains a problem.[54]

■ *3.4. The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

Slovakia similarly succeeded to the Convention against Torture and Other Cruel, Inhuman or Degrading Acts in 1993 as its predecessor signed the treaty in 1988 and

50 See Ministry of Foreign Affairs Appendix to the text of the original report of the Slovak Republic, 1995.

51 The decision is from 2016, where the Committee decided upon communication No. 66/2014, where the victim claimed that she is a victim of discrimination on the grounds of gender and her marital and family status in violation of Art. 2 read in conjunction with Art. 1 and 11 of the Convention. The Committee in the case observes that Slovakia has violated the petitioners' rights.

52 Committee on the Elimination of Discrimination against Women. Concluding observations on the seventh periodic report. N. CEDAW/C/SVK/CO/7. 31 May 2023, paras. 9–19.

53 See Publication of the Statistical Office of the Slovak Republic. Structure of wages in the Slovak Republic in 2019.

54 Svoreňová, 2009, p. 62.

implemented it into its legal order by publication in the collection of laws under No. 143/19788 Coll.

Slovakia has implemented the articles of the Convention in through numerous amendments of its legislature. This implementation may be seen in the amendments of the Criminal Code by strengthening the basic legal guarantees; amendment of the Act no. 274/2017 Coll. on the victims of the crimes which established a number of measures aimed at protecting and providing redress and rehabilitation to victims of torture and ill-treatment including the definition of "criminal act of domestic violence", from 2017; later the amendment of the Criminal Code via Act no. 161/2018 Coll., which mandated the use of technical devices intended for sound recording and image during the interrogation of juveniles, or Act no. 321/2018 Coll., amending the Act on Probation and mediation officers and some laws which are allowed to perform various non-custodial measures.[55]

Slovakia, as a contracting party, is among the countries where, as a rule, there are no proceedings that could be characterised as seriously disturbing or systematically supporting the practice of torture.[56] According to the latest report on the implementation of the convention by Slovakia from 2023, it can be concluded that the treatment of members of the Roma national minority appears to be the most problematic, in relation to the disproportionate use of force by the police during interventions against the Roma. In the pertinent report the Committee articulated its concerns about reports of the excessive use of force, along with verbal threats and verbal abuse, by law enforcement officials against members of the aforementioned community. Hence, the Committee recommended the State party to carry out an effective investigation of all allegations of the excessive use of force by officials including their following prosecution on the basis of this investigation. The Committee additionally recommends to record on video all actions by the police which could have investigative and preventive advantages.[57]

Although the Committee expressed its concerns regarding the treatment coming from law enforcement officials, so far there has been only one decision made on merit of an individual complaint from 2018. The complainant claims that the State party violated the rights of the petitioner Lucia Černáková under Articles 1, 2 (1), 4 (1), 11, 12, 14 (1) and 16 (1) of the Convention. The complaint was regarding her treatment in a social care facility in Slovakia, as she was a woman with combined intellectual disabilities and an autism spectrum disorder. As there were several issues regarding her behaviour, the institution took the measures of placing her in a cage bed and giving her sedatives. After deliberations covering different aspects of the case, the Committee reached a conclusion that based

55 Committee against Torture. Concluding observations on the fourth periodic report of Slovakia. N. CAT/C/SVK/CO/4, 7 June 2023, para. 5.

56 See Chrenšť, 2018, pp. 126–131.

57 Committee against Torture. Concluding observations on the fourth periodic report of Slovakia. N. CAT/C/SVK/CO/4, 7 June 2023, paras. 9–16.

on the State's duty to exercise due diligence, the actions of the facility should be understood as having an effect on state responsibility. Finally, the Committee concluded that there has been a violation of Art. 2 read in conjunction with Art. 16, Art. 4, Art. 11, Art. 12 and Art. 14 of the Convention.[58]

■ *3.5. The 1989 Convention on the Rights of the Child*

The Convention on the Rights of the Child was promulgated in the Czechoslovak Federative Republic under Collection of Laws by notification of the Federal Ministry of Foreign Affairs no. 104/1991 of 6 February 1991. Slovakia later in 1993 succeeded to the Convention.

The most visible implementation of the Convention may be seen on the establishment of the Children's Commissioner Office, understood as an independent body that participates in the protection of children's rights by supporting and enforcing the rights granted to children by the Convention. It is established by Act no. 176/2015 Coll. on the Commissioner for Children and the Commissioner for Persons with Disabilities and on Amendments to Certain Acts as amended.[59]

In recent years, at UN level, Slovakia has made a significant profile in the child rights agenda, when it presented itself for the first time as a leader and coordinator of the process of preparing an international treaty on human rights. The Optional Protocol to the Convention on the Rights of the Child on the notification procedure brought a further strengthening of guarantees for the protection of children's rights. It established a notification (complaint) mechanism, due to which it is possible to contact the Committee on the Rights of the Child in cases of the violation of rights arising from the Convention or its substantive optional protocols. Slovakia became a party to the optional protocol as the ninth UN member country.[60]

The Committee on the rights of the child is currently undergoing its sixth periodic report on the situation in Slovakia in 2024. The last known step was the demand to submit additional information to the Committee.[61] Nevertheless, previous report from 2016 recommended that the State ensure that the Government Council for Human Rights, National Minorities and Gender Equality and the Committee for Children and Young People have sufficient authority to coordinate activities related to the implementation of the Convention. Additionally, it recommended to reinstate as a priority, the task of implementing a method for

58 Committee against Torture, Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 890/2018. 21 January 2022.

59 Committee on the Rights of the Child. The sixth periodic report of the Slovak Republic on the implementation of the Convention on the Rights of the Child. 19.4.2023.

60 National strategy for the protection and support of human rights in Slovakia republic, 2014, p. 10. [Online]. Available at: https://hudoc.echr.coe.int (Accessed: 22 August 2024).

61 Committee on the Rights of the Child. Lost of issues in relation to the sixth periodic report of Slovakia. N. CRC/C/SVK/Q/6. 28 February 2024.

tracking resources allocated for children's rights, within the National Action Plan for Children.[62]

■ *3.6. The 1990 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 was not signed or ratified by the Slovak Republic. The reasoning of the government behind such a decision was, that by ratifying the aforementioned convention, the country would become responsible for obligations beyond the scope of the current national regulation, which was already considered sufficient.[63] Nevertheless, many of the rights granted under this convention, which is specifically oriented towards migrant workers, also derive from more general core international human rights instruments.[64]

■ *3.7. The 2006 Convention on the Rights of Persons with Disabilities*

By notification of the Ministry of Foreign Affairs of the Slovak Republic no. 317/2010 Coll. the Convention on the Rights of Persons with Disabilities was adopted into the legal framework of the country. It entered into force on 25th June 2010. Since then Slovakia has filed three reports, out of which the second and third are combined and currently ongoing. Concretely, the combined last report was filed on 10th October 2024. As to the first and only concluding observations of the Committee on the Rights of Persons with disabilities, the Committee has recommended the country to develop a policy or action plan to implement the Convention among Roma people. Additionally, the Committee has recommended the enactment of disability-based anti-discrimination legislation in all sectors, including proper training in both public and private sectors. The Committee's recommendations regarding specific disabled groups such as women or children inclusive of awareness-raising were also notable.[65]

The implementation of obligations stemming from the Convention can be observed in different ways. In 2016, the Ministry of Justice established an Analytical Centre, with the aim of streamlining the judicial system and increasing the enforceability of the Convention. The analytical centre systematically collects, processes, evaluates and provides relevant data obtained from functional information systems for the purposes of departmental and international statistics. Anti-discrimination disputes are conducted as a separate category, so there should be

62 Committee on the Rights of the Child. Concluding observations on the combined third to fifth periodic reports of Slovakia. N. CRC/C/SVK/CO/3-5, 20 July 2016, paras. 6–10.

63 National strategy for the protection and support of human rights in Slovakia republic, 2014, p. 13.

64 Moravcová, 2022, p. 152.

65 Committee on the Rights of Persons with Disabilities. Concluding observations on the initial report of Slovakia. N. CRPD/C/SVK/CO/1, 17 May 2016, paras. 5–28.

no more confusion with consumer or labour law disputes. The courts are obliged to determine in more detail on what basis discrimination has occurred.[66]

Furthermore, by resolution of the Government of the Slovak Republic no. 25/2014, the National Program for the Development of the Living Conditions of Persons with Disabilities for the years 2014-2020 was approved. The application of the aforementioned program has been active since its creation prolonged, updated and evaluated every two years. Several of the above-mentioned recommendations were in time included in this National Program. The basic goal of the National Program is to achieve progress in the protection of the rights of persons with disabilities recognised by the Convention through defined tasks and measures and progress in their use. The measures contained in the National Program were compiled by area on the basis of individual articles of the Convention.[67]

4. Conclusion

The Slovak Republic's commitment to the universal protection of human rights is evident in its legal framework and institutional mechanisms. However, the journey towards the full realisation of these rights requires ongoing efforts to address systemic challenges and promote a culture of respect for human dignity. By reinforcing its commitment to international standards and engaging with diverse stakeholders, Slovakia can work towards creating an inclusive society that upholds the principles of universal human rights for all.

For a modern democratic legal state, which the Slovak Republic undoubtedly strives to be and which is finally declared in Art. 1 of the Constitution, it is essential that law is primarily oriented towards the protection of people and their rights and freedoms. The existence of legislative procedural guarantees for the protection of fundamental rights and freedoms is a concrete principle of the material rule of law in the conditions of the Slovak Republic.

The 1951 Convention on the Legal Status of Refugees remains foundational, guiding Slovakia's asylum and refugee protections through laws such as the Act on the Residence of Foreigners. Slovakia's 30-year collaboration with the UNHCR further reflects its commitment to addressing the needs of displaced persons within its borders. Meanwhile, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination has inspired legislative and policy measures aimed at improving conditions for minority groups, including the Roma population, which faces systemic challenges. Recent legislative updates, such as

66 Combined second and third periodic reports submitted by Slovakia under Article 35 of the Convention, due in 2020. N. CRPD/CVSK/2-3, 10 October 2024, para. 9.

67 Combined second and third periodic reports submitted by Slovakia under Article 35 of the Convention, due in 2020. N. CRPD/CVSK/2-3, 10 October 2024, para. 1.

the requirement for pre-school attendance and enhanced demographic tracking, showcase efforts to foster inclusion and counter discrimination.

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women has spurred substantial advancements in gender equality through labour protections, fair wage legislation, and anti-discrimination efforts, though disparities in representation and pay persist. Slovakia's 1984 commitment to the Convention Against Torture underscores its resolve to uphold humane treatment standards, which it has reinforced through amendments to the Criminal Code and victim protection laws. However, recent reports highlight areas needing improvement, particularly in relation to police conduct toward Roma communities. The nation's succession to the 1989 Convention on the Rights of the Child has also influenced child protection laws, establishing independent offices like the Children's Commissioner to safeguard children's rights. Slovakia's leadership in advancing international child rights protections is evident in its support for mechanisms like the Optional Protocol.

The rights of persons with disabilities have been strengthened under the 2006 Convention on the Rights of Persons with Disabilities, guiding Slovakia toward a more inclusive society. With initiatives such as the National Program for the Development of the Living Conditions of Persons with Disabilities, Slovakia has progressively enacted policies to improve access and equity, though gaps in implementation and discrimination remain. Notably, Slovakia's approach to migrant worker rights reflects a cautious stance; the country has yet to ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, citing existing national regulations as sufficient. This selective engagement highlights both the strides made in areas of direct interest to Slovakia and its pragmatic approach to obligations that may extend beyond its current policy scope.

Despite advancements, Slovakia faces several challenges in fully realising human rights protections. Issues such as social inequality, discrimination against minorities, and the treatment of refugees and migrants remain persistent problems. Reports from international human rights organisations have highlighted cases of hate speech, police brutality, and inadequate support for victims of domestic violence. To ensure the effective implementation of human rights, Slovakia has established several institutions and mechanisms as well as various programs and initiatives aimed at promoting equal rights for marginalized groups, including the Roma population and women. The government additionally collaborates with non-governmental organizations to enhance advocacy and support for these initiatives.

The Office of the Commissioner for Human Rights plays a crucial role in monitoring human rights practices, raising awareness, and addressing complaints from individuals regarding human rights violations. This office is vital for the safeguarding of human rights in Slovakia. The Commissioner serves as an

independent body that monitors human rights issues, raises public awareness, and addresses grievances from individuals. The commissioner's activities include conducting regular assessments and reports on the state of human rights, providing recommendations to government bodies on improving human rights protections or engaging with civil society organisations to amplify advocacy efforts.

Numerous non-governmental organisations in Slovakia are dedicated to human rights advocacy. These organisations focus on various issues, including the protection of minorities, such as the Roma population who often face discrimination and socio-economic challenges, the promotion of gender equality, support for victims of domestic violence, or the advocation for LGBTQ+ rights and awareness of the challenges this community faces. These organisations often collaborate with international human rights frameworks and local authorities, creating a multifaceted approach to human rights advocacy.

While Slovakia has made progress, certain areas require ongoing attention to ensure a comprehensive protection of human rights. The Roma community in Slovakia is one of Europe's largest ethnic minorities, facing persistent discrimination and social exclusion. Various initiatives aimed at improving education, healthcare, and employment prospects for the Roma population have been launched. However, challenges remain, including access to quality education, which is often hampered by systemic inequalities or representation in local and national governance, where Roma voices are frequently underrepresented. Slovakia has recognised the need for gender equality, but issues such as the gender pay gap, domestic violence, and inadequate support systems for victims remain pressing concerns.

To strengthen the protection of human rights, Slovakia must adopt a multipronged approach, for example strengthening the legal frameworks by revising existing laws and introducing new legislation to address gaps in human rights protections, particularly for vulnerable groups, enhancing education and awareness by implementing national education programs to promote human rights awareness among citizens and encourage civic participation, promoting dialogue and cooperation by fostering partnerships between governmental bodies, civil society organisations, and international human rights agencies in order to ensure collaborative efforts in addressing human rights issues.

International treaties on human rights imply an obligation for the Republic to regularly inform the committees established by these treaties about the progress in the implementation of their provisions at the national level. The conclusions and recommendations of the contracting authorities represent an important guide for improving the actual fulfilment of human rights obligations at a national level. Despite their legally non-binding nature, the recommendations of international organisations can create necessary pressure on national institutions, in order to achieve progress in individual thematic areas of human rights. In the abovementioned chapters it was regularly mentioned that different Committees refer to

the Anti-Discrimination Act or the Centre for Human rights. Both of these represent an example of a step forward in the human rights protection in the Republic. Consequently, even though the CC explicitly stipulated, that the resolutions of UN Committees have no binding nature, the country on different levels proved that the recommendations are taken into account and are generally accepted.

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The Universal Human Rights Protection and Eastern Europe: Ukraine

ABSTRACT: *The process of implementation of international human rights standards in Ukraine, in particular in the context of cooperation with the United Nations is examined. The article makes a significant contribution to the research of the process of integrating international standards into Ukraine's legal system and provides recommendations for improving national legislation to ensure effective human rights protection. Particular attention is paid to the historical development of human rights in Ukraine, from Kyivska Rus to the present. The author provides a detailed analysis of the process of integrating major international human rights conventions into Ukrainian legislation, including the International Covenant on Economic, Social and Cultural Rights the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and others. The efforts made by Ukraine to align its national legislation with international standards are described, as well as the establishment of specialised bodies for monitoring human rights compliance. The author analyses Ukraine's relations with the United Nations in the field of human rights, in particular through the mechanisms of the United Nations. The challenges related to human rights violations in the temporarily occupied territories and the problems encountered when filing cases with UN monitoring bodies are considered.*

KEYWORDS: *human rights development, the UN human rights conventions, human rights monitoring, the UN Human Rights Committee, the United Nations High Commissioner for Human Rights, legislative process in Ukraine*

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1. The historical development of human rights in Ukraine: introductory thoughts

Ukraine has a multilayered history that has had a significant impact on the development of the concept of human rights. In order to analyse the current challenges faced by the state in the field of human rights protection, it is necessary to study the historical experience of shaping state approaches to regulating this area.

A key role in shaping early ideas about human rights was played by Kyivska Rus, which is one of the oldest states in the territory of modern Ukraine. The adoption of Christianity in 988 under Prince Volodymyr the Great was an important turning point in the development of public morality and legal norms. The Christian faith, brought from Byzantium, influenced the formation of ideas about justice, mercy and equality before God, which became the basis for understanding moral obligations and human rights.

Byzantine law, which was partially adopted by the princes of Kyivska Rus, was focused on maintaining social stability and ensuring justice. The principles of equality before the law and protection of the weak were enshrined in numerous legal acts, such as the Ruska Pravda, which was the first written code of law in Kyivska Rus. This code provided for the protection of property rights, regulated family relations and punished crimes, reflecting the first attempts to establish law and order on the basis of morality and justice.

Ruska Pravda was a set of legal norms that regulated the relationship between the Prince, who acted as the highest judicial authority (personally or through his administration), and individual citizens who represented the interests of their clan, community, family, i.e. the community to which they belonged. And such a community was given the opportunity to ensure that the rights of its representatives were not violated during the trial.

The main difference between the collective and the legal norms of previous centuries was that most legal norms were established in accordance with the canons of the Christian faith. First of all, this was manifested in the fact that Ruska Pravda significantly limited the possibility of using the principle of thalion, or blood revenge, and condemned methods of resolving judicial disputes with the help of uncontrolled violence ('whoever has the sharper sword wins'). This collection of laws had a huge impact on the society of that time in the moral sphere, as it limited violence, and the deprivation of human life by a human being was prohibited by both the church and the law.[1]

The Mongol invasion in the thirteenth century was one of the most destructive episodes in the history of Ukraine, which had a significant impact on the situation of the local population and the development of the legal system. The

1 Paida, 2017, p. 16.

conquest of Kyivska Rus by the Mongols led to the decline of towns and villages, the destruction of the economy, and the depopulation of large areas.

For non-payment of tribute, Tatar representatives sold people into slavery. Only the clergy were exempt from paying tribute. Many artisans were taken to the Golden Horde and forced to work for the khans. Towns and villages were burned and destroyed, and many people were killed or taken prisoner. The country's economic and political development slowed down.[2]

The absence of a centralised government and constant military attacks forced the local population to seek protection in new political formations. In the western lands, particularly in Galicia and Volhynia, the role of Lithuania began to grow, gradually becoming the dominant force in the region. As a result of the Lithuanian-Rusian Union, many Ukrainian lands became part of the Grand Duchy of Lithuania. Ensuring a certain legal stability and protection of the rights of the population, lawmaking had peculiarities that manifested themselves in two main areas: a) amendments to existing Ruthenian sources (collections) of law; b) creation of new legislative acts. Changes in the law were caused by the evolution of socio-economic relations and peculiarities of socio-political development of the Galicia-Volhynia principality.[3]

The greatest achievement in the process of systematisation of law in the Grand Duchy of Lithuania was the compilation of the Lithuanian Statutes in the 16th century. The Lithuanian Statute of 1529 contained provisions of civil, land, state, criminal and other branches of law. It enshrined the rights of the gentry, which it received by granting privileges, and levelled the gentry into a single class. At the same time, this codified act ensured some rights of peasants, including the right to own land. The First Lithuanian Statute stated that the law was the same for everyone, which was a very progressive principle in Europe at the time.

The Lithuanian Statute of 1566 consisted of 14 chapters and 367 articles. The first section contained provisions that proclaimed the basic principles of Lithuanian-Russian law and the rules of state law; the second section contained rules on military service; the third section contained the rights and privileges of the nobility; the fourth section dealt with the organisation of the judicial branch of power; the fifth dealt with family law; the sixth with guardianship law; the seventh with contract law; the eighth with inheritance law; the ninth with the legal regulation of land disputes; the tenth with forestry and hunting law. The last four chapters established the rules of criminal liability, namely: the eleventh chapter covering violence and crimes against the nobility, the twelfth chapter covering crimes against commoners, the thirteenth chapter covering property crimes, and the fourteenth chapter covering other crimes.[4]

2 The Mongol-Tatar invasion of Ukraine in the 13th century.
3 Zabzalyuk et al., 2021, p. 227.
4 Atamanova, 2014, p. 22.

With the establishment of the Polish-Lithuanian Commonwealth in 1569, after the Union of Lublin, a significant part of Ukrainian lands came under Polish rule. The main state and legal significance of the Lithuanian Statute of 1588 was that it legally formalised the preservation of the Grand Duchy of Lithuania as an independent state, despite the act of the Union of Lublin. Structurally, the Lithuanian Statute of 1588 consisted of 14 sections, which contained 487 articles. The first section included provisions of various nature, which can be divided into two groups: provisions relating to the basic provisions and provisions defining the punishment for state crimes. The second section covered the rules that regulated the performance of military duty by the nobility. The third section set out the rules of state law. The ruling class was forced to make concessions to ordinary people. Thus, the Lithuanian Statute of 1588 included an article on the criminal liability of a nobleman for the murder of a commoner.[5]

At the same time, these territories were gradually integrating Western European legal traditions, in particular Magdeburg law, which gave cities a certain degree of autonomy and self-government. In the Ukrainian lands, unlike in Western Europe, Magdeburg law did not completely free cities from feudal dependence; sometimes it was intertwined with customary law. In some cities, particularly in western Ukraine, the introduction of Magdeburg Law was accompanied by increased German and Polish colonisation and restrictions on the rights of the Ukrainian population. In general, the part of Magdeburg law that helped to organise the system of self-government in Ukraine was enforced.[6]

The liberation war of the Ukrainian people against the Polish-Lithuanian Commonwealth in 1648-1654 brought about significant changes in the development of law in Ukraine. Most of the sources of law that had functioned in Ukraine during the period of its stay as part of noble Poland were abolished in the liberated lands. After the national liberation war of the Ukrainian people, the very essence of law changed, and new norms emerged. This primarily concerned the issues of land ownership and possession, class affiliation, Cossack self-government, and the scope of peasants' freedoms.[7]

The Hetmanate, which was formed on the Left Bank of Ukraine, was in fact an autonomous Cossack republic with its own system of government and justice. One of the main features of Cossack rule was the functioning of an elected system where Cossacks could elect their leaders – hetmans, colonels and other officials. Although this system was far from modern democratic standards, it gave the Cossacks a voice in matters of governance and preservation of their rights. Cossack customs, including the right to protect their lands and property, ensured a certain level of personal freedom and security.

5 Zabzalyuk et al., 2021, p. 252.
6 Kyrychenko, 2011, p. 363.
7 Matveyeva, 2022, p. 37.

The division of Ukraine between the Russian Empire and Austria-Hungary in the eighteenth century had a significant impact on the development of human rights in these territories. One of the tasks of the Russian authorities was to take measures to carefully and systematically destroy the rights and freedoms of Ukrainians and prepare the population for the all-Russian system. An important step towards preparing for the complete enslavement of the Ukrainian peasantry was the General Inventory of 1765-1769. By her decree of 3rd May 1783, Catherine II legally established serfdom on the Left Bank and Slobozhanshchyna. Peasants were forbidden to move from one landowner to another [8]. This was one of the worst practices of this period, which deprived peasants of basic rights and freedoms, made the majority of the population dependent on landlords, and limited opportunities for economic and social development.

In Austria-Hungary, the situation was somewhat different. Although Ukrainians in Galicia and Bukovina were also under the rule of the empire, they retained a certain degree of cultural and national autonomy. The introduction of educational reforms and the development of the Ukrainian language and literature contributed to the formation of national consciousness. In addition, these lands were subject to Austrian law, which guaranteed certain rights and freedoms, including freedom of speech and assembly. The Austro-Hungarian Constitution of 21st December 1867 stipulated that Austrian citizens had the right to freedom of choice of profession and professional education. The basic law proclaimed the freedom of assembly and the organisation of political and public associations.[9]

After the establishment of Soviet rule in Ukraine in the early twentieth century, the country entered a new stage of its history marked by serious restrictions on human rights. The totalitarian regime established in the Soviet Union systematically suppressed any manifestations of opposition, freedom of speech, religion and assembly. One of the most brutal episodes of this period was the Holodomor of 1932-1933, which was the result of a policy of forced collectivisation and repression of the Ukrainian peasantry. Millions of people died, and it became one of the largest humanitarian disasters in the history of Ukraine.

The repression continued in the form of mass arrests, deportations and executions as part of Stalin's purges. Intellectuals, religious leaders, nationalists and other categories of the population were persecuted. Between 1933 and 1941, the occupying Russian authorities killed and arrested 80% of the Ukrainian intelligentsia: engineers, scientists, writers, doctors, and teachers. Almost everything that reflected the original features of the Ukrainian phonetic and morphological system was removed from Ukrainian spelling.[10] The constitutional rights pro-

8 Stepanchuk, 2009, p. 241.
9 Makarchuk and Korytko, 2013, p. 83.
10 Nagornyak, 2020, p. 136.

claimed in Soviet documents were not respected in practice, and the judicial system became an instrument of political terror.

In the post-war period, the situation improved somewhat, but the main restrictions remained in place. Even during the 1950s and 1960s, when some reforms took place, the rights and freedoms of citizens remained strictly controlled by the state. The dissident movement that emerged in Ukraine in the 1960s and 1970s was aimed at fighting for human rights, but its members faced severe repression.

Gaining independence in 1991 opened a new chapter in Ukraine's history, when the country committed itself to international human rights standards. The adoption of the Constitution of Ukraine in 1996 was an important step towards ensuring the rights and freedoms of citizens. Basic law enshrined fundamental human rights, such as the right to life, liberty, security of person, freedom of speech and religion.[11]

Ukraine has also acceded to a number of international treaties and conventions aimed at protecting human rights. International organisations have played an important role in this process, supporting Ukraine in implementing reforms.

2. The relationship between Ukraine and the UN from a human rights perspective

After gaining independence in 1991, Ukraine integrated into the system of international relations, and the United Nations became one of its key partners. Ukraine's cooperation with the UN in the field of human rights includes its participation in the UN General Assembly, the UN Human Rights Council and other bodies.

The UN General Assembly is the central forum for discussing human rights issues, and Ukraine regularly participates in these discussions, presenting its positions. Ukrainian diplomacy actively uses this platform to draw the attention of the international community to the challenges facing the country, in particular in the context of human rights violations in the occupied territories.

On 19th December 2023, the UN General Assembly adopted an updated resolution on the 'Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine', with 78 votes in favour.[12] The resolution condemned Russia's continued disregard for international human rights law and international humanitarian law, the illegal detention of Ukrainian

11 Constitution of Ukraine, 1996.
12 The Media Initiative for Human Rights, 2023.

civilians, the use of torture and ill-treatment, and the discrimination against residents of the temporarily occupied territories.[13]

Ukraine's cooperation with the UN High Commissioner for Human Rights and the Office of the High Commissioner should be highlighted separately. The UN High Commissioner for Human Rights is the main official responsible for coordinating all human rights activities within the UN.[14] In the framework of Interactive Dialogues with the UN High Commissioner for Human Rights, based on the reports on the situation in Ukraine prepared by his Office, the human rights situation in Ukraine is considered, with a special focus on the territories of Ukraine temporarily occupied by the Russian Federation.

On 31st July 2014, the Government of Ukraine and the Office of the United Nations High Commissioner for Human Rights signed an Agreement on the deployment of a short-term UN Human Rights Monitoring Mission to Ukraine.

The UN Human Rights Monitoring Mission in Ukraine (HRMMU) monitors and publicly reports on the human rights situation in the country with the aim of strengthening human rights protection, fostering access to justice, and ensuring that perpetrators of human rights violations are held to account. Since the start of the armed attack by the Russian Federation against Ukraine on 24th February 2022, HRMMU's work has focused on documenting violations of international human rights law and international humanitarian law committed by all parties to the conflict.[15]

Based on the results of the work of the United Nations Human Rights Monitoring Mission in Ukraine from 24th February to 15th May 2022, the Office of the United Nations High Commissioner for Human Rights published a report entitled 'The situation of human rights in Ukraine in the context of the armed attack by the Russian Federation'. It states that the armed attack by the Russian Federation on Ukraine led to a serious deterioration in the human rights situation in the country: with thousands of killed and wounded civilians, the massive destruction of civilian infrastructure and housing, arbitrary detentions and enforced disappearances, torture and ill-treatment, and conflict-related sexual violence.[16]

Between 24th February 2022 and 23rd May 2023, the UN Human Rights Monitoring Mission in Ukraine documented the execution of 77 Ukrainian civilians during their arbitrary detention by the Russian occupiers. The Russian armed forces, law enforcement agencies and penitentiary authorities have widely used torture and the ill-treatment of detained civilians.[17]

Ukraine's active cooperation with the UN is also carried out within the framework of the UN Human Rights Council, which demonstrates its commitment

13 Ministry of Foreign Affairs of Ukraine, 2023.
14 The Office of the High Commissioner for Human Rights, 2022.
15 The Office of the High Commissioner for Human Rights, 2022.
16 Legal Practice, 2022.
17 Interfax News Agency, 2023.

to adhere to international standards in this area. Ukraine has been elected as a member of the UN Human Rights Council and advocates for strengthening the Council's role in ensuring the protection of human rights at a global level, including by expanding the mandate of special rapporteurs and investigative missions.

Since 2010, Ukraine has been consistently and regularly promoting the Council's initiative on the role of the prevention of human rights violations, with the dedicated support of the core group of States. Relevant HRC resolutions 'Role of prevention in the promotion and protection of human rights' (14/5 from 17th June 2010, 18/13 from 29th September 2011, 24/16 from 27th September 2013 and 33/6 from 22nd September 2016) were adopted by consensus.[18]

On 12th May 2022, a 34th special session of the Human Rights Council on the deteriorating human rights situation in Ukraine stemming from the Russian aggression was held. The Human Rights Council strongly condemned the reported violations and abuses of human rights and serious violations of international humanitarian law, documented by the High Commissioner, that were committed in the areas of Kyiv, Chernihiv, Kharkiv and Sumy regions under the control of Russian armed forces in late February and March 2022.[19]

Ukraine actively cooperates with special rapporteurs and other mechanisms, such as human rights monitoring missions. For example, the UN sends missions to Ukraine to monitor the human rights situation, especially in the context of the conflict in the east of the country. These missions provide objective assessments of the situation and formulate recommendations for the government of Ukraine.

In 2022, the UN Human Rights Council established the Independent International Commission of Inquiry on Ukraine to investigate all alleged human rights violations and abuses and violations of international humanitarian law and related crimes in the context of Russia's aggression against Ukraine. Based on its investigations, the Independent International Commission of Inquiry on Ukraine has found reasonable grounds to conclude that an array of war crimes, violations of human rights and international humanitarian law have been committed in Ukraine.[20]

It is important to note that the UN Human Rights Council has created a unique mechanism for peer review of each UN member state every 4.5 years, which is the Universal Periodic Review. Ukraine regularly submits national reports under this mechanism, detailing its human rights record, describing measures taken to improve the situation, and responding to recommendations received from other member states. National reports allow Ukraine not only to report on its achievements, but also to identify problems that require attention.

18 Permanent Mission of Ukraine to the UN Office and other International Organizations in Geneva, 2012.

19 General Assembly, 2022.

20 United Nations in Ukraine, 2022.

Ukrainian scholars are actively analysing relations between Ukraine and the United Nations in the context of human rights. Researches often focus on the effectiveness of international human rights mechanisms, Ukraine's role in the international legal system, and the implementation of UN recommendations in national legislation. Researcher S. Kravchuk draws attention to the fact that the human rights situation is steadily deteriorating in the regions of Ukraine that are not controlled by the Ukrainian authorities. In Crimea, Donetsk and Luhansk regions, gross human rights violations, such as abductions and torture, are no longer limited to activists, journalists and politicians, but are used by armed men against the population of the region as a whole.[21] Researcher A. Ryzhova emphasises that human and civil rights and freedoms are guaranteed by international agreements and treaties, and customary law, which apply in any case in peace and in war. According to this law, the Russian Federation is obliged under international law to comply with its obligations under international human rights laws in the cities that are temporarily occupied, but this is not what is actually taking place. The Russian Federation is ruthlessly violating the right of Ukrainians to life, liberty, security and safety.[22]

Despite these challenges, there appear to be prospects for further cooperation between Ukraine and the UN in the field of human rights. Ukraine could benefit from international support for reforms. Post-war reconstruction also opens up new opportunities for cooperation with the UN in the context of human rights, integration into European structures and strengthening the role of civil society.

3. The UN Human Rights Treaties to which Ukraine is a state party

The United Nations conventions to which Ukraine is a party play an important role in shaping Ukraine's national legal system in the context of human rights and social justice. They set standards that oblige the state to ensure the observance of rights at the national level and implement relevant policies and legislative reforms.

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol define international standards for the protection of refugees. The main obligations of Ukraine as a state party to the Convention are to ensure access to safe haven for persons who meet the definition of a refugee, to guarantee that refugees will not be returned to countries where their life or freedom would be threatened, and to provide legal status that allows refugees to enjoy basic rights.

21 Kravchuk, 2022, p. 92.
22 Ryzhova, 2022, p. 102.

The 1965 Convention on the Elimination of All Forms of Racial Discrimination prohibits all forms of racial discrimination and obliges States Parties to take measures to eliminate it at national level. Ukraine, as a state party to the Convention, implements policies to combat discrimination on the basis of race, ensuring equal rights for all citizens.

The 1966 International Covenant on Civil and Political Rights guarantees fundamental civil and political rights, such as the right to life, freedom of thought, speech and religion, and the right to a fair trial. Ukraine, as a state party to the International Covenant, undertakes to ensure these rights in its territory.

The 1966 International Covenant on Economic, Social and Cultural Rights defines economic, social and cultural rights, including the right to work, education, health care and social protection. Ukraine, as a State Party to the International Covenant, is working to guarantee these rights through national policies and reforms.

The 1979 Convention on the Elimination of All Forms of Discrimination against Women aims to eliminate discrimination against women in all spheres of life. Ukraine, as a state party to the Convention, pursues a gender policy and implements measures to ensure women's equal access to employment, education and social benefits.

The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits torture and inhuman treatment by the state. As a state party to the Convention, Ukraine takes measures to prevent torture and protect the rights of victims.

The 1989 Convention on the Rights of the Child defines the rights of children to education, health care, protection from violence and exploitation. Ukraine, as a state party to the Convention, pursues a policy of protecting children's rights, including creating conditions for their development and education.

The 2006 Convention on the Rights of Persons with Disabilities ensures equal rights for persons with disabilities, including access to education, employment, healthcare and other public services. As a State Party to the Convention, Ukraine is working to ensure barrier-free access for people with disabilities and their integration into society.

4. National implementation of the UN Human Rights Treaties

After Ukraine declared its independence in 1991, the country embarked on a course of international integration and membership in various international organisations, which required the adaptation of its domestic legislation to international standards.

One of these important steps was the accession to the 1951 Convention relating to the Status of Refugees[23], which is the main international instrument in the field of refugee protection. After the collapse of the Soviet Union and the growing number of asylum seekers due to political, economic and social upheavals, the refugee issue became particularly relevant for Ukraine. The adoption of the first Law of Ukraine 'On Refugees'[24] in 1993 was an important preliminary step towards accession to the Convention. This law regulated the granting of asylum, defined the status of refugees, their rights and obligations, and established mechanisms for reviewing applications for refugee status. The law has been updated several times, including in 2001, to bring it in line with international standards prior to official accession to the Convention.

On 10th January 2002, Ukraine officially acceded to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol. This was the result of Ukraine's international obligations as a UN member state and its desire to ensure the protection of asylum seekers on its territory.

Ukraine, as part of the USSR, ratified the 1966 International Covenant on Civil and Political Rights[25] on 19th October 1973. Under communist rule, the human rights guaranteed by the Covenant were not always respected, but ratification was nevertheless an important step in an attempt to meet international standards. After declaring independence, Ukraine became the successor to international treaties concluded by the USSR, including the International Covenant on Civil and Political Rights. Ukraine officially confirmed its obligations to the international community through its succession in 1991. Also in 1991, Ukraine ratified the Optional Protocol to the International Covenant on Civil and Political Rights, which allowed citizens to file individual complaints with the UN Human Rights Committee in cases of violations of their civil and political rights.

The main document that enshrined the principles of the International Covenant on Civil and Political Rights was the Constitution of Ukraine adopted in 1996. In particular, Section II of the Constitution, which defines the fundamental rights and freedoms of man and citizen, is largely based on the provisions of the Covenant. Articles 21-68[26] guarantee a wide range of rights, including the right to life, freedom of speech, freedom of conscience, equality before the law, the right to a fair trial, etc.

After the ratification of the International Covenant on Civil and Political Rights, Ukraine adopted a number of laws aimed at ensuring civil and political rights. For example, the Law on Freedom of Conscience and Religious Organisations, the Law on Information, the Law on the Election of People's Deputies, etc. To ensure the observance of human rights, the institution of the Ukrainian

23 Convention relating to the Status of Refugees, 1951.
24 Verkhovna Rada of Ukraine, 1993.
25 United Nations, 1966.
26 Constitution of Ukraine, 1996.

Parliament Commissioner for Human Rights was established, which is responsible for monitoring and protecting civil and political rights in Ukraine.

Ukraine, as a part of the Soviet Union, participated in the drafting of the International Covenant on Economic, Social and Cultural Rights,[27] and the USSR ratified it on 19th October 1973. After gaining independence on 24th August 1991, Ukraine confirmed its succession to the International Covenant on Economic, Social and Cultural Rights, which meant that it assumed all of the international obligations of the Soviet Union, including the Covenant.

Ukraine has undertaken a number of legislative reforms and has also adopted laws aimed at realising economic, social and cultural rights. In particular in the areas of healthcare, education, labour rights and social security, which were important steps in bringing national legislation in line with the provisions of the Covenant. In particular, the Constitution of Ukraine enshrines the fundamental rights guaranteed by the International Covenant, such as the right to work (Article 43), the right to social security (Article 46), the right to healthcare (Article 49) and the right to education (Article 53).[28]

In response to the requirements of the International Covenant on Economic, Social and Cultural Rights, laws have been adopted to protect the social and economic rights of citizens: the Law on Education (2017)[29] guarantees the accessibility and quality of education in accordance with international standards; the Labour Code of Ukraine (1971)[30] establishes the rights for employees to work, and receive remuneration, leave and other social guarantees; the Law on Compulsory State Social Insurance (1999)[31] regulates social protection, including pensions, unemployment insurance, etc.

The International Convention on the Elimination of All Forms of Racial Discrimination[32] was adopted by the United Nations in 1965 as a response to the global problem of racial discrimination, which was particularly acute in the world at that time. The USSR ratified the Convention on 21st January 1969. After the collapse of the USSR, Ukraine became its successor and assumed the relevant obligations.

Since accession, Ukraine has worked to adapt its national legislation to ensure protection against racial discrimination. These changes have included the adoption of laws regulating equality, non-discrimination and the protection of national minority rights. In particular, the Constitution of Ukraine enshrines the equality of all citizens before the law and prohibits any form of discrimination, including racial discrimination. The Law 'On National Minorities in Ukraine'

27 United Nations, 1966.
28 Constitution of Ukraine, 1996.
29 The Law on Education, 2017.
30 The Labour Code of Ukraine, 1971.
31 Law on Compulsory State Social Insurance, 1999.
32 United Nations, 1965.

(1992)[33] guarantees the rights of national minorities and protects them from discrimination based on ethnicity. The Law of Ukraine 'On Principles of Preventing and Combating Discrimination in Ukraine' (2012)[34] regulates legal relations in the area of protection of rights against discrimination on any grounds, including race. It defines the procedures for filing complaints against discriminatory actions and establishes liability for violations of equality legislation.

The Convention on the Elimination of All Forms of Discrimination against Women[35] was adopted by the United Nations on 18th December 1979 and entered into force on 3rd September 1981. It aims to ensure equality between women and men in political, economic, social, cultural and all spheres of public life. In the context of Ukraine, important prerequisites for ratification were the changes in the political and social system caused by the collapse of the Soviet Union, as well as international pressure and the need to adapt Ukrainian legislation to international standards after independence. During the existence of the USSR, its legal and social structure emphasised a formal equality between men and women, but after independence, Ukraine had to implement real reforms to protect women's rights.

The USSR ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1981. After gaining independence in 1991, Ukraine confirmed its succession to the Convention, which obliged it to implement all provisions and carry out relevant reforms. Article 24 of the 1996 Constitution of Ukraine explicitly enshrines equality of rights between women and men and prohibits any discrimination on the basis of sex.[36]

In 2003, Ukraine ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which allows for individual complaints to be submitted to the UN Committee on the Elimination of Discrimination against Women.

The Law of Ukraine 'On Ensuring Equal Rights and Opportunities for Women and Men' (2005) enshrines the principles of gender equality in all spheres of public life and defines mechanisms to ensure equality.[37] The Law of Ukraine 'On Preventing and Combating Domestic Violence' (2017) introduced stricter mechanisms to combat violence against women, in line with Ukraine's obligations under the Convention on the Elimination of All Forms of Discrimination against Women.[38]

33 Verkhovna Rada of Ukraine, 1992.
34 Verkhovna Rada of Ukraine, 2012.
35 United Nations, 1979.
36 Constitution of Ukraine, 1996.
37 Verkhovna Rada of Ukraine, 2005.
38 Verkhovna Rada of Ukraine, 2017.

The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[39] was ratified by the Soviet Union on 26th January 1987. For Ukraine, the national implementation of the Convention was linked to the general processes of democratisation and reform following the collapse of the Soviet Union. Human rights became one of the priorities of international politics, and Ukraine sought to ensure compliance with international human rights standards, including the prevention of torture. After gaining independence, Ukraine automatically assumed its obligations under the Convention. The 1996 Constitution of Ukraine enshrines the right of everyone to protection from torture, and prohibits cruel, inhuman or degrading treatment. In turn, the Criminal Code of Ukraine of 2001 explicitly establishes liability for torture, which is in line with the requirements of the Convention.[40]

As part of the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Ukraine is carrying out reforms of law enforcement agencies and the penitentiary system to prevent the use of violence and torture. An important aspect of the national implementation of the Convention is the conduct of training programmes for law enforcement and judicial officials on the standards of humane treatment.

The Convention on the Rights of the Child[41] was adopted by the UN General Assembly on 20th November 1989. Ukraine ratified the Convention on the Rights of the Child on 27th February 1991, before gaining independence. After gaining independence in 1991, Ukraine became a party to many international agreements, and the implementation of the Convention on the Rights of the Child was one of the first steps towards integration into the international human rights system. The prerequisites for this process were Ukraine's desire to strengthen the legal protection of children and meet international standards in this area.

The 1996 Constitution of Ukraine stipulates that children are equal in their rights regardless of their parents' origin and position.[42] The Law of Ukraine 'On the Protection of Childhood' (2001) enshrines the main provisions of the Convention on the Rights of the Child, establishing legal guarantees for the protection of children's rights and interests.[43]

As for the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[44] it should be noted that Ukraine has not ratified this Convention due to several key reasons that relate to economic, legal and social aspects.

39 United Nations, 1984.
40 Verkhovna Rada of Ukraine, 2001.
41 United Nations, 1989.
42 Constitution of Ukraine, 1996.
43 Verkhovna Rada of Ukraine, 2001.
44 United Nations, 1990.

The Convention on the Rights of Persons with Disabilities[45] was adopted by the UN General Assembly on 13th December 2006. For Ukraine, the ratification of this Convention was important in the context of raising social standards and the legal protection of persons with disabilities. Since gaining independence, Ukraine has sought to raise the standards of protection for vulnerable categories of citizens and ensure their integration into society. Ukraine ratified the Convention on 16th December 2009 and it entered into force in Ukraine on 6th March 2010. The Law of Ukraine 'On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine' (1991) provides social protection for persons with disabilities and guarantees them equal rights and opportunities.[46] Following the ratification of the Convention, this law was reviewed and amended to meet international standards. Ukraine submits reports to the UN Committee on the Rights of Persons with Disabilities on measures taken to ensure the rights of persons with disabilities are respected, as well as on the fulfilment of international obligations under the Convention.

5. Reflection of the UN Human Rights Treaties in the Constitution of Ukraine

The 1951 Convention relating to the Status of Refugees and the 1967 Protocol both establish the legal status of refugees and oblige states to provide them with international protection. The Constitution of Ukraine has several provisions that are consistent with this Convention. Article 26 of the Constitution of Ukraine guarantees foreigners and stateless persons who are legally on the territory of Ukraine the same rights and freedoms as Ukrainian citizens. At the same time, it ensures their right to protection from persecution. Article 33 of the Constitution of Ukraine guarantees the right to freedom of movement, which is important for refugees and asylum seekers, as the 1951 Convention grants them the right to move without discrimination. Article 55 of the Constitution of Ukraine guarantees everyone the right to judicial protection, which is in line with Ukraine's obligation to protect refugees from persecution. This is in line with the principle of non-refoulement of the 1951 Convention, which prohibits the forcible return of persons to countries where they would be subjected to persecution.

The International Covenant on Civil and Political Rights of 1966 contains fundamental human rights, including the right to life, freedom of speech, religion, prohibition of torture, equality before the law, etc. Many of these provisions are directly reflected in the Constitution of Ukraine. Article 3 of the Constitution recognises that a person, his or her life and health, honour and dignity, inviolability

45 United Nations, 2006.
46 Verkhovna Rada of Ukraine, 1991.

and security are recognised as having the highest social value in Ukraine. This is in line with Article 6 of the International Covenant on Civil and Political Rights. Article 27 of the Constitution elaborates on this right: everyone has the inherent right to life. No one shall be arbitrarily deprived of his or her life. Article 28 of the Constitution prohibits torture, inhuman or degrading treatment or punishment, which is in line with Article 7 of the International Covenant. Article 34 of the Constitution guarantees freedom of thought and expression, the right to collect and disseminate information, which is consistent with Article 19 of the International Covenant. Article 24 of the Constitution guarantees equality of all citizens before the law, prohibiting discrimination on any grounds, which is in line with Article 26 of the International Covenant. Article 40 of the Constitution provides for the right to submit individual or collective petitions to public authorities, which is in line with Article 25 of the International Covenant on Civil and Political Rights.

The International Covenant on Economic, Social and Cultural Rights of 1966 protects the rights to work, claim social security, access healthcare, access education, take part in cultural activities and other important aspects. These rights are reflected in the Constitution of Ukraine as follows. Article 43 of the Constitution of Ukraine guarantees the right to work, which includes just conditions of work, remuneration and protection against unemployment, which is in line with Article 6 of the Covenant. Article 46 of the Constitution provides for the right of citizens to social protection, including security in the event of unemployment, sickness, disability or old age, which is consistent with Article 9 of the Covenant. Article 49 of the Constitution guarantees the right to health care, which is in line with Article 12 of the Covenant: everyone has the right to health care, medical assistance and medical insurance. Article 53 of the Constitution provides for the right to education, which includes access to free general secondary education, in line with Article 13 of the Covenant. Article 54 guarantees freedom of creative activity and protection of intellectual property, which is consistent with Article 15 of the Covenant.

The 1965 International Convention on the Elimination of All Forms of Racial Discrimination aims to prohibit all forms of racial discrimination and to ensure the equality of rights for all persons, regardless of race, colour, national or ethnic origin. The Constitution of Ukraine contains provisions that are consistent with the objectives of this Convention. Article 24 of the Constitution guarantees equality of all citizens before the law and prohibits discrimination on any grounds, including race, nationality, colour, etc., which is in line with Article 1 of the Convention. Article 35 of the Constitution guarantees the right to freedom of religion and belief, which may also be linked to the prohibition of discrimination on the basis of religious beliefs. Article 11 of the Constitution stipulates that the state shall promote the development of the ethnic, cultural and linguistic identity of all national minorities of Ukraine, which is in line with Article 5 of the Convention.

The 1979 Convention on the Elimination of All Forms of Discrimination against Women obliges states to ensure the equality of women in all spheres of life. The Constitution of Ukraine protects women's rights and prohibits discrimination on the basis of sex. In particular, Article 24 of the Constitution of Ukraine explicitly prohibits discrimination on the basis of sex and provides for equal rights and opportunities for men and women, which is in line with Article 2 of the Convention. Article 51 of the Constitution guarantees equality between men and women in marriage and family relations, which is in line with Article 16 of the Convention. Article 43 of the Constitution guarantees the equal right to work for men and women, including the right to equal pay for equal work.

The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits torture, inhuman or degrading treatment or punishment. The Constitution of Ukraine contains provisions that are consistent with the provisions of the Convention. Article 28 of the Constitution of Ukraine clearly prohibits torture and cruel and inhuman treatment. This provision is fully in line with Article 2 of the Convention, which obliges states to prohibit torture and provide adequate legal protection against it. Article 29 of the Constitution guarantees the right of everyone to liberty and personal security. This includes protection from unlawful detention or ill-treatment.

The 1989 Convention on the Rights of the Child protects children's rights to life, development, health, education, and protection from violence and exploitation. The Constitution of Ukraine includes several provisions that are in line with the objectives of the Convention. Article 52 of the Constitution of Ukraine guarantees special protection of children's rights. Article 53 guarantees the right to education, which is an important right of children under Article 28 of the Convention on the Rights of the Child.

It is worth noting that Ukraine has not ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and therefore has not implemented its provisions in national legislation.

The 2006 Convention on the Rights of Persons with Disabilities aims to protect the rights of persons with disabilities, ensure their social inclusion and equality. The Constitution of Ukraine also contains important provisions relating to the rights of persons with disabilities. Article 24 of the Constitution guarantees equality of rights for all citizens, including persons with disabilities, and provides for special measures to ensure equal opportunities. Article 49 of the Constitution guarantees the right to healthcare and medical care for all citizens, including persons with disabilities: the state creates conditions for effective and accessible medical care for all citizens. Article 53 guarantees the right to education for all citizens, including children with disabilities, which is in line with Article 24 of the Convention on the Rights of Persons with Disabilities.

6. Major legislative processes in Ukraine initiated by the UN Human Rights Treaties

After gaining independence in 1991, Ukraine began to actively engage in international legal processes, which included the signing and ratification of key international treaties. The main legislative processes that have taken place as a result of the ratification of the 1951 Convention relating to the Status of Refugees include:

1. In 1993, the first Law of Ukraine 'On Refugees' was adopted, which defined the process of acquiring and losing refugee status and the mechanisms for granting asylum.[47] The Ministry of Ukraine for Nationalities and Migration was designated as the central body of state executive power that coordinated the interaction of other state executive bodies in resolving all issues related to refugee problems.
2. In 2011, the Verkhovna Rada adopted a new Law on Refugees and Persons in Need of Complementary or Temporary Protection,[48] which brought Ukrainian legislation in line with international standards. It introduced categories of persons eligible for complementary and temporary protection and regulated the asylum procedure in detail.
3. In 2011, the Order of the Ministry of Internal Affairs of Ukraine approved Rules for the consideration of applications and the processing of documents required to decide the issue of the recognition of an individual as either a refugee or a person in need of complementary protection, the loss and revocation of refugee status, and the complementary protection and cancellation of a decision on recognition of a person as a refugee or a person in need of complementary protection.[49]

After Ukraine signed the International Covenant on Civil and Political Rights as a sovereign state in the 1990s, it began active work on harmonising its legislation with international standards. The main legislative processes that took place as a result of the ratification of the International Covenant include:

1. The 1996 Constitution of Ukraine enshrines a number of rights and freedoms enshrined in the Covenant, including the right to life, the right to freedom of expression, freedom of conscience and religion, the right to a fair trial, etc. The Basic Law was an important step in ensuring civil and political rights.[50]

47 Verkhovna Rada of Ukraine, 1993.
48 Verkhovna Rada of Ukraine, 2011.
49 Verkhovna Rada of Ukraine, 2011.
50 Constitution of Ukraine, 1996.

2. Subsequently, laws aimed at protecting political and civil rights were adopted, including the Law on Freedom of Conscience and Religious Organisations (1991), the Law on Elections of People's Deputies of Ukraine (2011), and the Law on Public Associations (2013).
   The Law 'On Freedom of Conscience and Religious Organisations' (1991) guarantees the right to freedom of conscience to citizens of Ukraine and the exercise of this right ensures social justice, equality, protection of the rights and legitimate interests of citizens regardless of their attitude to religion, defines the duties of the state with regard to religious organisations, defines the duties of religious organisations to the state and society, and eliminates the negative effects of state policy on religion and the church.[51]
   In 2011, the Law 'On Elections of People's Deputies of Ukraine' was adopted, which guarantees the exercise of the right to vote. The law regulated the types of parliamentary elections, the procedure and timing of their appointment and holding, the territorial organisation of parliamentary elections, election commissions, voter lists, nomination and registration of candidates for parliament, election campaigning, voting and determination of the results of parliamentary elections.[52]
   The Law 'On Public Associations' (2013) defines the legal and organisational framework for the exercise of the right to freedom of association guaranteed by the Constitution of Ukraine and the International Covenant on Civil and Political Rights, and the procedure for the establishment, registration, operation and termination of public associations.[53]
3. An important development was the adoption of the Law on the Judiciary and the Status of Judges in 2010, which reformed the judicial system and strengthened the protection of the right to a fair trial. In 2016, a new Law 'On the Judiciary and the Status of Judges' was adopted, which defines the organisation of the judiciary and the administration of justice in Ukraine, functioning on the basis of the rule of law in accordance with European standards and ensuring the right of everyone to a fair trial.[54]

Ukraine, as a state party to the International Covenant on Economic, Social and Cultural Rights, has an obligation to gradually realise the rights to work, education, healthcare and social protection provided for in this document. The main legislative processes that took place as a result of the ratification of the Covenant include:

51 Verkhovna Rada of Ukraine, 1991.
52 Verkhovna Rada of Ukraine, 2011.
53 Verkhovna Rada of Ukraine, 2013.
54 Verkhovna Rada of Ukraine, 2010.

1. The adoption of the Labour Code of Ukraine (1971), which enshrines the fundamental rights of workers, including the right to fair and safe working conditions, remuneration and rest.[55]
2. The adoption of the Law of 'Fundamentals of Legislation of Ukraine on Compulsory State Social Insurance' in 1998, which established guarantees for the protection of the rights and interests of citizens entitled to pensions and other types of social protection.[56]
3. The adoption of the Law 'On Compulsory State Social Insurance' (1999), which introduces the right to social security and social benefits, defines the legal, financial and organisational principles of compulsory state social insurance, guarantees working citizens their social protection in connection with temporary disability, pregnancy and childbirth, in case of an industrial accident or occupational disease, and protects their life and health.[57]
4. In the healthcare sector, the reforms that started with the adoption of the Law on State Financial Guarantees of Medical Care in 2017 were important. This was a step towards ensuring universal access to medical services. The law defines state financial guarantees for the provision of healthcare services (medical services) and medicines of appropriate quality, reimbursement of medicines and medical devices (including auxiliary products) at the expense of the State Budget of Ukraine under the medical guarantees programme.[58]
5. The adoption of the Law on Education (2017) introduced the right to equal access to education, reformed the system of school and higher education in line with international standards, and defined the competence of state and local governments in the field of education.[59]

By ratifying the Convention on the Elimination of All Forms of Racial Discrimination, Ukraine has committed itself to creating legislative instruments to combat racial discrimination. The main legislative processes that took place as a result of the ratification of the International Covenant include:

1. In 1992, the Law of Ukraine 'On National Minorities in Ukraine' was adopted, which defined the rights of national minorities and their protection from discrimination, including racial discrimination. The law enshrined their right to education in their native language, the protection of their cultural heritage, and equality in access to social benefits.[60]

55 Labour Code of Ukraine, 1971.
56 Verkhovna Rada of Ukraine, 1998.
57 Verkhovna Rada of Ukraine, 1998.
58 Verkhovna Rada of Ukraine, 2017a.
59 Verkhovna Rada of Ukraine, 2017b.
60 Verkhovna Rada of Ukraine, 1992.

2. In 2012, the Law 'On Fundamentals of Preventing and Combating Discrimination in Ukraine' was adopted, which introduced the concepts of 'direct discrimination' and 'indirect discrimination', defined mechanisms for preventing racial discrimination and provided liability for violations. The law created the basis for further expansion of anti-discrimination legislation in Ukraine.[61]
3. The Criminal Code of Ukraine was supplemented by Article 161, which provides for criminal liability for intentional actions aimed at inciting racial, national or religious hatred, as well as for the restriction of rights on racial or ethnic grounds.[62]

Having ratified the Convention on the Elimination of All Forms of Discrimination against Women, Ukraine has undergone a number of key legislative processes, including:

1. In 2005, the Law on Ensuring Equal Rights and Opportunities for Women and Men was adopted, which defined gender equality in the political, economic and social spheres. It obliged state institutions to implement gender policies aimed at equality.[63]
2. In 2017, the Law 'On Preventing and Combating Domestic Violence' was adopted, which complemented the obligations under the Convention. It includes measures to protect women from domestic violence, the main directions of implementation of state policy in the field of preventing and combating domestic violence, aimed at protecting the rights and interests of victims of such violence.[64]

Having ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Ukraine has undergone a number of key legislative processes, including:

1. An important step was taken with the adoption of the Criminal Code of Ukraine in 2001, which included Article 127, which explicitly prohibits torture and criminalises its commission. In particular, torture, i.e. any intentional act aimed at causing severe physical pain or mental suffering to a person, committed with the aim of forcing him or her or another person to perform acts contrary to their will, including obtaining information or confessions, or with the aim of punishing him or her or another person for acts committed or suspected by him or her or another person, or with the

61 Verkhovna Rada of Ukraine, 2012.
62 Verkhovna Rada of Ukraine, 2001.
63 Verkhovna Rada of Ukraine, 2005.
64 Verkhovna Rada of Ukraine, 2017.

aim of intimidating him or her or other persons, is punishable by imprisonment for a term of three to six years.[65]

2. In 2012, the Law of Ukraine 'On Amendments to the Law of Ukraine 'On the Ukrainian Parliament Commissioner for Human Rights' regarding the National Preventive Mechanism' was adopted, which introduced the National Preventive Mechanism for the Prevention of Torture. The Preventive Mechanism operates in cooperation with the Ukrainian Parliament Commissioner for Human Rights and allows the monitoring of places of detention (prisons, psychiatric hospitals, etc.) to prevent torture. A specialised structural unit, the Department for the Implementation of the National Preventive Mechanism, was established within the new structure of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights.[66]

Ukraine's ratification of the UN Convention on the Rights of the Child was an important step in establishing commitments to protect children's rights in various areas. The main legislative processes that took place as a result of the ratification of the Convention include:

1. The adoption of the Law of Ukraine 'On Protection of Childhood' (2001), which defines childhood protection in Ukraine as a strategic national priority of great importance in ensuring the national security of Ukraine, the effectiveness of the state's domestic policy, and in order to ensure the realisation of the child's rights to life, health care, education, social protection, comprehensive development and upbringing in a family environment, establishes the basic principles of state policy in this area based on ensuring the best interests of the child.[67]
2. The Criminal Code of Ukraine was supplemented with provisions to increase liability for crimes against children, including abuse, exploitation, trafficking and violence.[68]
3. In 2005, the Law 'On Ensuring Organisational and Legal Conditions for the Social Protection of Orphans and Children Deprived of Parental Care' was adopted, which guarantees the right to state support for these vulnerable categories of children, including social security, education and housing.[69]
4. In 2012, the National Strategy for the Prevention of Child Abandonment for the period up to 2020 was created, which aims to reduce the number of

65 Verkhovna Rada of Ukraine, 2001.
66 Verkhovna Rada of Ukraine, 2012.
67 Verkhovna Rada of Ukraine, 2001.
68 Verkhovna Rada of Ukraine, 2001.
69 Verkhovna Rada of Ukraine, 2005.

children deprived of parental care by supporting families and preventing their destruction.[70]

By ratifying the Convention on the Rights of Persons with Disabilities, Ukraine has committed itself to international standards to ensure the rights of persons with disabilities on an equal basis with other citizens. The main legislative processes that took place as a result of the ratification of the Convention include:

1. The adoption of the Law of Ukraine 'On Rehabilitation of Persons with Disabilities' (2005), which enshrines the right of access to social, medical and psychological assistance for persons with disabilities. Following the ratification of the Convention, the law was revised to meet international standards and to ensure the full integration of persons with disabilities into society.[71]
2. Amendments to the Law 'On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine', which established a system of measures to ensure equality for persons with disabilities in all spheres of life. The law provides for the creation of special programmes for the rehabilitation, employment, and access to infrastructure, education, culture and sports for people with disabilities.[72]
3. The approval by the Cabinet of Ministers of Ukraine of the National Strategy for Creating a Barrier-Free Space in Ukraine for the period up to 2030, which aims to fully integrate persons with disabilities into society and provides for inclusion measures, in particular in the educational, medical and labour spheres.[73]

7. Cases before the monitoring bodies of the UN Human Rights Treaties

Over the seventy-nine years of its existence, the United Nations has created an extensive monitoring system to ensure that states fulfil their treaty obligations. Ukraine's reports (cases) submitted under the main international human rights treaties are worth considering.

The UN Human Rights Committee was established on the basis of the International Covenant on Civil and Political Rights. In 2000, Ukraine submitted its fifth periodic report, in which it noted the adoption of the Constitution of Ukraine, the establishment of the Council for the Reform of the Judiciary and the System of Appeal Courts, the adoption of a new Criminal Code, and changes to the procedure

70 President of Ukraine, 2012.
71 Verkhovna Rada of Ukraine, 2005.
72 Verkhovna Rada of Ukraine, 1991.
73 Cabinet of Ministers of Ukraine, 2021.

for pre-trial detention and to the rules governing searches. At the same time, the Committee noted that the text of the Constitution of Ukraine does not make clear whether the provisions of the International Covenant have a direct effect similar to the provisions of the Constitution and whether the courts in Ukraine can directly apply the International Covenant.[74]

In 2011, the UN Human Rights Committee considered the case of V. Shchitka v. Ukraine. In this case, the author of the communication was the mother of the convicted V. Shchitka, who claimed that as a result of torture by the police, her son confessed to a crime he had not committed, and when he later recanted this testimony, the Ukrainian court did not take this into account and the materials were removed from the criminal case. In its findings, the UN Human Rights Committee found a violation of the following provisions of the ICCPR: Art. 7 (prohibition of torture); Art. 14(1) (equality before the courts); Art. 14(3) (compulsion to testify against oneself); Art. 14(3)(f) (refusal to examine witnesses). Based on the results of the review, the Committee decided that Ukraine is obliged to take effective measures to eliminate the harmful consequences of these violations and to conduct a new and impartial investigation, in particular regarding the use of torture; a retrial in accordance with national legislation and international standards; and provide adequate compensation.[75]

On 9th February 2022, the UN Human Rights Committee adopted Concluding Observations on Ukraine's eighth periodic report on the implementation of the International Covenant on Civil and Political Rights. The report noted the adoption of a number of important legal acts and measures, including the law on mine action measures, the law on preventing and combating domestic violence, the law on civil service, the national strategy for promoting the development of civil society in Ukraine until 2026, and the action plan for the implementation of the national human rights strategy. At the same time, the Committee recommended that measures be taken to avoid pre-trial detention of minors, with the use of alternative measures not involving the deprivation of liberty. In addition, certain issues remain related to the implementation of legislative changes on child-friendly justice.[76]

On 9th May 2022, the Permanent Representative of Ukraine to the United Nations and other international organisations requested the convening of a special session of the Human Rights Council on the deterioration of the human rights situation in Ukraine as a result of Russian aggression. On 12th May 2022, during the special Thirty-fourth Special Session, the Human Rights Council issued Resolution S-34/1 'The deteriorating human rights situation in Ukraine stemming from the Russian aggression'. The UN Human Rights Committee strongly condemned the

74 Antonovych, 2005.
75 Zubareva, 2016.
76 The UN Treaty Body Database, 2022.

reported human rights violations and abuses and serious violations of international humanitarian law documented by the High Commissioner that took place in the areas of Kyiv, Chernihiv, Kharkiv and Sumy regions under the control of the Russian armed forces in late February and March 2022, including the very high number of reported cases of summary executions of men, women and children, sexual and gender-based violence, torture and other forms of ill-treatment, and other forms of inhuman and degrading treatment or punishment. The UN Human Rights Committee demanded an immediate cessation of hostilities against Ukraine and compliance by all parties to the conflict with the fundamental principles and rules of international humanitarian law, including refraining from all attacks against civilians and civilian objects and refraining from all human rights violations and abuses in Ukraine.[77]

The Committee on Economic, Social and Cultural Rights was established on the basis of the International Covenant on Economic, Social and Cultural Rights. In 2000, the fourth periodic report of Ukraine on the fulfilment of its obligations noted the exercise by the Ukrainian people of the right to self-determination, the right to freedom from discrimination, including cooperation between national minorities, equality between women and men, and measures to guarantee the right to work. The report also contained information on measures to implement the right to fair and favourable working conditions, trade union rights, and the right to social security, including social insurance. Among the positive developments the Committee on Economic, Social and Cultural Rights noted the adoption of a number of laws on the protection of human rights, including the laws on refugees, immigration, citizenship and the new Criminal Code. At the same time, the Committee expressed concern about the high level of poverty and inadequate measures to overcome it; the situation of women and insufficient measures to eliminate discrimination against them; and de facto discrimination against ethnic minorities.[78]

In 2014, the Committee on Economic, Social and Cultural Rights considered and adopted the sixth periodic report of Ukraine on the implementation of the International Covenant on Economic, Social and Cultural Rights. The report stated that in order to boost economic activity, stimulate employment and strengthen social protection against unemployment, the Cabinet of Ministers adopted Decision No. 831 on 8th September 2010, approving the Basic Directions for Pursuing State Employment Policy for 2010-2011. This document sets out ways of tackling the problem of unemployment, stipulates measures to consolidate the efforts of all parties to social dialogues that are geared towards regulating processes as they occur on the national labour market, and specifies the areas (priority tasks) on

77 Report of the Human Rights Council on its Thirty-Fourth Special Session.
78 Antonovych, 2005.

which State regulation of the labour market is to focus.[79] The Committee recommended to take all appropriate measures to progressively reduce the level of informal employment and to increase the access of persons employed in the informal economy to basic services, social protection and other Covenant rights.[80]

On 20th-21st February 2020, during the 67th session of the UN Committee on Economic, Social and Cultural Rights in Geneva, Ukraine presented its 7th national periodic report on the fulfilment of its obligations. The report noted that the Russian aggression against Ukraine had negative social, economic and psychological consequences for the population and leads to the loss of human capital. It was emphasised that the most important thing for Ukraine was to provide all social guarantees and ensure the rights of its citizens, including internally displaced persons.[81] The Committee recommended: to develop and adopt a new comprehensive national strategy and action plan for the integration of internally displaced persons and their access to economic, social and cultural rights for the period beyond 2020; to adopt legislation abolishing the requirement for residents of non-government controlled areas to register as internally displaced persons in order to access their pensions and other social benefits.[82]

The Committee on the Elimination of Racial Discrimination was established on the basis of the 1965 Convention on the Elimination of All Forms of Racial Discrimination. In 1992, Ukraine submitted its eleventh and twelfth reports on the legislative, administrative and other measures taken to give effect to the provisions of the Convention. The reports noted that during the years of Ukraine's independence, 122 laws and 336 bylaws were adopted that relate to the Convention on the Elimination of All Forms of Racial Discrimination, the creation of institutional mechanisms for the development of cooperation between ethnic groups, and the criminalisation of incitement to national, racial and religious hatred and genocide. The Committee recommended that the Government of Ukraine include in its next report information on complaints lodged, prosecutions initiated and criminal and civil sanctions imposed for crimes arising from racial discrimination, including investigations into complaints lodged by the Ukrainian Parliament Commissioner for Human Rights.[83]

In 2016, at the 90th session of the UN Committee on the Elimination of Racial Discrimination, Ukraine presented its 22nd and 23rd Joint Reports on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. The Ukrainian delegation stressed that part of the sovereign territory of Ukraine – the Autonomous Republic of Crimea – was illegally occupied by the Russian Federation, as a result of which there were numerous

79 United Nations, no date.
80 The Committee on Economic, Social and Cultural Rights, 2014.
81 Permanent Mission of Ukraine in Geneva, 2020.
82 The Committee on Economic, Social and Cultural Rights, 2020.
83 Antonovych, 2005.

cases of human rights violations, including discrimination on national and other grounds, in particular against Crimean Tatars, Ukrainians, and persons of other nationalities who expressed pro-Ukrainian views, in the occupied and temporarily uncontrolled territories of Ukraine.[84] The Committee recommended to include nationality and descent as grounds for racial discrimination in the Law on the Principles of Preventing and Combating Racial Discrimination and in other legislation relating to the prohibition of racial discrimination.[85]

The UN Committee on the Elimination of Discrimination against Women was established on the basis of the 1979 Convention on the Elimination of All Forms of Discrimination against Women. In 1999, Ukraine submitted its fourth and fifth periodic reports (as one document) to the Committee. This report provided information on the national bodies guaranteeing the equality of rights between women and men, the national plan of action for the advancement of women and the expansion of their role in society, measures taken to overcome stereotypes, and to implement the right of women to participate in the management of public affairs and to represent the State at the international level. In its concluding observations, the Committee noted positive developments, including the incorporation of the elimination of all forms of discrimination against women in Ukrainian law and its primacy over national norms in cases of conflict; the adoption of new laws and programmes; and the high level of women's education. At the same time, the Committee on the Elimination of Discrimination against Women expressed concern about the unsatisfactory level of awareness of the Convention and its application among people, including judges, law enforcement officers and women themselves; the lack of understanding of discrimination against women as a multifaceted phenomenon.[86]

In 2017, the UN Committee on the Elimination of Discrimination against Women considered the eighth periodic report of Ukraine. The report noted the improvement of the fundamental principles of state policy aimed at accelerating the elimination of discrimination against women and the empowerment of women, including the adoption of the following documents: The State Programme for Ensuring Equal Rights and Opportunities for Women and Men, the Concept of the National Programme for Preventing and Combating Domestic Violence, and the National Action Plan for the Implementation of UN Security Council Resolution 1325 on Women, Peace and Security until 2020. At the same time, the Committee recommended ensuring women's and girls' access to justice and adopting gender-sensitive procedures for investigating sexual violence; providing training and adopting gender-sensitive codes of conduct and protocols for the police and armed

84 Cabinet of Ministers of Ukraine, 2016.
85 Committee on the Elimination of Racial Discrimination, 2016.
86 Antonovych, 2005.

forces; and strengthening the capacity of the judiciary to ensure its independence, impartiality and integrity.[87]

In 2022, Ukraine submitted its 9th periodic report on the implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women. The report indicates the adoption of Law No. 2229-VIII on Preventing and Combating Domestic Violence, the Law of Ukraine on Amendments to the Criminal and Criminal Procedure Codes of Ukraine regarding the introduction of criminal liability for domestic violence and other forms of gender-based violence, the introduction of a definition of gender-based violence in the Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men, and the appointment of the Government Commissioner for Gender Equality Policy. The Committee was concerned that the military attack on Ukraine had resulted in gross human rights violations against Ukrainian women and girls, who were victims of attacks on civilians and civilian infrastructure, as well as torture and other cruel, inhuman or degrading treatment. The Committee recommended that consideration be given to seeking international assistance, if necessary, to implement the recommendations, including technical assistance from the Committee.[88]

The Committee against Torture, established on the basis of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considered the second periodic report of Ukraine on 12th November 1992. In the report, Ukraine pointed out that the reform of the judiciary had not yet been completed, but legal measures were under consideration to guarantee the separation of powers and the independence of the judiciary. In addition, the new Supreme Soviet of Ukraine had set up three commissions. The first dealt with legislative activities, the second with issues of public order and the third was a human rights commission that considered complaints submitted to it. The Committee observed that some, but not all provisions of the Convention were reflected in national legislation, and wished to know what measures were being taken to incorporate the provisions of the Convention into domestic law and whether the Convention could be invoked before a court.[89]

In 2000 Ukraine submitted its fourth periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ukraine mentioned the withdrawal of reservations to the Convention, the establishment of the State Department for the Execution of Sentences, the adoption of the laws 'On Amnesty' and 'On the Legal Status of Foreigners', the reform of the judicial system and the adoption of new criminal legislation, measures to improve the detention conditions of prisoners and detainees, the definition of torture as a criminal offence, the replacement of the

87 The Committee on the Elimination of Discrimination against Women, 2017.
88 The Committee on the Elimination of Discrimination against Women, 2022.
89 Committee against Torture, 1993.

death penalty with life imprisonment, and the compensation and rehabilitation of victims of unlawful acts. The Committee noted a number of positive developments, including the adoption of a new Criminal Code that defines torture as a crime; the establishment of the Constitutional Court; the adoption of new legislation in the field of human rights protection; and the introduction of the institution of the Ukrainian Parliament Commissioner for Human Rights, who can visit all places of deprivation of liberty. At the same time, the Committee recommended that the Government of Ukraine take effective measures to prevent the practice of torture; recognise the competence of the Committee against Torture under Articles 21 and 22 of the Convention against Torture and withdraw the reservation to Article 20 of the Convention.[90]

In 2007, the Committee against Torture considered the fifth periodic report of Ukraine on the efforts of that country to give effect to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The report stated that Ukraine had ratified the Optional Protocol to the Convention against Torture and had established a national mechanism as provided for in that instrument. A law had been adopted under which a prisoner had the right to have access to correspondence without censorship, and contacts with the High Commissioner's office were also possible without interference. The Committee welcomed Ukraine's ratification of the Optional Protocol to the Convention, which was one of the most important preventive measures that could be taken. At the same time, the Committee was concerned that the definition of torture in Ukrainian law did not meet all the requirements of the Convention.[91]

In 2014, the Committee against Torture concluded its consideration of the sixth periodic report of Ukraine on its implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The report stated that the Government had adopted the programme of activities of the Cabinet of Ministers aimed at ensuring the protection of human rights and the institution of free legal aid had been introduced in 2011. Ukraine was taking all possible measures to ensure fundamental rights and freedoms in the territories occupied and annexed by Russia, and it was also conducting investigations into acts of ill-treatment, torture, abduction or death. The Committee of Experts expressed concern about reported acts of torture and ill-treatment taking place in the territory outside the State's control, and wondered about measures to address those acts and ensure compliance with international obligations. Experts welcomed the new criminal legislation but were concerned about the lack of systematic application of its provisions and serious procedural violations in places of detention.[92]

90 Antonovych, 2005.
91 The United Nations Office at Geneva, 2007.
92 The Office of the High Commissioner for Human Rights, 2014.

The Committee on the Rights of the Child is established under the Convention on the Rights of the Child. In 2002, Ukraine submitted its second periodic report. In the report, the Government of Ukraine outlined general measures taken to implement the Convention on the Rights of the Child, including the establishment of the Ministry for Family and Youth Affairs; amendments to the Code of Laws on Marriage and Family; the adoption of the National Family Planning Programme and the National Programme 'Children of Ukraine'. Whilst noting positive developments in its concluding observations and comments, the Committee on the Rights of the Child, *inter alia*, concluded that legislation on the Convention on the Rights of the Child was declarative in nature and had not been fully implemented. Forty recommendations of the Committee on the Rights of the Child to the Government of Ukraine included the need to establish a single permanent body to coordinate the implementation of the Convention at both national and regional levels; to provide the necessary resources for the full implementation of state programmes for children, including the Ukraine for Children programme.[93]

In 2011, the UN Committee on the Rights of the Child considered the third and fourth periodic reports of Ukraine on the implementation of the Convention on the Rights of the Child and the initial report of Ukraine on the implementation of the Optional Protocol on the involvement of children in armed conflict. The report presented the measures taken by the Government of Ukraine to protect children and their rights, which include, *inter alia*, improving the legal framework for child protection, including reforming the state system for the placement of orphans and children deprived of parental care; and strengthening social protection for low-income families with children.[94] The Committee urged Ukraine to ensure continuity in the implementation of key Government child policy priorities, in particular Child Care Reform; to ensure the effective coordination of child policies by the Ministry of Education and Science, Youth and Sports in line with the reform, and in this regard to review the role and authority of the Inter-agency Commission on Child Protection.[95]

The Committee on the Rights of Persons with Disabilities was established on the basis of the Convention on the Rights of Persons with Disabilities. In 2015, Ukraine submitted its first periodic report on the implementation of the Convention on the Rights of Persons with Disabilities. The report stated that Ukraine had adopted a number of important legal acts to improve the disability policy and to promote the rights of persons with disabilities to independence, social integration and full participation in the life of society without discrimination, including the Law on Principles of Prevention and Combating Discrimination, the Law on the Basis of Social Protection of Persons with Disabilities, and the Criminal Code of

93 Antonovych, 2005.
94 Women's Consortium of Ukraine, 2011.
95 The Committee on the Rights of the Child, 2011.

Ukraine.[96] The Committee noted with concern the lack of measures taken to raise awareness on the rights of persons with disabilities as contained in the Convention. The Committee was particularly concerned that public officials, professionals working with and for persons with disabilities, the public in general, and persons with disabilities themselves remained unaware of their rights. The Committee urged Ukraine to step up its efforts to raise the awareness of its public on the rights of persons with disabilities, by conducting public campaigns.[97]

In 2024, Ukraine submitted its combined second and third periodic report on the implementation of the UN Convention on the Rights of Persons with Disabilities. The report provided detailed information on institutional support for NGOs, the availability of additional services for women with disabilities in times of war, and gave examples of prosecution for discrimination on the basis of disability. Noting the positive aspects, the Committee recommended Ukraine to develop a comprehensive strategy to increase the employment of persons with disabilities, including internally displaced persons with disabilities, as well as a supervisory mechanism to monitor its effectiveness.[98]

8. Final Thoughts

The research of the history of human rights in Ukraine reveals that the country has deep roots in the traditions of a legal system dating back to Kyivska Rus. These historical milestones, including the influence of Byzantine law, the Lithuanian statutes and the implementation of the Magdeburg Law, have laid the foundations for a modern human rights system in Ukraine.

Cooperation with the UN allows Ukraine to integrate international standards effectively into national legislation, which is especially important in the context of the armed conflict of the Russian Federation against Ukraine. Ukraine actively uses international mechanisms to protect its national interests and draw attention to human rights violations in the occupied territories.

The incorporation of the main international human rights conventions into Ukrainian legislation ensures a high level of protection of citizens' rights, in particular in areas such as refugee protection, anti-discrimination, and the protection of the rights of persons with disabilities. The adoption of relevant legislation and the establishment of specialised bodies contribute to the effectiveness of these measures.

The analysis of cases submitted to UN monitoring bodies reveals systemic problems in the protection of human rights in Ukraine. This applies, in particular,

96 The Office of the High Commissioner for Human Rights, 2015.
97 The Committee on the Rights of Persons with Disabilities, 2015.
98 The United Editorial Board of the Periodicals of the Ukrainian Society of the Blind, 2024.

to violations of labour rights, discrimination, enforced disappearances and other serious violations committed in the context of the armed conflict.

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The Universal Protection of Human Rights and Eastern Europe: Republic of North Macedonia

ABSTRACT: *Macedonia, with its legal system of human rights and freedoms as well as its relevant protection regime, belongs to the category of States where continental law is applied and where the primary sources of law are the Constitution, the national laws and the international agreements concluded and ratified in accordance with the legislation. Article 9 of the Macedonian Constitution states that citizens are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law. This is very important for Macedonian society which consists of different national minorities and is compatible with the libertarian and democratic spirit of its constitutional system. In the Macedonian constitutional system, human rights and freedoms are not regulated and granted, but are confirmed and guaranteed by the Constitution. They are not brought into the constitutional system from the outside by a subjective act of State power, but they are integrated into the system as an expression of the quality and dynamics of societal relations. The Macedonian State is a member of the United Nations and of the Council of Europe and has ratified numerous international agreements and has committed itself through the Constitution to conform to the principles enshrined in these agreements. Respect for the generally accepted norms of international law is stated as one of the fundamental principles of the Macedonian constitutional order (Article 8) and the international agreements that are ratified in conformity with the Constitution are an integral part of the internal legal order and cannot be changed by law (Article 118). In addition to the brief historical review in the development of human rights and freedoms, this chapter will continue with the analysis of the relationship between Macedonia and the UN from a human rights perspective, what UN human rights conventions is Macedonia a State Party, the national implementation of the following UN conventions: the Convention relating to the Status of Refugees, the International*

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Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities. This chapter will focus on the human rights protection obligations deriving from the above-mentioned UN Conventions and on how are they reflected in the Macedonian Constitution and major legal acts of the country.

■ **KEYWORDS:** *UN, international conventions/covenants, human rights, fundamental freedoms, constitution, constitutionalism*

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

The Federative People's Republic of Yugoslavia was created during the revolution against the fascists. The revolutionary order was constituted during the revolution and built on the federative principle, the common struggle of all peoples of Yugoslavia. The liberation of each people conditioned the liberation of the other peoples of Yugoslavia. The right for self-determination through the socialistic revolution, Macedonian people used as their last act for the establishment of their national country as a constituent part of the Socialist Federative Republic of Yugoslavia. The Macedonian people took part in the Yugoslav revolution in such conditions in which their historical interests were connected with Communist Party of Yugoslavia, being the only political subject which had accepted the existence of the Macedonian nation and the struggles for its emancipation. The decision of the territorial integrity and the national question of the Macedonian people through the Yugoslav revolution resulted in the establishment of an independent Macedonian country within the structure of Federative Yugoslavia.[1] The political decision on the issue of Macedonia as a nation has got its full expression in the constitutional and political function, in the decisions of AVNOJ[2] and later in the decisions of ASNOM.[3]

1 Kulić, 1978.
2 Anti-Fascist Assembly of the Peoples Liberation of Yugoslavia.
3 Anti-Fascist Assembly of the Macedonian Peoples Liberation.

The Socialist Republic of Macedonia, as an integral part of SFR Yugoslavia, led a centralised federal foreign policy both towards individual States and international organisations, including the UN. The federal foreign policy did not allow or tolerate dissonant tones on the outside by the six republics in the composition of the federation: Slovenia, Croatia, Macedonia, Serbia, Bosnia and Herzegovina, Montenegro as well as the two provinces of Vojvodina and Kosovo.

The first basic principle listed in the 1974 Constitution begins with the formulation 'the nations of Yugoslavia, proceeding from the right of every nation to self-determination, including the right of secession...' However, the application of this principle was limited by the fact that no mechanism existed in the Constitution to allow for secession. It was further limited by two important distinctions. A distinction was made between the 'nations' of Yugoslavia and the 'republics' of Yugoslavia, the former being peoples like the Croats, Macedonians, Serbs and Slovenes without any necessary geographic connection and the latter being the six geographically defined federal units without any necessary ethnic connection. A second distinction was made between 'nations' and 'nationalities' with the latter being defined as 'members of nations whose native countries border on Yugoslavia'.[4]

In the period from 1946 to 1990, Macedonia did not have its own, autonomous position regarding foreign policy and international protection of human rights. All the steps taken on the external plan were coordinated, planned and organised by the federal authorities responsible for foreign policy without exception. Regarding human rights, the Federation, and within that framework, the Republic of Macedonia demonstrated a rather problematic protection regarding European standards and values. In this context, it should be emphasised that Article 175 of the SFR Constitution states that 'human life shall be inviolable', but that 'exceptionally' the death penalty may be provided for by a federal statute for the most serious forms of grave criminal offence. Nonetheless, of the 140 criminal offences defined in the federal criminal code, 45 carry a discretionary death sentence. These include 16 types of political offence if they have had as a consequence the death of a person or caused danger to human life, or were accompanied by serious violence or great destruction, or resulted in the undermining of the security or the economic and military strength of the country, or in other especially grave cases (Article 139).

Also included are a number of non-violent military offences committed in time of war or immediate danger of war, such as evasion of and refusal to undertake military service, desertion, non-fulfilment of duties during combat, activity designed to lower military morale.[5]

A report submitted by Yugoslavia to the Human Rights Committee in February 1978 on its implementation of the International Covenant on Civil and

4 Rich, 1993.
5 Amnesty International, 1981.

Political Rights under Article 40 of that Covenant, stated: 'It is the intention of the Constitution and even more of legal solutions and judicial practice to encourage abolitionist policy.' Official statistics show that during the period of 10 years from 1968 to 1978, 36 death sentences were upheld by the highest Yugoslav courts.[6]

Referring to control and protection of constitutionality, the Constitutional Court of Yugoslavia, six republican constitutional courts and one provincial constitutional court department (2 departments) were established in the SFRY. These courts functioned according to the following principles: 1. The federative constitution is the supreme legal and social instrument of the country. All functions of authority and public authorisation, as well as the function of political parties, emanate from the Constitution and cannot be acquired by any other instrument. Similarly, each and every function of authority and public authorisation can only be effected as provided for in the Constitution. 2. The federation, the republics, the provinces and the communes are all equal communities in the light of the Constitution, and they effect their jurisdiction and functions exclusively on the basis of the Constitution. Therefore, none of them are hierarchically superior or subordinated to any other. The legal system cannot be created or regulated arbitrarily. Therefore, the federation, the republics, the provinces and the communes are, in their mutual relations, larger or smaller communities placed on an equal footing. The obligations of the smaller communities having a relationship with the larger ones, the federation and the republics, stem exclusively from the Constitution and the Laws of the Federation and/or the republics. All legal acts must be in accordance with the Yugoslav Constitution.[7]

The concept of human development, primarily that of the working class, was analysed in the light of that principle and the system of 'self-governance'. In practice, the elements of political freedom and human rights were missing, although in Yugoslavia the standard of living and communications with the outside world were on a much more advanced level than in other countries with 'real socialism'. The socialist reality also lacked many other elements inherent to the human development concept, such as the rejection of market economy, and

6 Ibid. Amnesty International does not know if any of these sentences were subsequently commuted to imprisonment by presidential pardon. An article in the Yugoslav press in 1979 stated that on average about three or four death sentences were executed yearly; the Deutsche Presse Agentur, a news agency in the FRG, reported in September 1980 that 39 death sentences had been executed between 1970 and 1979. To Amnesty International's knowledge, the last death sentences passed for political offences were pronounced in 1976; all six cases were commuted by the court to terms of imprisonment.

7 Kulic, 1973. One of the first major decisions of the Constitutional Court of Yugoslavia is the one annulling the regulations passed after April 7, 1965, which, by the Law on the Nationalisation of Buildings and Land for Lease, national Constitutional Court of Yugoslavia nationalised building land, thus violating the right of private ownership guaranteed by the Yugoslav Constitution.

the inadequate concern about future generations, for instance due to excessively high expenditure of the social sector and high indebtedness, etc.[8]

After gaining its independence in 1991, the Republic of Macedonia has developed a liberal and democratic constitutional concept of human rights and freedoms protection based on liberal values, with an emphasis on the citizens. One third of all Macedonian constitutional provisions are committed to protect human rights and freedoms of individuals and citizens (individual rights), and the rights and freedoms of national minorities (collective rights) which classify the Macedonian Constitution in the group of liberal-democratic constitutions based on the liberal democratic values. This great and systematic bill of rights starts with basic freedoms and rights of individuals and citizens, civil and political freedoms and rights, continues with the economic, social and cultural rights, the guarantees of basic freedoms and rights, and end with the foundations for economic relations, which correspond to the citizen's evolution in legal theory and practice.

The contemporary development of human rights in Macedonia is closely related to the contemporary constitutional development in the country viewed from two aspects: the first, which follows the constitutional development of Macedonia as part of the former SFR Yugoslavia, and the second, which puts the emphasis on the period after the country gained independence from the Yugoslav federation, i.e. when the Macedonian State became an independent and sovereign country.

As part of the former SFR Yugoslavia, the human rights and constitutional development of Macedonia are viewed in close correlation with the constitutional development of the Yugoslav Federation, i.e. the federal and republican constitutions of the Federation: the Constitution of the FNRY (Federative People's Republic of Yugoslavia) of 1946[9], the 1953[10] Constitutional Act, the 1963 Constitution of the SFR Yugoslavia, i.e. of SR Macedonia, and the 1974[11] Constitution of SFR Yugoslavia.

Macedonia's independence, slowly but surely, was approaching with the major changes in the social, economic and political system that took place with the constitutional changes in September 1990. These constitutional amendments

8 United Nations Development Programme, 1996.

9 The first Constitution of the People's Republic of Macedonia of 1946 is particularly important for the Macedonian people having in mind the country's statehoodness and its unification with the other peoples of Yugoslavia as part of the new federal union, the FNRY.

10 Constitutional law for the social and political establishment and for the governing bodies of the People's Republic of Macedonia, predicated by the adoption of the Fundamental Law for Management with the State Companies and the higher commercial associations by the work collectives, also known as the Law on Workers' Self-Management of 1950.

11 This Constitution falls in the group of real-programme constitutions. The next period brings some new amendments to the constitution, the first amendments were made in 1981, and the remaining amendments were made in 1989-1990 with the aim of creating a constitutional basis for the in-depth reforms that followed two years later.

explicitly proclaimed the right of Macedonian people for self-determination, including the right to secession from the former Yugoslavia, based on the decision adopted by the National Assembly with a 2/3 majority of votes cast by the total number of MPs. This decision entered into force after it was adopted at a referendum with a majority of votes cast by the citizens with the right to vote.

The Declaration on the independent and sovereign State of Macedonia[12] by the National Assembly of the Republic of Macedonia was adopted on 25 January 1991. The Macedonian people directly expressed their will for an independent State at the referendum for independence held on 8 September 1991. On this day, 95.26% voted for independence from Yugoslavia, under the name of the Republic of Macedonia. The question of the referendum was formulated as follows: 'Would you be in favour of an independent Macedonia with the right to enter a future union of sovereign States of Yugoslavia?' On 25 September 1991, the Declaration of Independence was formally adopted by the Macedonian National Assembly, making the Republic of Macedonia an independent country – although in Macedonia, Independence Day is still celebrated as the day of the referendum, 8th of September.[13]

On 17 November 1991, the National Assembly of the Republic of Macedonia adopted the first Constitution of the independent and sovereign Republic of Macedonia. Although the 1991 Constitution falls in the group of rigid constitutions, bearing in mind the complexity for its amendment, the 36 adopted amendments in the past 33 years of independence point towards a different conclusion.

The Macedonian Constitution connects the fundamental human rights and freedoms not only with the concepts of the individual and the citizen, but also with the collective rights of ethnical minorities with highly respect of the international standards and responsibilities taken under the UN and CoE human rights treaties. The Macedonian government took over responsibility for its international relations with effect from 17 September 1991. The Republic of Macedonia was admitted as a member to the UN on 8 April 1993, eighteen months after its independence from the former Socialist Federal Republic of Yugoslavia. Within the UN, it was referred to as 'the former Yugoslav Republic of Macedonia' until the final settlement of the difference regarding the name, this being the result of the Greek objection to the membership application of the then Republic of Macedonia for fully–fledged United Nations membership under its constitutional name, as set forth in United Nations Security Council Resolution 817 (1993). In June 2018, Macedonia and Greece signed the Prespa Agreement, whereby the then ruling

12 See: Republic of Macedonia: From a Member State of the Yugoslav Federation to a Sovereign and Independent State. History of Macedonia [Online]. Available at: http://www.historyofmacedonia.org/IndependentMacedonia/RepublicofMacedonia.html (Accessed: 5 March 2024).

13 See: *Macedonian Independence Day* [Online]. Available at: http://www.123independenceday.com/macedonian (Accessed: 1 March 2024).

government of the Republic of Macedonia agreed to change its name to North Macedonia. Macedonian State is a party to numerous international human rights conventions of the United Nations and of the Council of Europe, including the control mechanisms established for the application of the provisions. A part of them is inherited by succession from the former Yugoslavian federation pursuant to Article 5 of the Constitutional Act on the Implementation of the Constitution of the Republic of Macedonia.

2. Relationship between Macedonia and the UN from a human rights perspective – UN Human Rights Treaties to which Macedonia is a Party

International human rights treaties create obligations that promote and protect human rights at national level. When these treaties become part of the domestic legal system, they generate binding legal obligations for the States. International treaties, through the establishment of committees and through their active functioning, enable international monitoring of their implementation at national level.

As a member to the United Nations, by way of succession to the former Yugoslavia, the Macedonian government took over responsibility for its international relations effective on 17 September 1991 and entry into force many UN covenants and conventions due to succession or accession process. For the purposes of this chapter, the most important UN Conventions are extracted as a subject of the research.

1. The 1966 International Covenant on Civil and Political Rights (CCPR) (competence for inter-State complaints (Article 41 was not adopted), which entered into force in Macedonia on 17 September, 1991 through the process of succession. The 1966 Optional Protocol to the CCPR, which entered into force on 12 March 1995, the UN Development Assistance Framework known as 'Partnership for Sustainable Development'– 2016-2020 addressed the key concerns identified by the UN human rights mechanisms affecting women, persons with disabilities, Roma and people on the move, as well as the authorities' failure to act and protect persons from discrimination. The National Human Rights Adviser for the UNCT works with the national partners and various stakeholders in Macedonia to identify priority areas, specifically, empowering the marginalised and socially excluded, accountability of State institutions to their gender equality commitments, and women and girls living free of discrimination and violence. In 2019, the National Human Rights Adviser supported the implementation of the joint UN project by UNFPA, UNICEF, UNDP and UN Women, deinstitutionalisation of persons with disabilities, as required by the Convention on

the Rights of Persons with Disabilities. In December 2017, relevant groups in the country led by the National Human Rights Adviser, contributed to the State's ratification of the Istanbul Convention. The NHR Adviser provided expert advice in the decision-making process related to the anti-discrimination law as well as the implementation of the international human rights standards in this area. The new anti-discrimination law in Macedonia is largely compliant with international human rights law and with the Paris Principles on national human rights institutions. In 2018, the government's National Mechanism for Reporting and Follow-up to human rights mechanisms appointed new members.

2. The 1966 International Covenant on Economic, Social and Cultural Rights (CESCR) entered into force on 17 September 1991 through the process of succession, while the Second Optional Protocol to the ICCPR of 1989 entered into force on 26 of April 1995. The implementation of this Covenant is visible in many country in the field of social policy and cohesion, education and cultural rights as well as in the field of economy.
3. The 1984 Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) (competence for inquiry procedure, individual/inter-State complaints) (adoption of Arts. 20, 21 and 22) entered into force on 17 September 1991 through the process of succession, while the Optional Protocol of the Convention against Torture of 2002 entered into force on 7 January 2009. The UN Committee against Torture raised several subjects of concern and provided recommendations in the Criminal Code and pursued a dialogue with the Macedonian government about the modernisation of many police stations equipped with holding cells and the installation of closed-circuit television (CCTV) cameras. The Committee expressed concerns about the fact that not all detained persons enjoy, in practice, all fundamental legal safeguards from the very outset of the deprivation of their liberty. In particular, the Committee was concerned about reports indicating shortcomings in the provision of effective access to a lawyer, as well as in the legal aid system. Reportedly, there were cases in which access to a lawyer was delayed during the first 24 hours of police custody and was provided only upon the person's arrival in court.[14] The Committee raised concerns about the overall lack of funding and understaffing of the prison system and chronic deficiencies in staffing levels, especially at the Idrizovo prison, which led to the declaration of a crisis situation at the prison facility on 6 June 2023. It asked the State Party to continue recruiting sufficient prison personnel to ensure an adequate

14 Office of the United Nations High Commissioner for Human Rights: Universal Periodic Review – Republic of North Macedonia [Online]. Available at: https://www.ohchr.org/en/hr-bodies/upr/mk-index (Accessed: 5 October 2024).

prisoner-to-staff ratio, to improve security, to reduce inter-prisoner violence as well as to record and to report cases of coercion by prison police. The Committee underscored the particular need to address the crisis situation declared at the Idrizovo prison.

4. The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) entered into force on 17 September 1991, while the 1999 Optional Protocol to the CEDAW (no opting-out in case of the inquiry procedure, Article 10) on 17 January 2004. Macedonia is a signatory of the Beijing Platform for Action (BPfA) and it is also committed to the implementation of UN Security Council Resolution 1325 – Women, Peace and Security. The country`s legal framework on gender equality is aligned with the international and European human rights standards, conventions and other international human rights instruments. Key legal and strategic documents on gender equality include the Act on Equal Opportunities of Women and Men (2014), the Law on Prevention and Protection against Discrimination (2020), the National Strategy for Anti-discrimination (2022-2026), the National Strategy for Gender Equality (2022-2027), the NAP on Implementation of the Istanbul Convention (2018-2023). The UNDP in Macedonia puts gender equality and the empowerment of women in the centre of its work in order to ensure that commitments on gender equality are translated into actions in all thematic areas: Inclusive Prosperity, Democratic Governance and Environment.
5. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (competence for individual complaints (Article 14 adopted) entered into force on 17 September 1991 through the process of succession. Since its independence, Macedonia has been developing an active policy of advancing the rights of persons belonging to various communities living in the country and it has also been promoting the policy of inter-ethnic and religious tolerance and understanding. This has been based upon Macedonia's historical experience of inter-ethnic coexistence and understanding and its dedication to its development as a democratic State. Guided by the traditions of good inter-ethnic relations and in the spirit of mutual understanding and tolerance, Macedonia has adopted a large number of laws, in an effort to establish a democratic political environment as a precondition for the respect for human rights and fundamental freedoms. In that framework, respecting the rights of persons belonging to communities, both for individual and for collective

rights, is viewed as an important factor for ensuring peace, stability and democracy in the country.[15]

6. The 1951 Convention relating to the Status of Refugees as well as the 1967 Protocol to the Convention relating to the Status of Refugees entered into force on 18 January 1994 through the process of succession.
7. The 1989 Convention on the Rights of the Child (CRC) entered into force on 17 September 1991 through the process of succession, the 2000 Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography entered into force on 17 November 2003, while the 2000 Optional Protocol to the CRC on the Involvement of Children in Armed Conflict entered into force on 12 February 2004.
8. The 2006 Convention on the Rights of Persons with Disabilities entered into force on 5 December 2011, while the 2006 Optional Protocol to the Convention on the Rights of Persons with Disabilities entered into force on 3 May 2008.
9. The 1954 Convention relating to the Status of Stateless Persons entered into force in 1994, while the 1961 Convention on Reduction of Statelessness entered into force in 2019.
10. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has not been ratified and Macedonia is not State Party.

3. National implementation of UN Conventions/Covenants

In the early 1990s, the United Nations started promoting National Human Rights Institutions (NHRIs) in Macedonia in the context of transition to a pluralist democracy. The start of the democratic transition processes in the country coincided with the international community's major efforts to strengthen the protection of human rights at the global level.[16] The political aspects of this process included the establishment of democratic political institutions, the rule of law, guarantees for the exercise of fundamental human rights and freedoms, as well as the provision of adequate institutional guarantees that the State would safeguard human rights in line with international standards. Independent national agencies specifically

15 United Nations: Committee on the Elimination of Racial Discrimination. Reports Submitted by States Parties Under Article 9 of the Convention (Seventh Periodic Reports of States Parties Due in 2004) Addendum – The Former Yugoslav Republic of Macedonia, CERD/C/MKD/7 [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FMKD%2F7&Lang=en (Accessed: 6 October 2024).

16 Rehn, 1996.

designed to protect and promote human rights were established in order to 'bridge the gulf between international law and domestic practices'.[17]

However, these global trends did not have an immediate impact in Macedonia, having regard to the fact that most countries in the region underwent the dissolution process of former Yugoslavia, accompanied by war, violence and massive infringements of human rights. Macedonia managed to avoid the wars that followed the break-up of Yugoslavia, but experienced an inter-ethnic conflict in 2001, which had a major impact on the exercise of human rights in the country. In the meantime, the United Nations made strong efforts to encourage the set-up and strengthening of national human rights institutions (NHRIs) in the country through the establishment of the Ombudsperson, the Commission for the Protection against Discrimination, the Data Protection Directorate and the Commission for Protection of the Right to Free Access to Public Information.[18]

The oldest NHRI in Macedonia is the Ombudsperson. The legal ground for the establishment of the institution was set in 1991, with the adoption of the first Constitution after the country's independence. However, due to the lack of political will, there were no developments regarding the adoption of the Law on the Ombudsperson and no setting-up preparations for several years after the adoption of the Constitution. The second NHRI is the Commission for the Protection against Discrimination established under the 2010 Law on Prevention and Protection against Discrimination. The Commission is a composite body of seven commissioners, appointed following a public call by the National Assembly, with a five-year mandate. The adoption of the Act was preceded by several years of effort by the domestic NGOs that urged the adoption of such a law, organised and coordinated a large, participatory and diverse working group and maintained a momentum for its adoption. However, a major political momentum for the adoption of this law emanated from the European Union, within the framework of the visa liberalisation process, which paved the way for the adoption of a comprehensive non-discrimination legislation as one of the benchmarks. The new version of the Law was adopted in 2020.

The third NHRI is the Data Protection Directorate established in 2005, by the Act on Protection of Private Data. As of 2008, the body received the mandate

17 United Nations, 1995.

18 United Nations, 1995. A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights; United Nations efforts to encourage the creation and strengthening of national human rights institutions can be traced back to 1946. However, it is only over the past few years that the international community has reached an agreement as to the optimal structure and functioning of these bodies. A landmark in this process was the formulation of the 'Principles relating to the Status of National Institutions', which were endorsed by the General Assembly in 1993. The same year, the World Conference on Human Rights reaffirmed the important and constructive role played by national human rights institutions and called upon governments to strengthen such bodies. See also: Reif, 2020.

to act as an inspectorate for the protection of personal data, headed by a Director appointed for a period of five years by the National Assembly of Macedonia following a public call. The Director has a Deputy Director, appointed following the same procedure and for the same number of years.

The fourth human rights institution is the Commission for the Protection of the Right to Free Access to Public Information established under the 2006 Law on Free Access to Public Information. It is responsible for the protection and promotion of the right to access to information. It has five members – a president, a vice president and three members, each with a five-year mandate. They are appointed by the National Assembly, following a public call. The situation with this Commission became alarming in May 2018 when, following the resignation of one of its members, it was left with only two members who were unable to adopt any decision, and to decide upon cases. Consequently, a new Act was adopted with the same title, which entered into force on 01 December 2019. According to this Law, the Commission was transformed into the Agency on the Right to Free Access to Public Information.

A common challenge for all NHRIs established in Macedonia is to refrain from entering into hot political issues. This was best exemplified during the wiretapping scandal in Macedonia in 2015-16[19], when the Ombudsperson appeared reluctant to use his mandate fully, probably as he was balancing between not upsetting the establishment too much in relation to concrete cases and his ability to carry out investigations into less politicised cases. In times of crisis, a strong oversight by the Ombudsman is essential to the rule of law, good governance, the protection of human rights and the restoration of public trust in the state institutions. Macedonia's Ombudsperson missed to address the potential violations of human rights in many cases, although he received substantial international support. On the other hand, the Directorate for Personal Data Protection also seemed to be unwilling to carry out its mandate. Several reports and research studies have concluded that all NHRIs in the country lack human and financial resources and are subject to severe political pressure, compromising their independence.

19 The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015 [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/43dcc4f7-4ea9-4d2c-9922-896c006d15ab_en?filename=20150619_recommendations_of_the_senior_experts_group.pdf (Accessed: 5 October 2024).

4. Reflection of UN Conventions /Covenants in national law and major legislative processes in Macedonia initiated by UN Conventions

The internationalisation of the law, the need for a better protection of human rights and freedoms, the links between the States and their membership in international organisations determined the need for common principles of international law, as well as the need for international treaties to be considered as fundamental sources of constitutional law. Despite the different treatment of international treaties in different States, they undoubtedly have an important role as sources of constitutional law, especially in the context of international conventions for the protection of human rights and freedoms.

The Constitution of the Republic of North Macedonia[20] is the supreme legal act in the country. Since its adoption and until the present date, the text of the Constitution was amended on eight occasions, with total of 36 constitutional amendments. The Constitution incorporates each if the most relevant international standards on human rights, and the fundamental human rights and freedoms recognised with the international law are defined in Article 8, para. 1, item 1 as a fundamental value in the Macedonian constitutional order. Besides human rights and freedoms, other fundamental values include the rule of the law, as well as the respect for the common norms of international law. Chapter 2 of the Macedonian Constitution addresses in detail the human rights and freedoms which are classified as civic and political rights, economic, social and cultural rights, and this chapter also defines the guarantees for the fundamental rights and freedoms.

The main characteristic of the concept of human rights is equality, which is defined in Article 9 of the Constitution:

> The citizens of the Republic of N. Macedonia are equal in their freedoms and rights regardless of their gender, race, colour of the skin, their national or social background, their political and religious beliefs of their property or social position. The citizens are equal before the Constitution and the laws.

According to Article 118 of the Macedonian Constitution, the international agreements ratified in accordance with the Constitution are part of the domestic legal order and cannot be changed by law. In this matter, in the hierarchical position of legal norms, international agreements take precedence over domestic laws.

20 The Constitution of the Republic of North Macedonia [Online]. Available at: https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx (Accessed: 30 March 2024).

International agreements are sources of law, which means that individuals or other subjects may automatically invoke the provisions of international agreements and the courts and administrative agencies are under the obligation to apply them directly. The human rights agreements/conventions have a stronger legal effect than other international agreements.

The Macedonian State belongs to the group of countries with a monistic model of positioning the international treaties (conventions, pacts, etc.), which means that in the national hierarchy of legal acts, the ratified international treaties are also included as part of the domestic legal order. The entire Macedonian law generates from and is coordinated with international law. Besides the acceptance of human rights and freedoms and international law as fundamental values in the Macedonian constitutional order, all legal areas in the country are regulated with laws and bylaws which comply with the international conventions. UN law had a serious impact and implication on the Macedonian legal system.

It should be noted that Macedonia is a signatory of all the relevant conventions, treaties and pacts on human rights and freedoms adopted by the UN, and for the purposes of this paper, we will analyse those legal solutions which are used to apply the UN Conventions, such as:

- The general application in laws of the UN International Covenant on Civil and Political Rights, as well as the UN International Covenant on Economic, Social and Cultural Rights;
- Protection from torture, inhuman and degrading treatment and punishment, primarily in the penal area;
- Non-discrimination of women, equality of all people before the Constitution and laws regardless of their gender, race, skin colour, national and social origin, political and religious belief, property and social status;
- Protection of persons with refugee status;
- Protection of disabled persons;
- Protection of people without citizenship;
- Protection of the rights of the child.

Article 21 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment[21], Article 32 of the International Convention for the Protection of All Persons from Forced Disappearance[22] and Article 10 of the Optional Protocol to the Convention on the Rights of the Child on a Communications

21 United Nations: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 [Online]. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading (Accessed: 23 March 2024).

22 United Nations: International Convention for the Protection of All Persons from Enforced Disappearance, 2006 [Online]. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced (Accessed: 24 March 2024).

Procedure[23] have all defined a procedure which is used by the relevant committee to review the appeals from one country against another for non-application of the Convention.

This procedure is applied only for those member-countries that have submitted a declaration for the acceptance of the competences of the Committee on these matters. Articles 11 to 13 of the International Convention on the Elimination of All Forms of Racial Discrimination,[24] as well as Articles 41 to 43 of the International Covenant on Civil and Political Rights[25] define a broad procedure for the settlement of disputes among the countries regarding their obligations set forth in those instruments through the establishment of a temporary reconciliation commission.

Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination[26], Article 29 of the Convention on the Elimination of All forms of Discrimination against Women[27], Article 30 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[28] and Article 32 of the International Convention for the Protection of All Persons from Enforced Disappearance[29] foresee that the disputes on these matters among Member States should be resolved firstly through negotiations, or, if this fails, through arbitration.

One of the involved States may launch a dispute before the International Court of Justice if the two sides fail to agree on the terms of arbitration within a period of six months. Member States may exempt themselves from this procedure during the process of ratification or joining, in which case, in accordance with the reciprocity principle, they are forbidden to submit cases against other Member States.

23 United Nations: Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, 2011 [Online]. Available at: https://resourcecentre.savethechildren.net/document/optional-protocol-convention-rights-child-communications-procedure/ (Accessed: 24 March 2024).

24 United Nations: International Convention on the Elimination of All Forms of Racial Discrimination, 1965 [Online]. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial (Accessed: 22 March 2024).

25 United Nations: International Covenant on Civil and Political Rights, 1966 [Online]. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (Accessed: 22 March 2024).

26 United Nations: International Convention on the Elimination of All Forms of Racial Discrimination, 1965.

27 United Nations: Convention on the Elimination of All Forms of Discrimination against Women, 1979 [Online]. Available at: https://www.un.org/womenwatch/daw/cedaw/ (Accessed: 24 March 2024).

28 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

29 United Nations: International Convention on the Protection of All persons from Enforced Disappearance, 2006.

■ *4.1. How the 1966 International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are reflected in the Macedonian Constitution and in other legal acts?*

As stated above, the international treaties ratified in accordance with the Constitution of the country are part of the domestic legal order, and all State bodies and institutions are obliged to respect and apply these treaties in full. The Constitution stipulates that North Macedonia is obliged to respect the commonly accepted norms of international law and to respect the fundamental human freedoms and rights as defined in the Constitution. These two international instruments are contained in the constitutional norms for human rights and freedoms as well as in numerous legal texts that will be further analysed in this paper.

4.1.1. Protection of the humans and citizens from torture, inhuman and degrading treatment, and sanctions in the Macedonian State

Article 11 of the Macedonian Constitution guarantees this right as a personal right which enjoys constitutional protection through the guarantees for physical and moral integrity of the person. Article 11, para. 2 defines the prohibition for any form of torture, inhuman or degrading behaviour or punishment, while para. 3 of the same Article defines the ban for forced labour.

Article 54 of the Constitution states the following:

> Restrictions to the rights and freedoms cannot refer to the right to life, ban on torture, inhuman or degrading behaviour or punishment, on the legal type of the sanctionable acts and sanctions, as well as on the freedom of belief, conscience, public expression of thought and religion.

Article 142 of the Macedonian Criminal Code[30] states that

1. A person who, during the performance of their duties, or the one inducted by an official person or by official person approval, applies force, threat or some other unallowed means or unallowed manner, with the intention of extorting a confession or some other statement from an accused, a witness, an expert or from any other person, or causes severe physical or mental suffering with the purpose of punishment for a crime or is suspected to have done so, or treats or forces another person to waive a right, or causes suffering as a result of discrimination, shall be punished with imprisonment from one to five years.

30 Criminal Code of North Macedonia [Online]. Available at: https://vlada.mk/sites/default/files/dokumenti/zakoni/criminal_code.pdf (Accessed: 4 April 2024).

2. If the crime from paragraph (1) has caused severe bodily injuries and other extremely hard consequences to the victim or the criminal act has been perpetrated due to hatred, the perpetrator shall be punished with imprisonment of a minimum of four years.[31]

Article 143 stipulates the following:

> A person who while performing their duty mistreats another, frightens them, insults them, or in general, behaves towards them in a manner in which the human dignity or the human personality is degraded, shall be punished with imprisonment of one to five years.

Articles 403-a and 404 of the Criminal Code also foresee a ban on torture. Article 403-a states the following on crimes against humanity:

> The persons that intend to systematically destroy civilians, give an order for homicides, inflict grievous bodily harm, physical extermination, enslave, deportation or forceful displacement of persons, imprisoning or other types of freedom depravation that are against international law, torturing, rape, sexual exploitation or slavery, forceful prostitution, forced pregnancy or forced sterilization, or any other type of serious sexual violence, pursuing any group or community on the basis of their political, ethnic, national, religious, cultural or sexual grounds, abduction and disappearance or persons, discrimination and segregation based on the race, or his/her nationality, ethnicity, political affiliation, culture or other basis and other inhuman acts intentionally causing physical and psychological suffering, or a person that with the same intention carries out any of the above mentioned criminal activities, shall be given a prison sentence of no less than ten years or a life sentence.

Article 404 states:

1. A person who, by violating the rules of international law, during a war, armed conflict or occupation, orders an attack upon civil population, a settlement, certain civil persons or persons incapacitated for combat, which had as consequence death, serious body injury or serious disturbance to the health of the people; an attack without choosing the target, which

31 North Macedonia: Consolidated Criminal Code, 1996 [Online]. Available at: https://www.refworld.org/legal/legislation/natlegbod/1996/en/124105 (Accessed: 30 March 2024).

> strikes the civil population; to commit against the civil population murder, torture, inhuman acts, biological, medical or other scientific experiments, taking issue or organs for the purpose of transplantation, inflicting grave suffering or injury to the body integrity or the health; resettlement and moving or forced denationalization or transfer to some other religion; coercion to prostitution or rape, sexual slavery or inducing unsolicited pregnancy, sterilization or other type of sexual violence; the implementation of measures of fear and terror, taking hostages, collective punishment, illegal taking to concentration camps and other illegal freedom deprivations, depriving of the right to a proper and unbiased trial or carry out punishment or execution without prior verdict passed by a court of law in a procedure in which all generally accepted legal borders are accepted; coercion for service in the armed forces of the enemy or in its intelligence service or administration enrolling and recruiting minors younger than15 into the armed forces of the country or recruiting persons under the age of 18 in armed forces that are not armed forces of the country and using them by active participation in conflict activities contrary to the conditions determined with the rules of the international law; using civilians or other persons as live shield in specific places or regions where armed forces are present; coercion to forced labor, starving of the population, obstruction of humanitarian aid; confiscation of property, pilfering of property of the population, illegal and self-willed destruction or usurpation of a larger extent of properties which is not justified by the military needs, taking an unlawful and excessive contribution and requisition, decreasing the value of the domestic currency or unlawful issue of money; or the person who commits some of the above mentioned crimes - shall be punished with imprisonment of at least ten years, or with life imprisonment.

In Article 405, the Criminal Code foresees a ban on torture of wounded and sick persons in times of war and armed conflict, while Article 406 foresees a ban on torture of persons who are prisoners of war. Imprisonment of at least 10 years or life imprisonment is also foreseen in both of these Articles. The inhuman treatment of migrants during their smuggling is specifically regulated in Article 418-b.

These prohibitions are taken from UN international instruments that define the responsibility for war crimes, crimes against humanity and other international crimes, some of which are mentioned above. The prohibition of torture, inhuman or degrading treatment or punishment covers a wide range of actions that are defined as violations of human rights.

There are several types of acts that constitute a violation of this prohibition, as well as several persons or entities that may be considered as violating this prohibition. There are also objective and subjective tests for determining whether the prohibition has been violated covering substantive and procedural aspects of

enforcement, such as, for example, the obligation to investigate the allegations for torture, inhuman or degrading treatment or punishment. These regulations are violated when certain specific activities are taken, but also when no measure is taken to guarantee the protection from such treatment or punishment.

The prohibition determines negative obligations, such as, for example, the obligation to refrain from such conduct or punishment, and positive obligations, such as, for example, the obligation to take positive measures that will guarantee the protection of the individual from the prohibited behaviour.

It is important to point out that the prohibition of torture, inhuman or degrading treatment or punishment most often refers to the abuse of powers by the police services or other State authorities. The aforementioned sections of the Criminal Code aim to establish protection against such acts for all persons to whom the Criminal Code applies. Hence, it is very important that there are clear, appropriate and efficient mechanisms for prosecuting the perpetrators of those crimes.

The Criminal Procedure Code[32] contains several provisions that refer to the prohibition of torture and other types of mistreatments. Article 12 regulates the legality of evidence. It contains a clear prohibition to extort a confession or any other statement from the accused or from any other person participating in the procedure. The same Article specifies that evidence obtained by illegal means or in violation of the freedoms and rights established by the Constitution, the law and international agreements, as well as the evidence derived from them cannot be used, and a court decision cannot be based on them. The purpose of this Article is to discourage the use of illegal means in obtaining evidence by establishing that such evidence shall not be valid in criminal proceedings.

In relation to the apprehension, deprivation of liberty and detention of a person, the Criminal Procedure Code clearly determines the rights of detained/apprehended persons.

According to Articles 159 and 160 of the Criminal Procedure Code[33], any person should be notified of the crime for which they are charged, has the right to inform their family, has the right to remain silent, has the right to a lawyer and the right to a medical examination. A special register is maintained for persons deprived of liberty in the information system of the Ministry of Interior. Oversight and control of this register is exercised by the competent public prosecutor, as well as by the Ombudsman.

The Criminal Procedure Code specifically regulates the procedure with detainees and establishes their rights, such as: notification to the family, respect for the person's dignity, their special rights, visits and disciplinary responsibility.

32 North Macedonia: Law on Criminal Procedure of 2018 [Online]. Available at: https://www.refworld.org/legal/legislation/natlegbod/2018/en/120650 (Accessed: 6 April 2024).

33 Criminal Code of North Macedonia.

It is of great importance that these rights are provided in the domestic legislation, that clear responsibility for their violation by officials or authorised persons is established.

According to the Law on the Ministry of Interior, the Department for Internal Control and Professional Standards is a separate and independent organisational unit that carries out internal control for the needs of the Ministry and carries out procedures for evaluating the legality of the actions of its employees.

Apart from the internal control mechanism at the Ministry of Interior, there is also a special preventive mechanism under the Office of the Ombudsman. The National Preventive Mechanism functions in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and functions as a national body that regularly examines the treatment of persons deprived of their liberty in order to strengthen, if necessary, their protection from torture and other cruel, inhuman or degrading treatment or punishment. This mechanism makes recommendations to the relevant authorities in order to improve the treatment and conditions for the persons deprived of their liberty, and suggests ways of preventing torture and other cruel, inhuman or degrading treatment or punishment, taking into account the relevant norms of the United Nations. It also presents proposals and opinions regarding the existing legislation.

With the Law on the Ratification of the Optional Protocol, the State declared that the Ombudsman is appointed to act as a National Preventive Mechanism. Following the recommendations of the UN Subcommittee on Prevention of Torture, the National Preventive Mechanism is tasked with preventing torture and other cruel, inhuman or degrading treatment or punishment.

The National Preventive Mechanism has access to all data related to the number of persons deprived of liberty, as well as to their locations; it has access to all information about the treatment of those persons, the conditions of their detention; as well as to all places of detention (establishments and facilities); it has the right to talk without supervision and without witnesses, to persons deprived of their liberty, either in person or with an interpreter, if this is deemed necessary, as well as to any other person for whom the National Preventive Mechanism considers is able to provide relevant information; it has the freedom to choose the places they want to visit and the people they want to talk to; as well as the right to contact the UN Subcommittee on Prevention of Torture, to which it can send information or hold meetings with.[34]

34 European Commission: North Macedonia Report, 2023 [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2023_en (Accessed: 2 April 2024).

■ *4.2. Non-discrimination of women, equality of all people before the Constitution and laws regardless of their gender, race, skin colour, national and social origin, political and religious belief, property and social status*

The relevant international anti-discrimination obligations are extensive in the country. Primarily, Article 7 of the Universal Declaration of Human Rights and Article 26. the International Covenant on Civil and Political Rights contain references to the general principles of equality and non-discrimination, including with respect to a person's 'race', colour, sex and language, among others.

Other more specific anti-discrimination Conventions ratified by Macedonia also include the UN Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of Persons with Disabilities. They contain general prohibitions of and obligations to combat 'racial' and gender discrimination, and discrimination of persons with disabilities, respectively, and oblige State Parties to ensure that all public authorities and institutions act in conformity with the obligations set out in the Conventions.

The above-mentioned Conventions also contain provisions stressing the need to have non-discriminatory legislation, and the equality of all persons before the law, with no distinction, notably in the enjoyment of, among others, political rights and in the participation in public affairs. When it comes to national acts, the foundations of the system for protection against discrimination are defined in the Constitution[35], where Article 9 states that: 'The citizens are equal in their freedoms and rights regardless of their gender, race, skin color, national and social origin, political and religious belief; property and social position. The citizens are equal before the Constitution and the laws.'

The country has ratified all international agreements related to the prevention and protection from discrimination, from which the national legal solutions in this sphere de facto emerge.

The first Law on Prevention and Protection from Discrimination was adopted in 2010, while the new Law on Prevention and Protection from Discrimination was adopted in 2020 and entered into force on 30 October 2020. The novelties and improvements in the Law on Prevention and Protection from Discrimination includes the definition for a precise glossary of terms, exceptions to discrimination, the method and procedure of selection of the members of the Commission, the powers of the Commission, the scope of discriminatory grounds, the possibility of *actio popularis,* judicial fees and other issues.

The new Law defines and further includes discrimination by association, discrimination by perception and intersectional discrimination. The scope of the discriminatory grounds is extremely wide. In fact, this is an open list of grounds for protection in numerous areas, to which sexual orientation and gender identity

35 The Constitution of the Republic of North Macedonia.

are also added. The measures and actions that are not considered to constitute discrimination are defined differently than in the previous Act, and the definition of marriage as a union between a man and a woman does not constitute an exception to discrimination.

The Commission for the Protection from Discrimination has a more precise scope of duties and responsibilities, where, for example, it makes general recommendations on specific issues in the area of equality and non-discrimination; monitors their implementation; initiates an *ex officio* procedure for protection against discrimination; provides training to advisory bodies of experts on specific issues related to the promotion, prevention and protection from discrimination; at the request of the party or on its own initiative, it may ask the court to allow the Commission to act as a 'friend of the court' (*amicus curiae*), etc.

Another improvement in the new Law is that persons who initiate court proceedings for the protection against discrimination are exempted from paying court costs. These costs are paid from the State budget.

The equality of a person and citizen is also guaranteed in the Criminal Code of the RSM. It contains a separate section where all criminal acts related to discrimination are divided into chapters.

For example in the chapter entitled 'Crimes against life and body', the criminal act described as 'Torture and other cruel, inhuman or degrading treatment and punishment' stipulates that whoever causes suffering (severe physical or mental suffering to punish a person for a crime he/she has committed or for which he/she or another person is suspected, or to intimidate or force a person to give up any of his/her rights, or will cause suffering due to any form of discrimination), shall be punished with imprisonment from three to eight years.

In the chapter entitled 'Criminal offenses against the state', the criminal offense 'Inciting hatred, discord or intolerance on national, racial, religious or any other discriminatory grounds', in Article 319 it is envisaged that:

1. A person who by force, mistreatment, endangering the security, ridicule of the national, ethnic or religious symbols, by igniting or in another manner destroying a flag of the Republic of Macedonia or flags of other countries, damaging other people's objects, by desecration of monuments, graves, or in some other manner causes or excites discord and intolerance based on sex, race, skin, color, gender, membership in a marginalized group, ethnicity, language, citizenship, social origin, religion or religious persuasion or other kinds of persuasions, education, political affiliation, family, or marital condition, property status, health condition or any other basis envisaged by law or by a ratified international agreement, shall be punished with imprisonment of one to five years.
2. A person, who commits the crime from paragraph 1 from the present Article by misusing their position or authorization, or if because of these crimes, riots and violence were caused among people, or property damage

with a large extent was caused, shall be punished with imprisonment of one to ten years.

Another criminal act related to discrimination is dissemination of racist and xenophobic material through an information system, in the chapter entitled 'Crimes against public order and peace' is provided for in Article 394-d:

1. The person who through a computer system spreads resist and xenophobic written material, images or other representation of an idea or theory that assists, promotes or encourages hatred, discrimination or violence against any person or group based on their sex, race, skin color, gender, membership in a marginalized group, ethnicity, language, citizenship, social origins, religion or religious persuasion, other types of persuasion, education, political affiliation, personal or social status, metal or physical disability, age, family or marital condition, property status, health condition or any other base envisaged with the law or ratifiesinternational agreement, shall be punished with imprisonment of one to five years.

In the Chapter entitled 'Crimes against humanity and international law, the criminal act of Racial or other discrimination' in Article 417 stipulates that

1. A person who based on the difference in race, color of skin, nationality or ethnicity belonging to a marginalized group, language, citizenship, social origin, religion or religious persuasion, other types of persuasions, education, political affiliation, personal or social status, mental or bodily disability, age, family or marital status, property condition, health condition or any other basis envisaged by law or a ratified international agreement, violates the basic human rights and freedoms, acknowledged by the international community, shall be punished with imprisonment of six months to five years.

The punishment from paragraph 1 shall apply also to a person who persecutes organizations or individuals because of their efforts for equality of the people. A person who spreads ideas about the superiority of one race above some other, or who advocates racial hate, or instigates to racial discrimination, shall be punished with imprisonment of six months to three years.

The Macedonian legal system includes other laws that incorporate provisions on the prevention of and the protection against discrimination. The provisions regarding the prohibition of discrimination are different in different laws, depending on the area regulated by those specific laws.

Certain laws are aligned with the new Law on Prevention and Protection from Discrimination as *lex specialis,* and have unified provisions on the prohibition

of discrimination. For example, the Law on Social Protection[36] prescribes equal treatment and non-discrimination, with the prohibition of discrimination and the inclusion of discriminatory grounds as provided for by the Law on Prevention and Protection from Discrimination which is considered *lex specialis*. The Law on Elementary Education[37], which is line with the Law on Prevention and Protection from Discrimination, includes provisions for preventing discrimination and promoting the principle of equality within education, as well as certain affirmative measures.

The Law on Job Relations[38] also prohibits discrimination. Although it does not include all discriminatory grounds, it defines direct and indirect discrimination differently than the separate law.

The Law on Health Protection prohibits discrimination in healthcare services on the basis of race, sex, age, nationality, social origin, religion, political or other opinion, property, culture, language, disease, mental or physical disability. Harmonisation of laws in different areas should continue with specific amendments and bylaws to the existing laws, by incorporating anti-discriminatory provisions, where appropriate.

There are several mechanisms for protection against discrimination in the country:

- The Commission for Prevention and Protection from Discrimination, which was established by the Law on Prevention and Protection from Discrimination.
- Civil courts as competent courts to decide on anti-discrimination cases, in accordance with the Law on Prevention and Protection from Discrimination.
- The Ombudsman, who has the authority to undertake actions and measures for protection against discrimination when they are committed by the State administration and other bodies and organisations with public powers.
- The Constitutional Court, which protects the rights and freedoms of all persons and citizens from discrimination based on gender, race, religion, nationality, social and political affiliation.

The Commission found discrimination in 49 cases in 2021, in 62 cases in 2022, in 59 cases in 2023 and during the first three months of 2024, 11 cases were reported.[39] Since 2011, when the first Anti-Discrimination Law entered into force, the courts have been considered as the most effective mechanism for protection against

36 Finance Think, no date.

37 Eurydice: *Legislation and Official Policy Documents – North Macedonia*. Available at: https://eurydice.eacea.ec.europa.eu/national-education-systems/republic-north-macedonia/legislation-and-official-policy-documents (Accessed: 11 April 2024).

38 North Macedonia: Consolidated labor relations law, 2005 [Online]. Available at: https://www.refworld.org/legal/legislation/natlegbod/2005/en/124109 (Accessed: 12 April 2024).

39 KSZD: Commission for the Protection against Discrimination: *Decisions and Opinions*. Available at: https://kszd.mk/odluki-i-mislenja/ (Accessed: 12 April 2024).

discrimination, taking into account the legally binding force of court decisions and the possibility for their execution. There have been many court cases for discrimination based on various grounds. The procedure before the courts takes longer than the procedure before other competent authorities, and is more expensive.

■ *4.3. Protection of persons with refugee status in North Macedonia*

The Macedonian State is situated on one of the main transit routes for migratory movements in Europe. The country plays an active role in the management of mixed migration flows. There have been continuous efforts to ensure the basic living conditions and services for all migrants in the country. There is, however, a need to enhance institutional and administrative capacities for all aspects of migration management. More staff and additional material and technical resources are required to increase capacity at a satisfactory level.

Systematic registration of migrants is needed, and protection-sensitive profiling needs to be improved. The country should establish a proper system for managing irregular movement and stop the practice of returning migrants outside a legal framework. A contingency plan to manage large migratory flows needs to be finalised and adopted. The Status Agreement for operational cooperation in border management with the European Border and Coast Guard Agency (Frontex) entered into force on 1 April 2023, allowing the launch of a joint operation with the deployment of officers from EU Member States to provide support with border control and the management of irregular migration and cross-border crime.[40]

Since the end of 2014, North Macedonia has faced continuous inflow of refugees transiting through its territory on their way to EU Member States. In just six months, from June to December of 2015, a total of 388,233 refugees transited through the country. In just three months of 2016, from January to March, a total of 89,623 refugees transited through Macedonia.

Considering that the registration process in the country started in June 2015, and before that date, a large number of refugees were let through unregistered, and many also entered at one of the numerous illegal border crossing points, the actual number of refugees and migrants who arrived in Europe between 2014 and 2016 is much higher than the officially declared one, i.e. it exceeds the number of 1 million refugees and migrants. Going through a turbulent period, the refugee crisis in the country also saw more controversial ways of addressing it. On 19 August 2015, the government adopted a decision to declare a state of crisis at the southern and northern borders of the country, due to the greater influx of refugees into the country. By decision of the Parliament, the crisis state was extended until June 2016, then until 31 December 2016, and then until the end of June 2017.

40 European Commission: North Macedonia Report, 2023.

The Law on Asylum and Temporary Protection[41] was the basic legal framework for the treatment of refugees and asylum seekers in Macedonia. This law underwent its first major changes in 2012, which aimed to bring the national legislation closer to relevant international standards and key provisions of the 1951 Convention Relating to the Status of Refugees by the term 'refugee' according to the Convention, illegal stay in the country of escape, the principle of non-repatriation, etc.). This Law guarantees certain rights for recognised refugees. In essence, these rights are the same that every citizen of the country enjoys, with the exception of the right to vote, the right to establish an employment relationship, the right to establish associations of citizens and political parties when citizenship is required (Arts. 57-50 of the Law on Asylum).

The 2015 and 2016 amendments of the Law on Asylum brought improvements in the area of access to the territory and to asylum procedures, as well as in the conditions of detention of persons seeking international protection, but also limitations in family reunification and definition of the term 'safe third country' in a way that causes serious violations of the rights of refugees and asylum seekers.

On 18 April 2018 the Parliament adopted the Law on International and Temporary Protection[42] which provided alignment with UN Conventions and European Directives in the area of asylum, i.e. international protection.

The right to asylum in the country is granted under the conditions and procedure provided by the law to: (1) a person with refugee status (refugee within the meaning of the Geneva Convention) and (2) to a person under subsidiary protection according to the legal provisions.

The Law on International and Temporary Protection also amended certain institutions and the way of regulating the rights and obligations of asylum seekers and persons under protection. This Law annulled the old Asylum and Temporary Protection Law, which only applied to proceedings initiated during its validity.

The new Law also regulates certain categories of significance for this area, including the principle of family reunification of asylum seekers, the reasons for terminating and cancelling the right to asylum, as well as the possibility of limiting the freedom of movement of asylum seekers in exceptional cases. According to this Law, each applicant has the right to access the labour market, but only if the Asylum Department does not take a decision within nine months from the submission of the application. This legal solution further complicates the implementation of this right. An asylum seeker is a foreigner seeking international protection from the Republic of North Macedonia, who has expressed an intention or submitted a request for recognition of the right to asylum, for which a final decision has not been taken in the procedure for recognition of the right to asylum. A request for

41 RSM Official Journal, no. 49/2003, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016, 71/2016.

42 Law on International and Temporary Protection (Закон за меѓународна и привремена заштита), Official Gazette of North Macedonia.

recognition of the right to asylum is a request submitted by a foreigner, which can be understood as a request for international protection. In 2019, several by-laws were adopted based on this Law. In March 2019, the Ministry of Interior adopted the list of safe countries of origin.[43]

Two rulebooks were also adopted: Rulebook on standards for accepting asylum seekers[44]and the Rulebook on the method of care and accommodation of unaccompanied children and vulnerable categories of persons with recognised international protection.[45]

In 2018, a new Law on Foreigners was adopted[46], (which entered into force in May 2019), which provides for the possibility of obtaining a temporary residence permit for anybody who has been granted the right to asylum in the Republic of North Macedonia for a period of five years.[47]

In 2019, the new Law on Free Legal Aid was adopted, which regulates legal aid for asylum seekers in a better and more precise way. Applicants have the opportunity to submit a request for legal aid to the Department, which is obliged to send it to the Ministry of Justice immediately, and no later than within five days from the day of receipt of the request. In cases of limited freedom of movement, the Department itself assigns a lawyer from the list of lawyers compiled by the Ministry of Justice.

The adoption of the new Law on Elementary Education is also of great importance[48], which regulates the implementation of the process of formal primary education through the inclusion of: refugee children, asylum seekers, children with recognised refugee status, children under subsidiary protection and children under temporary protection. With that, the right to education of these children is legally provided and the State is obliged to provide them with the same conditions as the children who are citizens of North Macedonia.

Despite limited progress achieved at the level of legislation, the inadequate implementation of legal provisions is still problematic. The decision-making process in asylum procedures is often considered non-transparent, as the decisions rarely provide clear explanations, and State security is often invoked as a ground for rejecting applications for international protection. In practice, there is also concern about the effective access to legal remedies, access to information and translation into a language that the asylum seekers understand. The country's experience from previous refugee crises has shown that the integration of asylum seekers into everyday life is difficult.

43 RSM Official Journal, No. 56/2019.
44 RSM Official Journal, No. 195/2019.
45 RSM Official Journal, No. 195/2019.
46 RSM Official Journal, No. бр. 97/18, 108/18.
47 Article 129, paragraph 2 of the Law on Foreigners; Official Gazette of the Republic of Macedonia, No. 97, 28 of May 2018.
48 RSM Official Journal, No. 161/19.

According to Article 25 of the Law on Foreigners, a foreigner who intends to submit an application for asylum, who has already submitted an application for asylum or to whom the State has already recognised the right to asylum, cannot be denied entry in the country. As of 19 June 2015, asylum seekers can submit a Declaration of Intent to Seek Asylum at border crossing points or at any police station, after which the applicant is issued a 72-hour residence permit, within which deadline the applicant must formally submit an application for asylum. If an asylum seeker is already in the country, he or she can submit the request to the nearest police station, or directly to the Asylum Department of the Ministry of Interior. After the initial registration of the request, the police is responsible for referring the asylum seeker to the Asylum Department of the Ministry of Interior, which is the primary institution responsible for the implementation of asylum procedures.

The Ministry of Labour and Social Policy is responsible for the reception and integration of the asylum seekers and the persons who have been granted the right to asylum. In practice, most problems are reported during the implementation of internationally accepted procedures for identification, profiling, referral and forwarding of applicants with special needs (victims of human trafficking, victims of sexual and gender-based violence, elderly persons or persons with disabilities).

With the involvement of the Asylum Department, trainings are organised for police officers deployed at border crossing points and for those in police stations, but these trainings are focused mainly on asylum procedures and not on identification, profiling and referral procedures. As there are no translators at the police stations, the applications usually contain only the basic biographical data but no other information that is relevant for the refugee status or for granting special protection. This calls into question the capacities of police officers and the functioning of mechanisms necessary for the timely identification of persons in need of international protection, including refugees and victims of human trafficking.

According to this Law, asylum seekers are entitled to freedom of movement within the territory of the State and to protection from arbitrary deprivation of liberty or detention. According to Article 21 of the Law on Foreigners, as illegal entry into the country is considered any entry where the foreigner crosses or tries to cross the State border outside of the place, time or method determined for crossing the State border; if he/she evades or attempts to evade the border control; uses forged, foreign or invalid travel documents or other documents upon entry; enters or tries to enter without a valid and recognised travel or other document; or, if he/she gives false information to the Ministry of Interior.

Irregular migrants who do not fall into the category of 'asylum seekers' are handed over to the Inspectorate for Irregular Migration for further handling and treatment in the Reception Centre for Foreigners as a closed institution. According

to Article 153 of the Law on Foreigners, illegal entry into the country is a misdemeanour for which a fine can be imposed, as well as a misdemeanour sanction: expulsion of a foreigner from the country.

■ *4.4. Protection of stateless persons*

In 2011, the UNHCR evidenced a high number of persons affected by statelessness in the country. The Macedonian government has taken some partial steps towards reducing statelessness in recent years.

In 2019, the government introduced a regulation route under the Law on Foreigners for citizens of former Yugoslavia, who continued to live in North Macedonia after 1991 without acquiring any nationality (and their children under five) to acquire permanent residence. In January 2020, North Macedonia acceded to the Convention on the Reduction of Statelessness and in 2020, a new Law on Undocumented Persons in Birth Registry Book came into force, enabling some people at risk of statelessness without personal documentation to apply for a 'special registration' to enable them to access social, health and employment rights, although this new Law has significant gaps in scope and protection.

Finally, in July 2021, amendments were made to the Macedonian Law on Citizenship, which provide possibilities for nationals of former Yugoslavia to obtain Macedonian citizenship. Although it is proclaimed that this will address issues of statelessness, statelessness is not mentioned in the amendments, and Article 7a of the Law on Citizenship which pertains to statelessness, has remained unchanged. The Republic of North Macedonia has acceded to the most relevant human rights treaties, and it has therefore clear obligations to protect the rights of stateless persons on its territory. However, it must be noted that the country has not yet acceded to two international legal instruments that safeguard the rights of stateless persons, namely the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession and the International Convention on the Rights of Migrant Workers and Members of their Families.

■ *4.5. Protection of persons with disabilities*

The Macedonian State signed the Convention on the Rights of Persons with Disabilities on 30 March 2007, and ratified it on 5 December 2011. Despite the application of the Convention, there is still no single terminology used for persons with different types of disabilities, neither in individual use nor in official documents, including the laws, strategies, regulations, etc. Different and outdated terminology is often used, mainly based on the medical model.[49]

It has already been mentioned that Article 9 of the Macedonian Constitution guarantees and protects the right to equality and non-discrimination, although disability among persons is not yet included as a separate ground for discrimination.

49 UNICEF, 2022.

Additionally, terminology such as 'invalids', 'persons with invalidities' used in the Constitution is outdated and inconsistent with the Convention.

The Law on Prevention and Protection from Discrimination establishes disability as a ground for discrimination, including the definition of persons with disabilities as persons with long-term physical, intellectual, mental or sensory impairments which, in combination with various social obstacles, may prevent their full and effective representation in society on an equal basis with the other citizens.

This Law prohibits all types and forms of discrimination, including direct and indirect discrimination, incitement or urging discrimination, harassment, victimisation and segregation, while more serious forms of discrimination under this Law mean multiple discrimination, cross discrimination, repeated discrimination and continuous discrimination.

This Law also makes reference to discrimination by association, such as a distinguishing, excluding or restricting act against a person based on that person's relationship to another person or group, on any discriminatory grounds, which includes persons affected by the condition of persons with disabilities. This Law emphasises that the prohibition of discrimination also means ensuring adequate access to infrastructure, goods and services through the application of the principle of reasonable adjustment, and that the denial of reasonable adjustment constitutes discrimination. However, the principle of reasonable adjustment is still not clear enough and has various interpretations. It is often equated with accessibility, which leads to its selective application. The principle of reasonable adjustment is not recognised even by the institutions due to the lack of guidelines for reasonable adjustment, which every institution is obliged to prepare and apply in its work.

National legislation and policies mention the accessibility only as a concept. For example, the Construction Law[50] regulates the right of physical access and accessibility to public facilities and public areas, as well as the design and construction of footpaths for the movement of persons with physical disabilities and persons with visual impairment. At local level, urban planning and the issuance of building permits are regulated by the Law on Local Self-Government[51], which does not include the principle of non-discrimination or the principle of accessibility.

At the local level, it is not clear which authority is responsible for implementing the provisions of the Construction Law, and problems arise as a result of the different interpretations of this Law.[52]

50 Construction Law, Official Gazette No. 130/09, 124/10, 18/11, 36/11, 54/11, 13/12, 144/12, 25/13, 79/13.

51 Law on Local Self-Government, Official Gazette No. 5/02 [Online]. Available at: https://mls.gov.mk/images/laws/EN/Law_LSG.pdf (Accessed: 17 April 2024).

52 Polio Plus, 2018, p. 77.

The obligation to ensure physical accessibility is further regulated in the Rulebook on the method of ensuring unhindered access, movement, stay and work of persons with disabilities to and inside facilities.[53] This Rulebook establishes the minimum standards for the way of ensuring unhindered access, movement, residence and work of persons with disabilities to and inside the facilities for public, business, residential and business-residential use. The Rulebook on standards and norms in urban planning,[54] also regulates the right to parking spaces. The accessibility of catering facilities is regulated in the Rulebook on the categorisation of catering facilities. Although the legal framework and policies adopted in this area are clear, problems still arise as a result of their inadequate implementation. There are many public institutions and even new buildings that are not physically prepared for the implementation of these regulations.

It should be mentioned that in our country there are different definitions and categorisations for the different types of disabilities. However, the definitions for persons with disabilities used in different documents are not unified. Also, persons with psychosocial disabilities are not recognised in the laws at all, which means that an entire community is not covered by the system of social compensation on the basis of disability.[55] The legislation itself is inconsistent with the model of disability in the context of human rights and freedoms.

In 2018, a Macedonian National Coordinating Body was established for the implementation of the Convention on the Rights of Persons with Disabilities. This body aims to unify the activities of the different competent ministries, government representatives, civil society organizations and the Resource Centre, as well as to ensure coordination with independent civil society organisations that support persons with disabilities, since they are not involved in its work.

The Ministry of Labour and Social Policy of North Macedonia is considered as the main body providing rights for persons with disabilities. Most of the bodies dealing with the provision of care to persons with disabilities work under the direct supervision of this Ministry.

Also, in 2019, a team for monitoring the implementation of the Convention was set up within the Department for the Protection of the Rights of Children and Persons with Disabilities within the Office of the National Ombudsman. The team deals with cases related to the violation of the rights of persons with disabilities and their discrimination, analyses the legislation, and proposes legal reforms for the rights of persons with disabilities.

In the Macedonian Assembly, there is an Inter-Party Parliamentary Group for the Rights of Persons with Disabilities. This informal group has been active

53 Government of North Macedonia: *Rulebook on the method of ensuring unhindered access, movement, stay and work of persons with disabilities to and in the facilities* [Online]. Available at: https://av.gov.mk/rulebooks.nspx (Accessed: 16 April 2024).

54 UNICEF, 2022.

55 Ibid.

since 2003 and it currently consists of 50 members representing different political parties. The technical coordination is ensured by the Polio Plus non-governmental organisation[56] on a voluntary basis. Although the MPs advocate for the improvement of the legislation, coordination with the rest of the government bodies is still weak.

In Macedonian society, there is considerable diversity in the understanding of disability within the disability movement. There is a National Council of Disability Organisations as an umbrella organisation comprised of seven trade unions, structured on the basis of the type of condition or affinity/interest of persons with disabilities. There is also a National Council of the Deaf and Hard of Hearing, a National Federation for Sports and Recreation of Persons with Disabilities, etc.

The National Council has a highly centralised structure based on the traditional understanding of disability, and its activities are primarily focused on providing medical access to these persons without including the organisations that protect their human and civil rights. Organisations which address their rights are a relatively new in Macedonian society. Among the organisations of persons with disabilities there are also the parents' associations and centres providing services to parents. There are also civil society organisations that implement projects and develop programmes addressing various issues concerning the rights of persons with disabilities.

Since 2011, the rights of persons with disabilities in Macedonian society have been significantly improved as a result of reforms implemented in the field of social protection and education, non-discrimination, inclusive employment services, deinstitutionalisation, access to sexual and reproductive health services, prevention of gender-based violence and the promotion of gender equality.

For example, the 2019 Law on Social Protection advanced the principle of equal treatment and non-discrimination in the exercise of social protection rights. It contained provisions on the equal and fair treatment of these persons, as well as on the recognition of disability as a ground for discrimination. The amended Law on Child Protection restructured and consolidated the system of financial assistance to children with disabilities in order to ensure increased coverage and adequacy in their protection. The reform also introduced new services for social support and care for persons with disabilities and their caregivers. With the reforms implemented in the area of education, the State insists on basic access to educational institutions for all children with disabilities in order to include them in regular primary education. The State provided 500 educational assistants for children and youth with disabilities through the Resource Centre.

56 DevelopmentAid: *Polio Plus* [Online]. Available at: https://www.developmentaid.org/organizations/view/22053/polio-plus (Accessed: 16 May 2024).

On the other hand, the Law on Secondary Education, the Law on Higher Education, as well as the National Strategy for Education 2018-2025[57] do not have a comprehensive and inclusive approach and are not aligned with the Convention. The training of educational staff on the problem of disability usually takes place through projects and support from international institutions without any long-term strategy from the Ministry of Education.

In four regions, the country also implements the assessment system according to the International Classification of Functioning (ICF) of children and young people up to 26 years of age who have some type of disability. Protection of children without parental care is also foreseen, they are placed either in foster families or in small group homes.

The Law on transportation in Road Traffic does not provide any essential equality for persons with disabilities. This Law only contains provisions on transportation privileges for persons with disabilities, who must be members of the National Council. A similar legal solution is provided in the Law on Public Roads that allows people with disabilities not to have to pay tolls for using public roads. The use of this right is determined according to the diagnosis and degree of disability, which are listed in an act of the competent committee under the Pension and Disability Insurance Fund. This legal solution is also included in the Program for the beneficial use of public city transport by persons with disabilities, in which persons with disabilities are categorised based on their diagnosis and degree of disability and is applicable to persons of up to 26 years of age.

The Law on Road Traffic Safety does not define parking spaces for persons with disabilities. At the same time, this Law failed to fully regulate the use of vehicles by the assistants and parents of children with disabilities. The movement of persons with disabilities with a guide dog has also been left unregulated.

The Law on Free Access to Public Information does not contain provisions stipulating that public information should be provided in an accessible format. For example, the Law on the Use of Sign Language provides for the right of hearing-impaired persons to use sign language in proceedings before State authorities. Hearing-impaired persons have the right to use sign language for other needs, but only up to 30 hours a year, and thus exercise their right to an interpreter. The decision to exercise the right to sign language is left to the Social Work Centre which only further limits the use of sign language. Persons with hearing and speech disabilities point out that they face difficulties in exercising their rights due to the insufficient number of trained sign language interpreters. Notably, there are only 31 sign language interpreters in the country.

57 Teacher Task – Force: *North Macedonia Education Strategy 2018–2025 and Action Plan*. [Online]. Available at: https://teachertaskforce.org/knowledge-hub/north-macedonia-education-strategy-2018-2025-and-action-plan (Accessed: 18 May 2024).

The Law on the Employment of Persons with Disabilities regulates the special conditions for the employment and work of persons with disabilities and is predominantly focused on employment in privately established companies. There are also a number of incentive measures, which are financed by the Special Disability Fund. The vocational rehabilitation system is regulated by several laws and policies, but the legal provisions are still not in line with the access to human rights and do not provide adequate access for persons with disabilities to the existing systems of training, reskilling or internships.

The existing criteria for general health condition limits the access to and inclusion of persons with disabilities in public administration. The provisions of the Law on Civil Servants, which regulate employment in the public sector, make the general health condition a prerequisite for employment. This provision, although basically neutral, has a negative impact on persons with disabilities, as they are prevented from applying for employment. It is necessary to make a distinction between the health condition and the working ability of persons with disabilities. These are two different categories and should not be considered equal.

The same provisions are also contained in the laws for courts, lawyers, police, military service, foreign affairs, etc. When viewed from the perspective of the Convention, it can be concluded that the implementation of the right to participate in political and public life for persons with disabilities is severely limited in the country, because the conditions under which these persons may exercise the right to vote and the right to run for public office are not specified. The existing legal framework does not take into account the cross-access. The legally established quota system intended for equal gender representation did not incorporate the participation of women and girls with disabilities in the lists.

The initiatives undertaken by the State Electoral Commission in the last few years have been supported exclusively by international donors, which is a serious drawback in terms of their continued implementation and sustainability. Despite the good intention to involve persons with disabilities in the observation process, the establishment of special organisations consisting exclusively of observers with disabilities and dealing exclusively with election observation was the only form of support.

The National Strategy for the Rights of Persons with Disabilities for the period 2023-2030 was adopted as a multi-sectoral strategic document drawn up on the basis of an extensive participatory process. It sets ambitious benchmarks for advancing the rights of persons with disabilities in accordance with the Convention on the Rights of Persons with Disabilities of the United Nations (UN), the Strategy for the Rights of Persons with Disabilities 2021-2030 of the European

Union[58], as well as the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.[59]

The strategy is based on the principle of human rights and the fundamental principle 'Leave no one behind' from the 2030 Agenda. The goal is the promotion, protection and complete enjoyment of all human rights and freedoms of persons with disabilities, on an equal basis with all other citizens, as well as the promotion and respect for their dignity.

Although the issue of disability was part of the 2021 Census, it failed to provide a clear overview of the total number of persons with disabilities within the population of the country. According to the results of the census, there are a total of 94,412 persons with disabilities in the country[60], representing almost 5% of the total population, of whom 2.5% are people over 65 years of age. The country does not have any official record for the number of persons who have been deprived of their capacity to work. According to the information from the State Election Commission[61], in the last elections in 2021, about 900 people were deleted from the voters' list, based on the data received from the court for their deprivation of capacity to work.

5. Protection of Children's Rights

In 2021, a consolidated text of the Law on Child Protection was adopted[62], which contained all previous amendments and additions to the 2013 Law. This Law is aligned with the UN Convention on the Rights of the Child.[63] It regulates the system and organisation of child protection, as seen through the prism of organised activity based on the rights of children, as well as the rights and obligations of parents for family planning and the obligations of the State and local self-government units for pursuing a human population policy.

58 European Commission: Union of equality: Strategy for the rights of persons with disabilities 2021-2030 [Online]. Available at: https://ec.europa.eu/social/main.jsp?catId=1484&langId=en (Accessed: 18 May 2024).

59 United Nations: *The 17 Sustainable Development Goals* [Online]. Available at: https://sdgs.un.org/goals (Accessed: 16 May 2024).

60 State Statistical Office of the Republic of North Macedonia: *Census 2021: Disability prevalence data* [Online]. Available at: http://makstat.stat.gov.mk/PXWeb/pxweb/mk/MakStat/MakStat__Popisi__Popis2021__NaselenieVkupno__Naselenie__Poprecenost/T1053P21.px/table/tableViewLayout2 (Accessed: 15 May 2024).

61 OSCE, 2023.

62 Law on the Protection of Children (Закон за заштита на децата), Official Gazette of North Macedonia.

63 UNICEF: Convention on the Rights of the Child [Online]. Available at: https://www.unicef.org/child-rights-convention (Accessed: 16 May 2024).

The protection of children is achieved through the provision of conditions and living standards that correspond to the physical, mental, emotional, moral and social development of children.

Despite the formal alignment, the UN Committee on the Rights of the Child reminds the State Party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasises the importance of all recommendations concerning the following areas: coordination, non-discrimination, violence against children, children with disabilities and health services. The Committee recommends that the State Party ensures the implementation of children's rights in accordance with the Convention, the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, throughout the process of implementing the 2030 Agenda for Sustainable Development. It urges the State Party to ensure the meaningful participation of children in the design and implementation of policies and programmes aimed at achieving all 17 Sustainable Development Goals as far as they concern children.[64]

The Committee is also concerned about the lack of efforts in the country for developing a comprehensive policy and strategy on children's rights covering all areas of the Convention; allocation adequate human, technical and financial resources for its implementation, ensuring that children and organisations dealing with children's rights are involved in the preparation, implementation and evaluation of policies, strategies and action plans. The Committee is concerned about the absence of a national body responsible for coordinating all policies relating to the implementation of the Convention and its Optional Protocols as well as about the non-sufficient budgetary allocations for the implementation of children's rights, paying particular attention to children in vulnerable situations. The Committee recommends that the country should identify areas of potential savings where funds could be transferred to budgets relating to children and their families, paying particular attention to children in disadvantaged situations, including children with disabilities, children living in poverty and Roma children. The Committee recommends the implementation of mechanisms to monitor and evaluate the adequacy, efficacy and equitability of budget allocations for the implementation of the Convention and involving civil society organisations working on children's rights and children themselves in budgetary decisions that affect them and duly take into account their opinions.

64 United Nations: Convention on the Rights of the Child. Concluding Observations on the Combined Third to Sixth Periodic Reports of North Macedonia [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMKD%2fCO%2f3-6&Lang=en (Accessed 10 May 2024).

6. Macedonian cases before the monitoring bodies (committees) for breaching UN Conventions/Covenants

Macedonia as a country does not have a large corpus of cases on the protection of citizens' human rights before the UN committees and bodies, although numerous reports can be noted with recommendations and observations for improving the situation in relation to the application of various UN Conventions in the national legal system. This situation refers to the activities of the UN committees and not to the International Court of Justice in the Hague where the State had several important cases related to the 'name dispute'[65] with Greece and cases known as the 'Hague cases' which were taken from the International Criminal Court, also known as The Hague War Criminal Tribunal[66], by the Macedonian authorities for further action.

In the following, three cases will be presented that have been resolved in the UN Committee on the Elimination of Discrimination against Women. The Committee decided on three applications submitted by Macedonian citizens according to Article 14 (Individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women), and three cases were closed:- CEDAW/C/75/D/110/2016, CEDAW/C/75/D/107/2016, CEDAW/C/77/143/2019.[67]

In the first case, the Committee noted that the applicants (authors) S.B. and M.B. (represented by counsel, Natasha Boshkova) claimed that they had suffered intersecting discrimination in North Macedonia based on both their gender and ethnicity, in violation of Article 2 (a), (c) and (e) of the Convention.

According to the facts presented in the application, the State Party failed to: ensure the practical implementation of the principle of non-discrimination as concerns access to and provision of gynaecological services; ensure through a competent national tribunal the effective protection of the authors against any act of discrimination; take all appropriate measures to eliminate discrimination against the authors by any person, organisation or enterprise and that the State

65 International Court of Justice, Case Concerning the Application of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v. Greece) [Online]. Available at: https://www.icj-cij.org/case/142 (Accessed 13 October 2024).

66 International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Ljube Boškoski and Johan Tarčulovski, Case No. IT-04-82 [Online]. Available at: https://www.icty.org/x/cases/boskoski_tarculovski/ind/en/bos-ii050309e.pdf (Accessed 13 October 2024).

67 United Nations Human Rights Treaty Bodies: UN Treaty Bodies Database: Reporting status for North Macedonia [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=MKD&Lang=EN (Accessed 10 May 2024).

Party's failure had a particularly disproportionate and discriminatory effect on Roma women and girls.

The Committee observed that the authors were treated differently from other women of reproductive age not belonging to ethnic minority groups who were seeking gynaecological services at the same time. The Committee also observed that the right to be free from discrimination entails not only treating people equally when they are in similar situations but also treating them differently when they are in different situations.

The Committee noted the authors' claim, which remained unrefuted by the State Party, that the courts lacked an understanding of the phenomenon of discrimination and of the vulnerability of Roma women in society and, despite the evidence of unequal treatment, failed to establish that the gynaecologist had demonstrated a discriminatory attitude and to provide redress. It also noted the authors' argument, also unrefuted, that the court lacked an understanding of the shifting of the burden of proof in a *prima facie* discrimination case to the defendant to establish that discrimination had not occurred.

The Committee appreciated the information provided by the State Party concerning the adoption in 2019 of a new legislative framework on the prevention of and protection against discrimination, especially in the health sector, the training programme implemented by the Ministry of Labour and Social Policy and the Ministry of Health and the project on Roma health mediators as part of the implementation of the Decade of Roma Inclusion 2005–2015.

The Committee further noted the authors' claims that they had faced serious obstacles to the enjoyment of their health rights, in breach of Article 12 of the Convention. The Committee noted that it remained undisputed that the authors were refused enrolment as patients at the practice of their local gynaecologist and denied a regular gynaecological examination free of charge despite their poor financial situation, while women of reproductive age from the majority community were accepted as patients and examined on the same day. In that context, the Committee recalled that States Parties' compliance with Article 12 of the Convention was central to the health and well-being of women and that special attention should have been given to the health needs and rights of women belonging to vulnerable and disadvantaged groups. Furthermore, it noted that States Parties should have reported on measures taken to eliminate barriers faced by women in terms of access to healthcare services and to ensure that women have timely and affordable access to such services, in particular those related to reproductive health.[68]

68 See: UNCHR: General Recommendation No. 24: Article 12 of the Convention (Women and health), 1999, paras. 2, 6 and 21–23 [Online]. Available at: https://www.refworld.org/legal/general/cedaw/1999/en/11953 (Accessed 10 May 2024).

In the light of the above conclusions, the Committee made the following recommendations to the State Party.

With regard to the authors: provide them with appropriate reparation, including through the recognition of the material and moral damages that they suffered as a consequence of their inadequate access to sexual and reproductive healthcare, in particular to regular gynaecological services; provide them with access to affordable healthcare services, in particular sexual and reproductive healthcare.

In general: adopt and implement specific and effective policies, programmes and targeted measures, to combat intersecting forms of discrimination and stereotypes in relation to Roma women and girls, including in healthcare, ensuring that language is not a barrier to gaining access to health services; effectively implement new legislation relating to health, guarantee and ensure access to affordable and high-quality healthcare and sexual and reproductive healthcare services without language barriers, in particular effective access to regular gynaecological examinations free of charge, and prevent and eliminate the practice of charging women and girls, in particular Roma women and girls, unlawful fees for public healthcare services; take administrative measures to eliminate the unequal distribution of gynaecological services in the territory of the State Party and allocate financial resources to support the equitable regional distribution of gynaecological facilities, especially in rural areas and areas in which Roma women and girls live; increase the awareness of judges of non-discrimination, including the procedural aspect of shifting the burden of proof during judicial proceedings; and ensure that women have recourse to effective, affordable, accessible and timely judicial remedies, to be addressed in a fair hearing by a competent and independent court or tribunal, where appropriate, or by other public institutions, taking into consideration the Committee's general recommendation No. 33 (2015) on women's access to justice; provide training to healthcare providers on discrimination against Roma women and girls, their specific needs and the problems that they face; engage actively, including through the provision of financial support, with civil society organisations (including human rights and women's organisations) representing Roma women in order to strengthen advocacy against intersecting forms of discrimination based on sex, gender and ethnicity and promote tolerance and the equal participation of Roma women in all areas of life; develop specific poverty alleviation and social inclusion programmes, in particular for Roma women and girls, etc.

The second case in the UN Committee on the Elimination of Discrimination against Women was initiated on 21 December 2016. The authors of the communication were L.A., D.S., R.A. and L.B., nationals of North Macedonia of Roma ethnicity, born in 1990, 1999, 1996 and 1994. The Committee noted that, at the time of eviction, the authors were in a particularly vulnerable situation, given that they

were single, young women and/or minors of Roma ethnicity who were pregnant or had recently given birth, and some of them had minor children.

The Committee took note of the State Party's observations indicating that the authors were subsequently provided with accommodation in a social centre and in a container settlement, the State Party categorised the affected persons into groups depending on their needs; and pregnant women were included in the target groups (see para. 4.2 above).

The Committee observed, however, that the living conditions at the social centre and the container settlement remained inappropriate, owing to sewerage problems, insufficient toilet facilities and scarce food.

The Committee noted the claims of the authors regarding the fact that, under the State Party's compulsory insurance plan, they were still required to pay a significant portion of the medical fees, which they could not afford.

In addition, the amount charged to them depended on whether a doctor chose to register them as patients, and gynaecologists refused to register Roma women as patients. Before and after the eviction, most of the authors could not afford to see a doctor. During their pregnancies, L.A. and D.S. never visited a gynaecologist, R.A. managed to visit a gynaecologist twice and L.B. only once, for the delivery. The Committee also noted that the eviction exacerbated the difficult health conditions faced by the authors as young pregnant women in that context, given that their access to food, clean water and nutrition was further compromised. In addition, the authors claimed never to have received education on sexual and reproductive health and rights, which remained unchallenged by the State Party.

Therefore, the Committee made the following recommendations to the State Party concerning the authors of the communication:

- Provide adequate reparation, including recognition of the material and moral damages that they suffered owing to inadequate access to housing and healthcare during their pregnancies, aggravated by their eviction;
- Provide suitable accommodation, access to clean water and proper nutrition and immediate access to affordable healthcare services.
- In general:
- Adopt and pursue specific and effective policies, programmes and targeted measures, including temporary special measures, in accordance with Article 4 (1) of the Convention and general recommendation No. 25(2004) on temporary special measures, to combat intersecting forms of discrimination against Roma women and girls;
- Ensure effective access to adequate housing for Roma women and girls;
- Ensure access to affordable and high-quality healthcare and reproductive health services, and prevent and eliminate the practice of charging Roma women and girls illegal fees for public health services;

- Develop specific poverty alleviation and social inclusion programmes for Roma women and girls;
- Reinforce the application of temporary special measures, in line with Article 4 (1) of the Convention and the Committee's general recommendation No. 25, in all areas covered by the Convention in which women and girls belonging to ethnic minority groups, in particular Roma women and girls, are disadvantaged;
- Engage actively, including through the provision of financial support, with civil society and human rights and women's organisations representing Roma women and girls, to strengthen advocacy against intersectional forms of discrimination on the grounds of sex, gender and ethnicity, and promote tolerance and the equal participation of Roma women in all areas of life, etc.

In the third case, the authors were S.B. and M.B., nationals of North Macedonia of Roma ethnicity, born in 1988 and 1985. Their complaint concerned denial of access to gynaecological services, notably a denial by a private healthcare facility to register them as patients based on their ethnicity, and the lack of gynaecological services in the area in which they lived, as a form of discrimination against women. They claimed that they were victims of a violation of their rights under Articles 1, 2 (a), (c) and (e) and 12 of the Convention owing to the State Party's failure to introduce positive measures in favour of the sexual and reproductive rights of Roma women, resulting in inequality in practice in the authors' enjoyment of their right to health.

They also claimed that the court had lacked an understanding of the nature, specificity and intersectionality of the discrimination, as well as its root causes and harmful effects, especially on ethnic minority women, and of the reversed burden of proof falling on the defendant.[69] The court neglected the defendant's discriminatory statements that she did not want to admit 'that kind of people' into her practice and that 'the patient had a pungent smell, smelled like a sewer'. It underestimated the emotional trauma and ignored the psychological suffering of the authors owing to the refusal, while other women from the majority ethnic background had received gynaecological services immediately. It also disregarded the statements of the control subjects who had experienced different, quite opposite, treatment to that reserved for the authors. The court also disregarded the poor financial situation of the authors, who needed access to gynaecological services close to their area of residence in order to reduce travel expenses. The court's

69 The authors explain that victims of discrimination have the right to seek court protection in a civil procedure, in which they can submit all the facts and evidence that justify their claim by establishing a prima facie case of discrimination, while the burden of proof that no discrimination has occurred falls on the defendant during the proceedings (art. 38 of the Law on Prevention of and Protection against Discrimination of 2010).

decision lacked motives and an analysis of the statements of the victims and the situation that they were facing; its reasoning was based solely on the defendant's statements.

In the light of the above conclusions, the Committee made the following recommendations to the State Party.

With regard to the authors:

- Provide them with appropriate reparation, including through the recognition of the material and moral damages that they suffered as a consequence of their inadequate access to sexual and reproductive health care, in particular to regular gynaecological services;
- Provide them with access to affordable healthcare services, in particular sexual and reproductive healthcare;

In general:

- Adopt and implement specific and effective policies, programmes and targeted measures, in accordance with Article 4 (1) of the Convention, including temporary special measures, taking into consideration general recommendation No. 25 (2004) on temporary special measures, to combat intersecting forms of discrimination and stereotypes in relation to Roma women and girls, including in healthcare, ensuring that language is not a barrier to gaining access to health services;
- Effectively implement new legislation relating to health, guarantee and ensure access to affordable and high-quality healthcare and sexual and reproductive healthcare services without language barriers, in particular effective access to regular gynaecological examinations free of charge, and prevent and eliminate the practice of charging women and girls, in particular Roma women and girls, unlawful fees for public healthcare services; take administrative measures to eliminate the unequal distribution of gynaecological services in the territory of the State Party and allocate financial resources to support the equitable regional distribution of gynaecological facilities, especially in rural areas and areas in which Roma women and girls live;
- Increase the awareness of judges of non-discrimination, including the procedural aspect of shifting the burden of proof during judicial proceedings; and ensure that women have recourse to effective, affordable, accessible and timely judicial remedies, to be addressed in a fair hearing by a competent and independent court or tribunal, where appropriate, or by other public institutions, taking into consideration the Committee's general recommendation No. 33 (2015) on women's access to justice;
- Provide training to healthcare providers on discrimination against Roma women and girls, their specific needs and the problems that they face;

- Engage actively, including through the provision of financial support, etc.

7. Conclusions

Republic of North Macedonia is a party to most of the key international UN human rights treaties and pursues regular dialogue with the bodies established under the UN Charter and treaties, including the Universal Periodic Review and special procedures of the UN Human Rights Council. The country submits periodic progress reports on the ratified UN core human rights instruments. Both the Ombudsman, appointed by the National Assembly, and human rights defenders play a pivotal role in monitoring, reporting and protecting human rights and the most vulnerable members of society.

As it has been already mentioned, Macedonia, with its legal system, belongs to the category of States where continental law is applied and where the main sources of law are the Constitution, the national laws and the international agreements concluded and ratified in accordance with the legislation. International law, according to the Vienna Convention on the Law of Treaties (1969), has in principle its priority with respect to national laws and is based on the fundamental principles of international law stated in Article 26 (*Pacta sunt servanda*), according to which 'every treaty in force is binding upon the parties to it and must be performed by them in good faith' and Article 27 that '[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.[70]

The respect for the generally accepted norms of international law in the country is stated as one of the fundamental principles of the constitutional order (Article 8) and the international agreements that are ratified in conformity with the Constitution are an integral part of the internal legal order and cannot be changed by law (Article 118). In the evaluations which are made by the UN committees, the country's overall human rights record is considered as generally satisfactory, with remarks that the country must improve the situation in the field of non-discrimination, women's rights, children's rights as well as the rights of migrants and stateless persons.

It can be noted that the legislation is mostly in line with the above-mentioned UN human rights conventions, but that in general the State faces certain problems in their application. In the country, there is a will to apply international standards on the protection against discrimination, the protection of children's rights, women's rights, the rights of persons with disabilities, the protection of migrants and stateless persons, there are efforts by official institutions in the country to improve the conditions and situation of these categories of persons in accordance

70 Karakamiseva, 2009.

with the criteria established in international instruments, however, there is a lack of complete inter-institutional coordination, insufficient budgetary support for activities aimed at improving the situation, as well as incomplete implementation of national strategies and plans for development and improvement of the situation with human rights and freedoms.

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TENA KONJEVIĆ*

The Universal Protection of Human Rights and Central Europe: Croatia

ABSTRACT: *This chapter delivers a thorough examination of human rights protection in Croatia through a contextual, historical, legislative, and practical lens. It outlines the evolution of human rights in the country, illustrating a complex journey from the socialist ideals of Yugoslavia to the aspirations of an independent nation committed to international human rights standards. Each phase of this journey, marked by significant political upheaval, nationalist movements, and evolving legal frameworks, has played a crucial role in shaping Croatia's current human rights landscape. In Croatia, the protection of human rights and freedoms operates through two main mechanisms, out of which international treaties play an important role. These treaties are integrated into the domestic legal order and take precedence over national laws. Since gaining independence, Croatia has ratified all major international human rights instruments, including all relevant UN conventions. Therefore, through assessing constitutional protections and then exploring the country's engagement with the UN as a party to various human rights agreements, this chapter provides a detailed analysis of Croatia's human rights framework. Finally, to shed light on key challenges within Croatia's human rights practice, the chapter also examines historical cases brought before the UN Human Rights Committee, identifying recurring issues that warrant further attention.*

KEYWORDS: *Human Rights in Croatia, United Nations, Croatian Constitution, UN Human Rights Committee*

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1. Introduction

As defined succinctly by the Canadian author D. Forsythe, human rights consist of essential entitlements that allow individuals to request certain actions from public authorities. These rights may include requiring that authorities avoid interfering in individuals' protected spheres, as seen in personal and political freedoms, or ensuring active steps are taken to uphold specific freedoms and rights related to social, cultural, and economic aspects.[1] It is evident that human rights need to be more than simply stated; they should be lived and realised by all individuals.[2] Therefore, the practical implementation of human rights is also reliant on theoretical insights. A groundbreaking contribution to this area is the concept of practical realisation by Stig and Helle Kanger. This approach is rooted in a logical examination of the concepts of rights and influence. The fundamental idea is to integrate different types of rights and influences to create a complete picture of an individual's overall situation, including their rights and their ability to exercise them. This approach helps in accurately identifying the conditions needed for the practical implementation of each right.[3] In discussing the formal realisation of human rights, John Raws' four-stage sequence provides a foundational framework.[4] According to Rawls' theory of justice as fairness, the process begins with selecting abstract moral and justice principles, which are then translated into constitutional principles for individual countries. These constitutional principles influence legislative decisions, leading to judges and officials applying legal rules to specific cases. Typically, citizens adhere to these rules. In Rawls' view, the national state has precedence over international considerations. However, to account for the role of international politics and law in human rights protection, the sequence should include a level between abstract principles and constitutional principles. This level involves international human rights standards that are relevant to specific historical contexts and guide state behaviour and constitutional norms. It's essential to note that this sequence is part of human rights and minority rights theory, providing a necessary framework for their formal realisation rather than describing a practical or purely theoretical process. At this level, specific human rights are established that are relevant to a particular historical period, providing standards for state conduct and aiding in the selection of constitutional norms. The sequence is not a depiction of a practical political or purely theoretical process; instead, it is an integral part of the theory

1 Smerdel, 2020, p. 103.
2 Matulovic and Boskovic, 1996, pp. 306–308.
3 Matulovic and Boskovic, 1996, pp. 306–308.
4 Rawls, 1971, ch. IV, sec. 31.

of human rights and minority rights, forming the essential framework for their formal realisation.[5]

Therefore, international human rights law has become an indispensable component of both transnational and national constitutional law for European countries. It has effectively become an 'international supplement' to constitutions, supporting the legal systems of national states and serving as a declaration of democratic constitutionalism. Without recognising this law, it is no longer possible to affirm and integrate national states into the broader international context.[6] In emerging democracies, there has been a strong interest in developing systems to protect human rights – legal and institutional mechanisms that citizens can use if their rights are infringed. With the growing impact of international and transnational law, this has resulted in a significant alignment between national and international law in this domain.[7] In the context of Europe, the fall of the Berlin Wall, which symbolised the end of the Cold War and the division between capitalist and socialist systems in Europe, acted as a catalyst for comprehensive constitutional and political change throughout the continent. This broad movement towards liberation involved both enhanced international collaboration and a revival of ethnic and nationalistic interests. The transformation of former socialist countries is especially significant. Beginning in 1990, these countries started to move away from socialist governance and societal structures, building liberal democratic systems based on Western models of authority. This led many political analysts at the time to describe it as the definitive victory of democracy and constitutionalism.[8] The early 1990s also represented a significant historical turning point for Croatia, characterised by three key influences: the shift to a new social system that embraced political pluralism, the achievement of an independent and internationally recognised state, and the conflicts resulting from the dissolution of Yugoslavia, particularly the wars in Croatia and Bosnia and Herzegovina. Within this context, the issue of human rights was particularly important. It can be posited that the approach to various human rights aspects in Croatia, Yugoslavia, and the international community has heavily influenced historical developments in both Croatia and the surrounding region. This is particularly relevant to widespread human rights violations, as well as the issues surrounding transitional processes, especially the advancement of civil society organisations.[9] Therefore, the following provides a historical overview of the development of the human rights protection system in Croatia, beginning with the recent history of socialism and advancing to the framework of an independent state that aspires to meet international standards.

5 Matulovic and Boskovic, 1996, pp. 306–308.
6 Bačić, 2006, p. 75.
7 Bačić, 2006, pp. 75–76.
8 Vasilescu, 1997, p. 66; Bačić, 2006, pp. 75–76.
9 Bing, 2008, pp. 195–198.

2. The evolution of human rights in Croatia: From Yugoslavia to an independent framework

Following World War I, the establishment of Yugoslavia aimed to maintain a distinctly democratic political system; however, this effort faced persistent challenges stemming from national rivalries, including Croatians and Serbs, as well as difficult economic conditions and instability. Furthermore, after World War II, Josip Broz Tito's partisans emerged victorious among three competing military and political factions, leading to the formation of the People's Republic of Yugoslavia as a socialist state with a unique structure and ideology compared to other Eastern European socialist regimes[10]. In that regard, the early constitutions of various socialist states in Eastern Europe, including that of Yugoslavia in 1946, included individual rights that were often associated with the Universal Declaration of Human Rights adopted in 1948. Nonetheless, these rights were not effectively safeguarded by the state, particularly during the years when the Communist Party solidified its power and became increasingly repressive[11]. Notably, the constitution recognised women's rights to equal treatment for the first time, highlighting their role as mothers and key contributors to the socialist state.[12] Later on, as the 1980s progressed, a notable shift occurred regarding the perception of human rights, with collective rights increasingly overshadowing individual freedoms.[13] This transformation coincided with the rising nationalist sentiments during the turbulent disintegration of Yugoslavia.

After Tito's death, political chaos allowed for attempts at communism to resurface alongside a push for liberal democracy, culminating in national aspirations becoming a central theme during the 1990s.[14] The breakup of Yugoslavia, which was initiated by Serbian political and military leaders, positioned the establishment of an independent Croatian state as essential to averting serious human rights violations.[15] While Croatia indeed suffered from aggressive Serbian ambitions, the democratic shortcomings of the new administration were not merely the result of the violent conflict. The slow emergence of an authoritarian governance model, intertwined with nationalist sentiments, further complicated the

10 Initially, its structure and ideology were comparable to other Eastern European socialist regimes. However, after 1948, following the Tito-Stalin split, People's Republic of Yugoslavia developed a distinct model of socialism, characterised by its non-alignment policy and decentralisation, setting it apart ideologically and structurally from the Eastern Block.

11 For instance, the right to freedom of religion, though nominally recognised, was not genuinely protected, with religious institutions facing significant state control and suppression.

12 Popović, 2013, pp. 95–98.

13 Bing, 2008, pp. 196–198.

14 Bing, 2008, pp. 198–199.

15 Matulović and Bošković, 1991, p. 309.

development of human rights during this period.[16] However, the declaration of an independent Republic of Croatia in 1991 prominently highlighted the significance of human and minority rights in its new constitutional framework.[17] On 25th June 1991, key foundational legal documents were enacted, including the Declaration on the Proclamation of the Sovereign and Independent Republic of Croatia.[18,19] The new constitution enshrined fundamental rights, emphasising principles such as freedom, equality, and harmonious coexistence among diverse ethnicities. Additionally, the Constitutional Act on Human Rights and Freedoms[20] underscored the obligation to respect and safeguard the rights of minority communities.[21] Also, the deliberations of the Arbitration Commission regarding Croatia's recognition underscored the critical importance of human rights standards as foundational for the newly established state. However, significant challenges persisted in the actual implementation of these rights. The leaders of the Serbian community in Croatia pursued their autonomy vigorously, often resorting to violent means rather than peaceful negotiations to assert their rights.[22]

Importantly, the international acknowledgement of Croatia in early 1992 was closely intertwined with human rights considerations, presenting intricate challenges in balancing nation-building with democratisation and civil society development. The events of 1990 to 1992 served as a historical foundation for the ongoing dialogue around human rights in Croatia.[23] However, the constitutional framework finally established robust normative guarantees for fundamental rights, although much of the political discourse frequently leaned on references to pre-communist Croatian statehood, complicating the refinement of national identity. Following decades of communist governance, the recognition of fundamental rights allowed for the opportunity to define national identity while addressing historical grievances among different ethnic communities.[24] The evolving perspective on human rights in Croatia has transitioned from a framework of inclusive yet limited rights within socialist Yugoslavia to a more narrow interpretation following independence, while current initiatives aim to align

16 Bing, 2008, pp. 196–198.
17 Matulovic and Boskovic, 1996, p. 304.
18 Declaration on the Proclamation of the Sovereign and Independent Republic of Croatia (*cro. Deklaracija o proglašenju suverene i samostalne Republike Hrvatske*), Official Gazette, no. 31/1991.
19 Mijić Vulinović, 2022, p. 15.
20 The Constitutional Act on Human Rights and Freedoms and on the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia (*cro. Ustavni zakon o ljudskim pravima i slobodama i o pravima etničkih i nacionalnih zajednica ili manjina u Republici Hrvatskoj*), Official Gazette, no. 34/1992.
21 Matulovic and Boskovic, 1996, p. 304.
22 Matulovic and Boskovic, 1996, pp. 311–312.
23 Bing, 2008, pp. 195–197.
24 Rodin, 2013, pp. 391–392.

with European standards.[25] This notable shift in understanding human rights during this transitional period showcases the challenges faced by the emerging independent state as it navigated its historical context.[26] However, later on, the Arbitration Commission determined that the Constitutional Act on Human Rights and Freedoms inadequately addressed minority rights, emphasising the need for ongoing discussions regarding the balance between self-determination and the rights of ethnic communities in Croatia.[27] It became increasingly evident that the newly sovereign Croatian state, despite proclaiming its independence, relied significantly on pre-existing international treaties from the former Yugoslavia, which affected the nascent system of human rights protection.[28] Additionally, the Constitutional Declaration affirming Croatia's sovereignty explicitly acknowledged the importance of fundamental human rights, democratic principles, and the rule of law, thereby laying a solid groundwork for future governance.[29] This acknowledgement was pivotal for establishing Croatia as a modern democratic nation committed to protecting human rights.

To conclude, Croatia's history of universal human rights protection offers a nuanced story that progresses from Yugoslavia's socialist goals to the aspirations of an independent nation founded on international human rights norms. Every phase of this journey, marked by significant political upheavals, nationalist movements, and evolving legal frameworks, has been crucial in forming Croatia's current human rights environment. The cornerstone of this framework is the Croatian Constitution, which is interconnected with international mechanisms that will be further analysed in the subsequent sections.

3. Constitutional protection of human rights and its interconnection with international mechanisms

Similar to other post-communist nations, Croatia was involved in both constitutionalisation and economic restructuring following its departure from socialism. This constitutionalisation process aimed to create a true multiparty democracy dedicated to upholding the rule of law and safeguarding the rights of individuals and minorities.[30]

The foundations for the organisation of the government in the Republic of Croatia, as well as the system of human rights and freedoms, were established by its state-building acts predating the first Constitution, adopted on 25th June 1991.

25 Popović, 2013, p. 94.
26 Mijić Vulinović, 2022, p. 16.
27 Matulović and Bošković, 1991, p. 311.
28 Mijić Vulinović, 2022, p. 17.
29 Mijić Vulinović, 2022, p. 17.
30 Bačić, 2006, p. 78.

This date is recognised as the day Croatia acquired international legal personality. The Croatian Parliament, then part of the SFRY, passed key legal documents: the Declaration on the Proclamation of the Sovereignty and Independence, the Constitutional Law on Amendments for Implementation, and the Charter on the Rights of Serbs and Other National Minorities in Croatia.[31] Even in political and methodological principles for the new Constitution, the first President of Croatia, Franjo Tuđman, highlighted that the essential starting point and objective of the Constitution are human (civil, political, social, and cultural) and national rights.[32] Therefore, the final result of this constitutional process was the Constitution of the Republic of Croatia[33], which incorporated fundamental provisions for the protection of human rights, including the rights and freedoms of individuals and social groups, similar to other democratic constitutions.[34] The 1990 Constitution specifies the highest values of the constitutional order of the Republic of Croatia as: freedom, equality, national equality, peace, social justice, respect for human rights, the inviolability of property, the preservation of nature and the environment, the rule of law, and a democratic multiparty system. In 2001, constitutional amendments added gender equality to this list and emphasised that these values serve as the foundation for interpreting the Constitution.[35] Later on, the Constitution from 1990 has been amended several times. The constitutional changes in 2000 and 2001, as well as those in 2010, are particularly significant in terms of the organisation of government and the system of human rights and freedoms.[36] Hence, the Croatian Constitution has been revised to align with international democratic standards[37], meaning also that the list of constitutional guarantees for human rights and freedoms outlined in the Croatian Constitution is not intended to be definitive or exhaustive, but it is supplemented by provisions from international treaties to which Croatia has acceded.[38] In addition to the Constitution of the Republic of Croatia, significant provisions for the protection of rights are contained in the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Minorities, which was adopted in 1991. Committing to respect and protect national and fundamental rights and freedoms, the rule of law, and other values within its constitutional and international legal frameworks, this Constitutional Law directly references and aligns with essential international documents adopted by the UN, the Council of Europe, and the OSCE.[39]

31 Bačić, 2006, p. 15.
32 Matulović and Bošković, 1991, p. 304.
33 Constitution of the Republic of Croatia (*cro. Ustav Republike Hrvatske*), Official Gazette, no. 56-1092/90, 22 December 1990.
34 Bačić, 2006, p. 85.
35 Mijić Vulinović, 2022, pp. 59–60.
36 Mijić Vulinović, 2022, p. 19.
37 Mijić Vulinović, 2022, p. 30.
38 Smerdel, 2020, p. 377; See more: Matulović and Bošković, 1996, pp. 313–318.
39 Bačić, 2006, p. 85.

Therefore, in Croatia, the protection of human rights and freedoms is addressed through two key mechanisms. First, the Constitution mandates that these rights, including those of national minorities, must be regulated by organic laws, which require a qualified majority for adoption, emphasising their significance. Second, international treaties play a crucial role in safeguarding human rights within the Croatian legal system. These treaties are considered part of the domestic legal order and have legal precedence over national laws. In this context, Article 134 of the Constitution of the Republic of Croatia states: 'International treaties that have been concluded and ratified in accordance with the Constitution and published, and which are currently in force, constitute part of the internal legal order of the Republic of Croatia and have legal superiority over laws. Their provisions can be changed or revoked only under the conditions and in the manner set forth in the treaties or in accordance with general principles of international law'[40,41] To conclude, alongside the Constitution and national regulations, human rights are also safeguarded through international treaties.[42] Consequently, in Croatia, similar to various European nations that adopt the monistic principle regarding the relationships between international and domestic law, international instruments for safeguarding human rights and fundamental freedoms are incorporated into the domestic legal framework and possess a status that is superior to regular legislation.[43] This viewpoint is reinforced by the provisions of the Law on Courts from 1994[44], which states that courts not only adjudicate based on the Constitution and laws but also refer to international treaties that form part of the legal order in Croatia. Additionally, the Constitutional Court of the Republic of Croatia supports the application of international law norms in the domestic legal framework, which strengthens the role of international law, particularly human rights law. In a decision evaluating the constitutionality of specific provisions related to local statutes, the Constitutional Court clarified that only ratified and published international treaties can have legal effect within the domestic legal order.[45] Accordingly, the Constitution, laws, and other legal documents must comply with the relevant international treaties, reflecting the hierarchy of legal norms. This greatly influences the rule of government bodies in establishing and realising human rights. The Croatian Parliament's primary responsibility is to ratify international treaties and ensure that existing laws are aligned and new laws are created accordingly. Moreover, executive and judicial authorities are tasked with acting in accordance with these provisions. Consequently, the responsibility

40 Article 134 of the Constitution of the Republic of Croatia, Official Gazette, no. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.
41 Gardašević, 2014, p. 58.
42 Office for Human Rights and the Rights of National Minorities, 2023, p. 39.
43 Smerdel, 2020, p. 103.
44 Article 5 of the Croatian Law on Courts, Official Gazette, no. 3-31/94.
45 Bačić, 2006, pp. 80–81.

of relevant state entities (such as higher courts, the Constitutional Court, the ombudsman, and the public prosecutor's office) is to oversee that lower norms comply with the higher ones and to enforce sanctions against those who violate guaranteed human rights.[46]

However, while a legal framework was established to guarantee these rights, reports indicate a lack of institutional compliance with international standards, leading to ineffective democratic institutions. This issue is especially evident in the limitations on government power necessary for protecting human rights, with root causes linked to a poor economic situation and the legacy of the former one-party socialist system.[47] Finally, the Republic of Croatia has successfully articulated its commitment to protecting human rights and freedoms through legal frameworks in a relatively brief period, aligning these efforts with international and comparative law standards. Nonetheless, it has become evident that the implementation of these rights and the mechanisms for their protection have posed significant challenges, that will be touched upon in the following sections.[48]

■ *3.1. Republic of Croatia in the United Nations*

Within the United Nations framework, global human rights protection is facilitated through international legal instruments that cover civil, political, economic, social and cultural rights. This involves ensuring protection against racial discrimination and shielding individuals from torture and inhumane treatment. Additionally, it includes international legal protections for refugees, displaced persons, and stateless individuals, alongside protections for the rights of women, children, workers, and minorities. The UN develops universally binding international treaties that should be reflected in national legislation, enabling these provisions to be directly applied within the legal systems of member states.[49] These international human rights documents have gained increasing significance and influence since the later decades of the 20th century. The adoption of the Universal Declaration of Human Rights in December 1948[50] marked a pivotal effort to restore faith in human rationality and provide hope to humanity, which had been deeply shaken by the atrocities and devastation of the 20th century's major wars. This document successfully encapsulated the vision of prominent intellectuals on what needed to be accomplished to avoid the repetitive cycle of such horrors and crimes throughout history.[51] The Universal Declaration of Human Rights lays out

46 Mijić Vulinović, 2022, p. 59.
47 Mijić Vulinović, 2022, p. 67.
48 Bačić, 2006, p. 85.
49 Petričušič, 2014, pp. 14–15.
50 Universal Declaration of Human Rights, UN General Assembly, Resolution 217A (III), , A/RES/217(III), 10 December 1948.
51 Smerdel and Sokol, 2006, p. 109.

a brief but impactful list of rights that have been elaborated in later treaties such as the 1966 International Human Rights Covenants. These documents emphasise four key structural elements. First, universal rights are the vehicles for promoting values like non-discrimination and an adequate standard of living. Second, aside from the right to self-determination, the rights outlined pertain to individuals rather than corporations. Third, these internationally recognised rights are viewed as interconnected and inseparable, rather than optional items to choose from. Fourth, while these rights are universally applicable to all individuals, states bear the primary responsibility for implementing them domestically for their citizens.[52] Therefore, the Covenants built on the Declaration aimed to create a framework for monitoring and holding states accountable for safeguarding human rights and fundamental freedoms. Following this, various elements of human rights protection have been addressed by numerous UN international conventions, focusing on human rights and fundamental freedoms, and these will be explored further later.[53]

When it comes to the relationship between Republic of Croatia and the UN, it can be defined as multifaced, focusing especially on peacekeeping, human rights, and sustainable development. It is important to emphasise that Croatia has ratified and accepted all major international human rights instruments since its inception, including all UN conventions that require reporting. Therefore, Croatia is dedicated to enhancing its collaboration with UN treaty bodies created under these conventions. The nation supports UN efforts by contributing expert representatives, such as a specialist on the Committee on the Elimination of Discrimination against Women. Croatia is actively engaged in setting new standards for human rights and fundamental freedoms protection within the UN and other regional organisations. It also plays a role in protecting human rights through its involvement in the UN Economic and Social Council, the Human Rights Commission, and the Commission on the Status of Women.[54] Also, since becoming a full member of the UN in May 1992, Croatia already has actively participated in the development and implementation of human rights on a global scale through its governmental bodies. Croatia maintains a Permanent Mission to the UN and is a member of all major human rights conventions within the organisation, which will be further analysed in Section 3.1.1. Following its treaty obligations, Croatia should submit regular reports on the state of human rights.[55] By collaborating with various specialised UN agencies, Croatian representatives contribute to the advancement of human rights, too. Namely, Croatia joined the International Labour Organisation (ILO) on 6th August 1992 and has been a part of its governing body since 2000. The country also became a member of the United Nations

52 Donnelly, 2003, p. 23.
53 Smerdel and Sokol, 2006, p. 108.
54 Barbir, 2022, p. 32.
55 Mijić Vulinović, 2022, p. 79.

Educational, Scientific and Cultural Organization (UNESCO) on 1 June 1992, the Word Health Organization (WHO) on 23rd June 1992, and the Food and Agriculture Organization (FAO) on 8th November 1993. Additionally, Croatia has been a member of the World Bank since 25th February 1993 and joined the International Monetary Fund (IMF) on 14th December 1992. It is also a member of the World Intellectual Property Organisation (WIPO) since 8th October 1991, and the United Nations Industrial Development Organization (UNIDO) since 2nd June 1992, holding observer status in the IMF. Within these institutions, Croatian representatives work with other member states to promote and implement human rights, focusing primarily on economic and social rights. This is supported through agricultural and industrial development, as well as free trade, which helps realise rights such as the right to work, a decent standard of living, and health.[56]

Furthermore, regarding the assessment mechanisms for detecting the implementation and application of the international human rights instruments in Croatia, it is important to analyse the Universal Periodic Review (UPR) with the Human Rights Council engagements, Treaty Bodies' evaluations, , and especially the assessments by the relevant national bodies, with an emphasis on the national ombudsman's reports. Firstly, Croatia has submitted its third national report in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. It was prepared in coordination with the Ministry of Foreign and European Affairs and the competent administration bodies, and afterwards adopted by the Croatian Government. The good practices have been emphasised, meaning that the Croatian authorities noted the adaptation of the Protocol to be followed in Cases of Sexual Violence, straight after the ratification of the Istanbul Convention. They also mentioned the Protocol on Procedures to be followed in Cases of Domestic Violence, just as the project 'My Voice against Violence' that raised awareness about the unacceptability of violence against women and girls and the project 'LILY', with the preventive role in the same scope. Furthermore, the report also refers to the Strategy for Combating Poverty and Social Exclusion, defining the vulnerable groups. Also, the Guidelines for the improvement of regional cooperation in prosecuting war crimes and searching for missing persons was signed, and the Act on Missing Persons in the Homeland War was adopted.[57] Finally, the recommendations given to Croatia on the session of the Human Rights Council, included aligning national legislation with international obligations and ratifying conventions on enforced disappearance and migrant workers' rights. It was emphasised that it is also essential to strengthen national human rights institutions and ensure that the Ombudsman has adequate resources and independence. Moreover, advancing gender equality and combating discrimination, particularly

56 Mijić Vulinović, 2022, p. 81.

57 Human Rights Council (2020) National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Croatia, A/HRC/WG.6/36/HRV/1, 4–15 May 2020, pp. 2–3.

concerning gender-based violence, was considered crucial. The recommendations further emphasised enhanced conditions for refugees and asylum seekers while ensuring humane treatment and fair asylum procedures. Also, promoting human rights education and support for vulnerable groups, including minorities and persons with disabilities, is important. Lastly, improving oversight on anti-corruption efforts, media freedom, and conditions in detention facilities was considered necessary. Overall, these recommendations aimed to enhance human rights protections and promote social inclusion in Croatia.[58] Additionally, afterwards, in late 2021, after experiencing significant delays, the Croatian Government adopted the Second Periodic Report under the International Covenant on Economic, Social and Cultural Rights. To prepare for a discussion on Croatia, the UN Committee on Economic, Social and Cultural Rights held a preparatory meeting in March 2023. The Croatian Ombudsperson, fulfilling its role as a national human rights institution and working with the Children's Ombudsperson and the Ombudsperson for Persons with Disabilities, submitted an alternative report addressing the hurdles in implementing the Covenant. In August 2023, the UN Committee on the Elimination of Racial Discrimination (CERD) evaluated Croatia's combined 9th-14th periodic report on its progress in eliminating racial discrimination. Ahead of this, the Ombudsperson submitted an alternative report in July 2023 and took part in an oral hearing in Geneva, specifically pointing out issues related to the segregation of Roma children in primary schools. Furthermore, Croatia's Ministry of Foreign and European Affairs began working on a voluntary Mid-term Report regarding the implementation of recommendations from the Universal Periodic Review on human rights, demonstrating good governance practices. During this initiative, they also informed civil society organisations about the actions taken to address these recommendations.[59]

3.1.1. Croatia as the party of the UN's Human Rights Treaties

Beyond the Constitution of the Republic of Croatia and its domestic laws governing various aspects of social and economic life, human rights and freedoms are safeguarded internationally through treaties. Croatia is a signatory to major international human rights agreements promulgated by the United Nations, each of which includes provisions prohibiting discrimination on multiple grounds.[60] Therefore, international documents are primarily the focus of International Public Law studies, but it is crucial to recognise that their provisions have influenced the political and methodological approaches used in drafting the Croatian Constitution. These documents served as a foundational standard for establishing

58 Human Rights Council, 2020; Report of the Working Group on the Universal Periodic Review, Croatia, A/HRC/46/16, Human Rights Council, Forty-sixth session, 22 February – 19 March 2021, pp. 11–23.

59 Pučka pravobraniteljica, 2024, p. 319.

60 Office for Human Rights and the Rights of National Minorities, 2023, pp. 2, 10.

guarantees for human rights and freedoms in the Constitution. By declaring succession from the Yugoslav Federation, Croatia became a party to 19 conventions adopted under the auspices of the United Nations and its specialised agencies.[61] Namely, on 8th October 1991, Croatia notified the UN Secretariat that, following the principles of state succession regarding international treaties, it would adhere to the agreements previously entered into by the former Socialist Federal Republic of Yugoslavia. Through these succession notifications, Croatia eventually became a party to all significant human rights treaties. Nonetheless, Croatia's credibility in this commitment needed to be demonstrated first through its overall legislative efforts and then through the effective implementation of its obligations.[62] Consequently, through the principle of succession, Croatia became a party to several significant treaties that will be analysed more in detail afterwards. Furthermore, beyond its commitments within the European Union, Croatia identified specific areas where it aims to make continuous contributions on a global scale. These areas primarily include the protection and promotion of human rights, with a particular focus on the rights of women and girls, ethnic and religious minorities, and LGBT groups.[63] In this regard, for instance, Article 1 of the Constitutional Act on the Rights of National Minorities[64] refers to international human rights documents, alongside the Constitution of Croatia, such as the 1945 United Nations Charter, the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, and the 1966 International Covenant on Economic, Social and Cultural Rights. Through this article, Croatia pledges to respect the principles and provisions of these international documents, including those that are not binding treaties but serve as political documents or international guidelines for the promotion and protection of human rights and fundamental freedoms. Similarly, other legislation, like the Gender Equality Act[65], also makes reference to international conventions and political documents.[66]

Therefore, in the context of essential UN human rights instruments, Croatia has ratified most of them, alongside the Charter of the United Nations established

61 Smerdel and Sokol, 2006, p. 110.

62 Bačić, 2006, pp. 84–85; General rules on succession are prescribed by the Vienna Convention on Succession of States in respect of Treaties, Vienna, 23 August 1978, entered into force on 6 November 1996, United Nations, Treaty Series, vol. 1946, p. 3.

63 Office for Human Rights and the Rights of National Minorities, 2023, p. 10; Mijić Vulinović, 2022, pp. 79–80.

64 Constitutional Act on the Rights of National Minorities (*cro. Ustavni zakon o pravima nacionalnih manjina*), Official Gazette of the Republic of Croatia, no. 155/02, 47/10, 80/10, 93/11, 93/11.

65 Gender Equality Act (*cro. Zakon o ravnopravnosti spolova*), Official Gazette of the Republic of Croatia, no. 82/08, 69/17.

66 Smerdel, 2020, pp. 377–378.

in 1945[67] and the Universal Declaration of Human Rights adopted in 1948[68]. The following is an overview of the key covenants and conventions and their implications on Croatia's system, just as the relevant UN reports on the effectiveness of the national system:

1. The 1966 International Covenant on Civil and Political Rights[69]. The ICCPR is recognised as the most thorough and established UN treaty addressing civil and political rights, generating the majority of the UN's jurisprudence in the field. Initially adopted by the UN General Assembly in 1966, the ICCPR came into effect in 1976 after obtaining 35 ratifications. Following the Cold War, there was a notable increase in the number of state parties to both the ICCPR and its First Optional Protocol, as human rights issues became less politically charged within the UN context.[70] The ICCPR, has been ratified by the Socialist Republic of Yugoslavia, of which Croatia was a part. After gaining independence, the Republic of Croatia succeeded to the International Covenant on Civil and Political Rights on 12th October 1992, based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions.[71] Croatia also accessed the CCPR-OP1 – Optional Protocol to the International Covenant on Civil and Political Rights on 12th October 1995,[72] just as the second one for the abolishment of the death penalty.[73] When it comes to its implementation and application, it is worth to check the newer relevant reports.[74] For example, in the 2020 report by the Office of the UN High Commissioner for Human Rights concerning Croatia, the Human Rights Committee raised concerns about the infrequent use of the

67 Charter of the United Nations, Official Gazette of the Republic of Croatia, International Documents, no. 15/1993 and 7/1994; Lulić and Muhvić, 2012, pp. 13–48.

68 The Universal Declaration of Human Rights, Official Gazette of the Republic of Croatia, International Documents, no. 12/2009; Lulić and Muhvić, 2012, pp. 49–53.

69 International Covenant on Civil and Political Rights, New York, 16 December 1966, United Nations, Treaty Series, vol. 999; Centre for Human Rights Geneva (1988) A Compilation of International Instruments. New York: United Nations, pp. 18–37; Official Gazette of the Socialist Federative Republic of Yugoslavia, no. 7/1971. The Republic of Croatia is a party of this Convent based on the Decision on the Publication on Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions, Official Gazette of the Republic of Croatia, International Documents, no. 12/1993; Lulić and Muhvić, 2012, pp. 54–75.

70 Joseph and Castan, 2013, p. 8.

71 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org.

72 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org.; Optional Protocol to the International Covenant on Civil and Political Rights, Official Gazette of the Republic of Croatia, International Documents, no. 7/1995.

73 Second Optional Protocol to the International Covenant on Civil and Political Rights, Official Gazette of the Republic of Croatia, International Documents, no. 7/1995.

74 For the comparison with the first Reports submitted by the Republic of Croatia, see more in: Human Rights Committee, 2000.

ICCPR by domestic courts. The Committee noted a lack of sufficient awareness about the Covenant's provisions among the judiciary and legal professionals, as well as a lack of accessibility to this information for civil society, minorities, and individuals with disabilities. To address these issues, the Committee advised the state to implement measures to enhance the understanding of the Covenant among judges, lawyers, and prosecutors, ensuring its provisions would be considered in domestic legal proceedings. Additionally, the Committee recommended that efforts be made to broadly disseminate information about the Covenant across the country, including translating it and making it accessible to all segments of society.[75] Furthermore, the newer 2024 UN Human Rights Committee assessment of Croatia's compliance with the International Covenant on Civil and Political Rights[76] highlighted both positive developments and significant concerns. While commending Croatia's temporary protection for Ukrainian refugees, the Committee expressed deep concern regarding reports of irregular border crossings from Bosnia and Herzegovina and Serbia, including pushbacks and ill-treatment of migrants and asylum seekers. Croatia was urged to guarantee equitable access to asylum procedures for anyone needing international protection, to provide comprehensive human rights training to border officials (emphasising non-refoulement), and to ensure thorough, independent investigations into alleged abuses. Further concerns were raised about the prevalence of hate speech and historical revisionism, particularly by high-ranking officials, and the inadequate punishment of hate crimes. The Committee recommended strengthening efforts to combat hate speech and hate-motivated violence against minorities (Roma, Serbs, non-citizens, and LGBT individuals), and providing specialised training on hate crime identification and prosecution for law enforcement, prosecutors, and judges.[77]

2. The 1966 International Covenant on Economic, Social and Cultural Rights[78]. The Republic of Croatia succeeded to the International Covenant on Civil and Political Rights on 12th October 1992, meaning that it is a party based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of

75 Human Rights Council, 2020, p. 1.

76 International Covenant on Civil and Political Rights, 16 December 1966, General Assembly resolution 2200A (XXI), Entry into force: 23 March 1976.

77 United Nations Human Rights Office of the High Commissioner, 2024.

78 United Nations, 1988; Official Gazette of the Socialist Federative Republic of Yugoslavia, no. 7/1971. The Republic of Croatia is a party of this Convent based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions, Official Gazette of the Republic of Croatia, International Documents, no. 12/1993; Lulić and Muhvić, 2012, pp. 76–84.

Successions.[79] As was noted in the Report of the Committee on Economic, Social and Cultural Rights, during the time of its succession to this Covenant, Croatia was suffering from the recovery from the armed conflict, which disabled the fluent implementation of the rights provided by the Covenant, due to the complicated socio-economic, political and other circumstances.[80] However, drawing from the ICESCR, the Constitution of the Republic of Croatia managed to ensure so-called second-generation rights. These encompass rights like property ownership, entrepreneurial and market freedom, the right to work, social security, sufficient earnings for a dignified life, healthcare, association, and the right to strike. They also include the right to education, and freedom of scientific, cultural, and artistic creation, alongside the right to a healthy life. Unlike first-generation rights, these are long-term goals that government agencies are responsible for facilitating through active measures. However, due to economic conditions, many citizens are unable to fully realise the right to work and to earnings that ensure a dignified life, which, in turn, affects their right to a healthy life. The ICESCR imposes less stringent duties than those for first-generation rights but still mandates legal obligations that must be upheld.[81] Despite this, Croatia has not yet signed the Optional Protocol to the ICESCR. As a result, citizens are not able to submit individual complaints to the independent UN committee responsible for safeguarding social, economic, and cultural rights.[82] In the Report of the Office of the United Nations High Commissioner for Human Rights from 2020 regarding the economic, social, and cultural rights in Croatia, several challenges were emphasised. Firstly, regarding the right to work and employment conditions, it was noted that there are concerns about horizontal and vertical occupation segregation, with women overrepresented in low-paid and part-time jobs. Issues also include inadequate implementation of equality legislation and the principle of equal pay for work of equal value, leading to a persistent gender wage gap and employment discrimination against women related to pregnancy. Recommendations include introducing regulatory measures for gender mainstreaming, straightening efforts to eliminate occupational segregation, enforcing equal pay, and ensuring effective complaint mechanisms for employment discrimination. The report also emphasises the need to encourage paternity leave and increase access to formal

79 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org.

80 Committee on Economic, Social and Cultural Rights, 2001; Consideration of Reports Submitted by States Parties Under Articles 16 And 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights, Croatia.

81 Mijić Vulinović, 2022, pp. 63–64.

82 Đaković et. al., 2023, p. 14.

employment for disadvantaged groups, including Roma women. Secondly, it was clarified that low social benefits and strict eligibility criteria disproportionately impact women, particularly older women and those without prior employment. The report suggests conducting a socioeconomic study of impoverished women to enhance social protection measures. Thirdly, Croatia has made progress in healthcare, however, challenges remain in ensuring access to reproductive health services, with reports on the denial of abortion rights due to conscientious objection by hospitals and abuse during medical procedures related to reproductive health. Recommendations have called for policies that prioritise the rights of vulnerable groups. Fourthly, the report urges the revision of educational materials to remove discriminatory content, the expansion of access to education for unaccompanied children, and the certainty that Roma children receive adequate education in their mother tongue. Finally, the report highlights issues related to trafficking of persons, and special attention is drawn to the barriers faced by marginalised populations in accessing adequate housing, social benefits and services.[83]

3. The 1951 Convention relating to the Status of Refugees[84]. The former SFRY was a party to both the Convention and the Protocol, and thus the Republic of Croatia ratified the 1951 Convention relating to the Status of Refugees[85] and its 1967 Protocol on January 19th 1992, soon after achieving independence, through its notification of succession.[86] Consequently, the Republic of Croatia is a party based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions.[87] The ratification of this Convention was crucial, since in the past decade Croatia has faced a significant refugee crisis. As a nation affected by aggression, it dealt with its own displaced people while also accommodating a large number of refugees from neighbouring regions, mostly from Bosnia and Herzegovina. In 1992, Croatia registered 531,839 refugees, along with 300,000 displaced persons, making up nearly a quarter of the country's population. Croatia ratified

83 Human Rights Council, 2020, pp. 4–6.

84 Convention relating to the Status of Refugees, Geneva, 28 July 1951, United Nations, Treaty Series, vol. 189, with the Protocol relating to the Status of Refugees, New York, 31 January 1967, United Nations, Treaty Series, vol. 606; Centre for Human Rights Geneva, 1988, pp. 294–310.

85 Official Gazette of the Socialist Federative Republic of Yugoslavia. The Republic of Croatia is a party of this Convent based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions, Official Gazette of the Republic of Croatia, International Documents, no. 12/1993; Lulić and Muhvić, 2012, pp. 207–221.

86 Lapaš, 2008, p. 5.

87 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org; Lulić and Muhvić, 2012, pp. 222–225.

key international documents on the movement and residence of foreigners, including refugees, with its Constitution granting asylum rights, barring non-political crimes or activities against international law. To address refugee issues, it enacted the Asylum Act[88] with support from the UNHCR, involving representatives from relevant ministers in its drafting.[89] In the Report of the Office of the United Nations High Commissioner for Human Rights from 2020 regarding the treatment of refugees in Croatia, UNHCR highlighted key issues in the legal framework and current practices. Concerns include restricted access to asylum processes, reports of police violence, and inadequate integration support. UNCHR recommended improving asylum procedures, addressing mistreatment, and enhancing integration through language courses and employment opportunities. Additionally, unaccompanied minors are often placed in unsuitable facilities, prompting calls for specialised centres to ensure proper care and prioritise their best interests. The report stresses the need for better border protections and rights for unaccompanied children.[90]

4. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination[91]. The Republic of Croatia succeeded in the International Convention on the Elimination of All Forms of Racial Discrimination on 12th October 1992, meaning it is a party based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions.[92] According to reports in 2022, progress toward accepting Article 14 of the Convention remained stagnant. Consequently, citizens continue to be unable to file individual complaints with the Committee overseeing its implementation.[93] In 2023, CERD, issued findings on Croatia in its session. The Committee highlighted concerns about racial discrimination against Roma and Serb minorities, urging Croatia to enforce anti-discrimination laws and raise awareness. It also called for faster and impartial prosecution of serious humanitarian law violations, regardless of ethnicity.[94] In July 2023, the

88 Asylum Act (cro. Zakon o azilu), Official Gazette of the Republic of Croatia, no. 103/2003.
89 Damjanović and Tomičević, 2004, p. 74.
90 Human Rights Council, 2020, pp. 8–9.
91 International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966, United Nations, Treaty Series, vol. 660; Centre for Human Rights Geneva, 1988, pp. 56–68.
92 United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org; Official Gazette of the Socialist Federative Republic of Yugoslavia no. 6/1967. The Republic of Croatia is a party of this Convent based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions, Official Gazette of the Republic of Croatia, International Documents, no. 12/1993; Lulić and Muhvić, 2012, pp. 91–101.
93 Đaković et. al., 2023, p. 14.
94 UN Committee on the Elimination of Racial Discrimination, 2023.

Ombudswoman submitted a shadow report to the UN Committee on the Elimination of Racial Discrimination (CERD). This report, regarding Croatia's implementation of the Convention on the Elimination of All Forms of Racial Discrimination, is part of the responsibilities of our institution as a National Human Rights Institution (NHRI) with 'A' status. It aligns with CERD's General Recommendation No. 28 on the role of national human rights institutions in fulfilling the Convention's obligations and implementing CERD recommendations. According to the report, in Croatia, racial or ethnic discrimination is prohibited by the Constitution, EU law, international law in force, and Croatian laws, primarily through the Anti-Discrimination Act, as well as the Criminal Code and others. Despite these regulations, racial and ethnic discrimination remains a problem, particularly towards foreign workers from distant third countries, whose numbers have significantly increased in recent years.[95] Previously, in the Report of the Office of the United Nations High Commissioner for Human Rights from 2020, it was noted that the UNESCO's National Roma Inclusion Strategy (2013-2020) prioritised improving educational inclusion for Roma children. However, UNHCR reported increasing intolerance towards the Serbian minority, marked by hate speech and the displaying of Nazi symbols. The Human Rights Committee highlighted challenges faced by national minorities in using their languages and ongoing racist attacks against Roma and Serbians, with inadequate investigations and compensation for victims. To address these issues, UNHCR recommended a national campaign for minority rights and media awareness, while the Human Rights Committee called for enhancing minority language rights.[96]

5. The 1979 Convention on the Elimination of All Forms of Discrimination against Women[97]. The Republic of Croatia succeeded in the Convention on the Elimination of All Forms of Discrimination against Women on 9th September 1992, meaning it is a party based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions[98] Croatia also signed the CEDAW-OP - Optional Protocol to the Convention on the Elimination of All

95 The Ombudswoman of the Republic of Croatia, 2024.

96 Human Rights Council, 2020, p. 8.

97 International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966, United Nations, Treaty Series, vol. 660; Centre for Human Rights Geneva, 1988, pp. 112–124.

98 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org; Official Gazette of the Socialist Federative Republic of Yugoslavia no. 11/1981. The Republic of Croatia is a party based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions, Official Gazette of the Republic of Croatia, International Documents, no. 12/1993; Lulić and Muhvić, 2012, pp. 108–118.

Forms of Discrimination against Women on 5th June 2000 and ratified it on 7th March 2001[99], just as it accepted CEDAW-OP, Arts. 8–9 – Inquiry procedure under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 7th March 2001.[100] Nonetheless, Croatia further postponed fulfilling its international obligations, including the report on the implementation of the International Convention on the Elimination of All Forms of Discrimination against Women, which is now four years overdue.[101] The Committee urged Croatia to leverage the Beijing Declaration and Platform for Action in its efforts to fulfil the obligations outlined in this Convention. Additionally, it stressed the need to incorporate a gender perspective, consistent with the Convention's provisions, into all initiatives designed to achieve the Sustainable Development Goals.[102] In the Report of the Office of the United Nations High Commissioner for Human Rights from 2020, it was noted that the Committee on the Elimination of Discrimination against Women urged Croatia to enact legislation to address sociocultural attitudes that impede women's rights and to enhance legal education for professionals on these rights. It recommended raising awareness among women about their rights and encouraging reporting of discrimination. The Committee on the Rights of Persons with Disabilities highlighted the need for initiatives to empower women with disabilities and protect them from violence. Concerns were raised about the effectiveness of domestic violence laws, with issues including dual arrest, lack of investigations, lenient sentencing, insufficient legal aid, and inadequate shelters for victims.[103] Furthermore, in the Comprehensive national-level review prepared by the Office for Gender Equality of the Government of the Republic of Croatia for the purpose of the Thirtieth anniversary of the Fourth World Conference on Women and adoption of the Beijing Declaration, and Platform for Action (1995), from June 2024, it has been concluded that over the past five years, Croatia has made notable progress in gender equality through legal reforms, national strategies, and collaborative initiatives. However, continued efforts are needed to combat discrimination and improve women's social and economic status. The National Plan for Gender Equality (2021-2027) outlines seven key priorities, including raising public awareness, improving women's labour market position, addressing

99 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, International Documents, no. 3/2001 and 4/2001; Lulić and Muhvić, 2012, pp. 119–123.

100 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org.

101 Đaković et. al., 2023, p. 15.

102 Human Rights Council, 2023, p. 1.

103 Human Rights Council, 2020, pp. 6–7.

gender-based violence, promoting gender-sensitive education, and increasing women's political participation. Future initiatives focus on combating violence against women and children, enhancing victim support services, and strengthening anti-hate speech measures. Additionally, efforts will be directed toward education, poverty reduction, and ensuring equal opportunities in all areas of life. An emphasis will remain on intersectional cooperation, professional development, and the continuous improvement of policies and practices.[104]

6. The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[105]. The Republic of Croatia succeeded in the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment on 12th October 1992, meaning it is a party based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions.[106] Also, the then president of the Republic of Croatia, Stjepan Mesić, announced the Law on the Ratification of the Optional Protocol to the Convention, which was adopted by the Croatian Parliament during its session on 20th January 2005[107]. Croatia also accepted the CAT, Art. 22 – Individual complaints procedure under the Convention against Torture on 12th October 1992 and has accepted the CAT, Art. 20 – Inquiry procedure under the Convention against Torture.[108]
7. The 1989 Convention on the Rights of the Child[109]**.** The Republic of Croatia succeeded in the Convention on the Rights of the Child on 12th October 1992, meaning it is a party based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a

104 Office for Gender Equality of the Government of the Republic of Croatia, 2024, pp. 74–75.

105 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, United Nations, Treaty Series, vol. 1465; Centre for Human Rights Geneva, 1988, pp. 212–225.

106 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org; Official Gazette of the Socialist Federative Republic of Yugoslavia no. 9/1991. The Republic of Croatia is a party based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions, Official Gazette of the Republic of Croatia, International Documents, no. 12/1993; Lulić and Muhvić, 2012, pp. 124–135.

107 Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Official Gazette of the Republic of Croatia, International Documents, no. 2/2005 and 3/2007; Lulić and Muhvić, 2012, pp. 136–146.

108 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org.

109 Convention on the Rights of the Child, New York, 20 November 1989, United Nations, Treaty Series , vol. 1577; See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org.

Party based on Notifications of Successions.[110] Croatia signed the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict[111] and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography[112] in 2002. Also, Croatia ratified the CRC-OP-IC - Optional Protocol to the Convention on the Rights of the Child on 18th April 2017[113] and has accepted the CRC-OP-IC, Art. 13 – Inquiry procedure under the Optional Protocol to the Convention on the Rights of the Child.[114] Nevertheless, despite a 19-year delay, Croatia still did not submit a periodic report regarding the implementation of the above-mentioned Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.[115]In the Report of the Office of the United Nations High Commissioner for Human Rights from 2020, it was noted that the Committee on the Rights of Persons with Disabilities urged Croatia to ensure equal protection for children with disabilities in all relevant legislation and to enhance deinstitutionalisation efforts. It recommended implementing a moratorium on new institutional admissions and straightening psychological, financial, and social support for families.[116]

8. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[117]. According to the latest reports, Croatia did not express any intention to join the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[118] The Committee on the Elimination of Discrimination against Women urged the State to consider ratifying both

110 Official Gazette of the Socialist Federative Republic of Yugoslavia no. 15/1990. The Republic of Croatia is a party based on the Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Successions, Official Gazette of the Republic of Croatia, International Documents, no. 12/1993. Amendments in Official Gazette of the Republic of Croatia, International Documents, no. 20/1997, 4/1998 and 13/1998; Lulić and Muhvić, 2012, pp. 147–165.

111 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Official Gazette of the Republic of Croatia, International Documents, no. 5/2002 and 2/2003; Lulić and Muhvić, 2012, pp. 164–168.

112 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Official Gazette of the Republic of Croatia, International Documents, no. 5/2002 and 7/2002; Lulić and Muhvić, 2012, pp. 169–175.

113 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org.

114 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org.

115 Đaković et. al., 2023, p. 15.

116 Human Rights Council, 2020, p. 7.

117 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, New York, 18 December 1990, United Nations, Treaty Series, vol. 2220.

118 Đaković et. al., 2023, pp. 12–13.

this convention and the International Convention for the Protection of All Persons from Enforced Disappearance, but these efforts did not yield any results.[119] Even though it has been proven by the reports that the rights of migrants has been violated in Croatia, especially regarding their treatment by the police, and even though Croatia got several recommendations from other states in the Human Rights Council of the UN to implement the mentioned Convention, that didn't result in its success, neither has it been argumentatively reasoned by the Croatian authorities. Therefore, it will be valuable to follow any further progress in this regard.[120]

9. The 2006 Convention on the Rights of Persons with Disabilities[121]. The Republic of Croatia signed the Convention on the Rights of Persons with Disabilities on 30th March 2007.[122] The Act of the Ratification on this Convention has been adopted by the Croatian Parliament at the session on 1st June 2007.[123] Croatia has ratified it on 15th August 2007.[124] Additionally, Croatia signed the CRPD-OP – Optional Protocol to the Convention on the Rights of Persons with Disabilities on 30 March 2007 and ratified it on 15th August 2007.[125] It also accepted the CRPD-OP, Art. 6-7 – Inquiry procedure under the Convention on the Rights of Persons with Disabilities.[126] In the Report of the Office of the United Nations High Commissioner for Human Rights[127] from 2020, it was noted that the Human Rights Committee raised concerns about the excessive use of involuntary hospitalisation for individuals with intellectual or psychosocial disabilities, recommending it be a last resort with proper legal safeguards and an independent monitoring system to address abuses. It also called for dignified psychiatric care and a

119 Human Rights Council, 2023, p. 1.

120 Human Rights Council, 2020, pp. 9, 11–23.

121 United Nations, 2006; See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org.

122 Convention on the Rights of Persons with Disabilities, Official Gazette of the Republic of Croatia, International Documents, no. 6/2007 and 3/2008, amendment in 5/2008; Lulić and Muhvić, 2012, pp. 176–200.

123 Declaration on the proclamation of the Act on the Ratification of the Convention on the Rights of Persons with Disabilities and the Facultative Protocol to the Convention on the Rights of Persons with Disabilities, 6. June 2007, Croatian Parliament, Official Gazette 6/2007.

124 Convention on the Rights of Persons with Disabilities, Official Gazette of the Republic of Croatia, International Documents, no. 6/2007 and 3/2008, amendment in 5/2008; Lulić and Muhvić, 2012, pp. 176–200.

125 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org; Optional Protocol to the Convention on the Rights of Persons with Disabilities, Official Gazette of the Republic of Croatia, International Documents, no. 6/2007 and 3/2008; Lulić and Muhvić, 2012, pp. 201–204.

126 See more in: United Nations Human Rights Treaty Bodies, Treaty Body Database, OHCHR.org.

127 For the status of the persons with disabilities in Croatia after gaining independence, see more in: Michailakis, 1997, pp. 97–98.

plan for deinstitutionalisation with community-based options. The Committee on the Rights of Persons with Disabilities urged Croatia to expand reasonable accommodation and universal design in various sectors beyond the Anti-Discrimination Act, ensure inclusive education at all levels, and provide training for public authorities on disability rights. It recommended legislation to respect the autonomy of persons with disabilities, ensuring their rights to consent to medical treatment, access justice, vote, marry, maintain parental rights, and work, as well as promoting their creative potential through initiatives like disability art festivals.[128]

To provide a clear and systematic overview of the implementation of the aforementioned UN treaties in Croatia in the national legal system, a detailed summary has been prepared. The following section outlines Croatia's approach to integrating the provisions of these international treaties into its national legal framework.

For each UN convention and covenant, two main aspects are highlighted:

1. The date of Accession/Succession/Ratification: This indicates when Croatia formally became a party to the treaty, signifying its commitment to uphold the treaty's provisions.
2. National Implementation Mechanisms: This includes relevant constitutional provisions and major legislative acts that incorporate the principles and requirements of the respective UN treaties into the Croatian legal system.

The subsequent Table offers a concise reference point, summarising the accession dates and key legislative measures enacted to implement the treaties. This expanded text provides a more comprehensive context for readers, helping to understand the legal and institutional measures adopted by Croatia to fulfil its international obligations.

128 Human Rights Council, 2020, pp. 7–8.

Table 1: National implementation of the UN conventions/covenants

UN conventions/ covenants	Time of accession/ succession/ratification	Examples of the national implementation mechanisms
The 1966 International Covenant on Civil and Political Rights CCPR-OP1 – Optional Protocol to the International Covenant on Civil and Political Rights	12th October 1992 (succession) 12th October 1995 (accession)	– The Constitution of the Republic of Croatia (OG, no. 05/14) provides numerous civil and political rights in its part II titled cro. 'Osobne i političke slobode i prava' (Article 21 to Article 47). It is important to mention that in its Article 21, Constitution has explicitly forbidden the death penalty. – Constitutional Law on the Rights of National Minorities (OG, no. 93/11) undertakes to respect and protect the rights of national minorities and other fundamental rights and freedoms of man and citizen. – The Law on International Legal Assistance in Criminal Matters (OG, no. 178/04) states that the 'international legal assistance is provided in the broadest sense, in accordance with the principles of the domestic legal order, the principles of the ECHR and Fundamental Freedoms and the ICCPR.' – The Law on International and Temporary Protection (OG, no. 33/23) in its Article 44, while defining the safe country of origin, is directly referring to the ICCPR. – Specific laws, such as the Criminal Code (OG, no. 36/24), the Anti-Discrimination Act (OG, no. 112/12) or Act on Courts (OG, no. 36/24) also further implement these rights.
The 1966 International Covenant on Economic, Social and Cultural Right Optional Protocol to the International Covenant on Economic, Social and Cultural Right	12 October 1992 (succession) Not signed	– The Constitution of the Republic of Croatia (OG, no. 05/14) provides numerous civil and political rights in its part III titled cro. 'Gospodarska, socijalna i kulturna prava' (Article 48 to Article 70). – The Anti-Discrimination Act (OG, no. 112/12) is the fundamental regulation of anti-discrimination legislation, which ensures the promotion of equality as the highest value of the constitutional order, creates conditions for achieving equal opportunities, and regulates the protection against discrimination. It applies particularly in the areas of: employment, education, science and sports, social security, healthcare, judiciary, housing, media, membership in organisations and cultural creation.[129] – The provisions on the economic, social and cultural rights are also contained in the special laws, such as: the Labour Act (OG, no. 64/23), Gender Equality Act (OG, no. 69/17), Family Act (OG, no. 156/23), the Act on Life Partnerships of Persons of the Same Sex (OG, no. 98/19), the Act on Maternity and Parental Benefits (OG, no. 152/22), Act on Social Welfare (OG, no. 156/23), the Act on the Protection of Patient Rights (OG, no. 37/08), the Act on Education in Primary and Secondary Schools (OG, no. 156/23), Constitutional Law on the Rights of National Minorities (OG, no. 93/11), etc.

129 See more in: Ministry of Labour, Pension System, Family and Social Policy, 2021, p. 12.

The 1951 Convention relating to the Status of Refugees 1967 Protocol to the Convention relating to the Status of Refugees	19 January 1992 (ratification) 19 January 1992 (ratification)	– Article 33 of the Constitution of the Republic of Croatia (OG, no. 05/14) says that 'a foreign national and stateless persons can seek asylum in the Republic of Croatia, except if they are prosecuted for non-political crimes and activities contrary to the fundamental principles of international law. A foreigner who is legally residing in the territory of Croatia cannot be expelled or extradited to another state, except when it is necessary to enforce a decision made in accordance with international agreements and the law.' – The Law on International and Temporary Protection (OG, no. 33/23) regulates the status and rights of refugees, just as the Act on Mandatory Health Insurance and Health Care of Foreigners in the Republic of Croatia (OG, no. 46/22) specifically in the scope of their health care.
The 1965 International Convention on the Elimination of All Forms of Racial Discrimination	12 October 1992 (succession)	– The Constitution of the Republic of Croatia (OG, no. 05/14), Article 14 explicitly provides the rights and freedoms to everyone, no matter the rase. – Constitutional Law on the Rights of National Minorities (OG, no. 93/11) is explicitly referring to the Convention and granting the rights to national minorities. – The Anti-Discrimination Act (OG, no. 112/12) is the fundamental regulation of anti-discrimination legislation and it ensures protection and promotion of equality as the highest value of the constitutional order of Croatia, and regulates the protection against, beside other, discrimination based on race.
The 1979 Convention on the Elimination of All Forms of Discrimination against Women Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	9 September 1992 (succession) 7 March 2001 (ratification)	– The Constitution of the Republic of Croatia (OG, no. 05/14), Article 3 emphasises the gender equality as one of the highest values of the constitutional order of Croatia and the foundation for the interpretation of the Constitution. Also, in Article 14, it guarantees all the rights and freedoms no matter the gender. – The Gender Equality Act (OG, no. 69/17) Article 6(1) contains a definition of discrimination based on gender, in accordance with the provisions of the Convention. – The Civil Service Act (OG, no. 85/24), Article 8, also defines the principle of prohibition of discrimination, which prohibits discrimination or favours towards citizens based on, beside other, gender. – The Criminal Code (OG, no. 36/24), Article 125 contains sanctions for violations of citizens' equality based on gender, defining the denial or limitation of such freedoms or human and citizen rights categorised by the Constitution, law, or other regulations. – The Criminal Procedure Act contains Article 6 that prohibits discrimination in the treatment of any person, and a violation of this provision excludes the possibility of using evidence obtained in that manner.[130]
The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	12 October 1992 (succession)	– The Constitution of the Republic of Croatia (OG, no. 05/14), Article 17 states that even in the case of immediate danger to the survival of the state, the application of the provisions of the Constitution regarding the right to life, the prohibition of torture, cruel or degrading treatment or punishment cannot be restricted. – The Criminal Code (OG, no. 36/24) contains Article 91 and especially Article 104 that explicitly probit the torture, and other cruel, inhumane or degrading treatment or punishment.

130 Office for Gender Equality of the Government of the Republic of Croatia, 2013, pp. 34–36.

The 1989 Convention on the Rights of the Child Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography Optional Protocol to the Convention on the Rights of the Child	12 October 1992 (succession) 1 November 2002 (ratification) 13 May 2002 (ratification) 18 April 2017 (ratification)	– The Constitution of the Republic of Croatia (OG, no. 05/14), Article 63 explicitly guarantees the protection of children. – The Act on the Ombudsman for Children (OG, no. 73/17) outlines the scope and functioning of the Ombudsman for Children, as well as conditions for the selection and dismissal of the Ombudsman and their deputies. The Ombudsman is responsible for protecting, monitoring, and promoting the rights and interests of children, in accordance with the Constitution of the Republic of Croatia, international treaties, binding legal acts of the EU, and national laws. – The Family Act (OG, no. 156/23) and the Social Welfare Act (OG, no. 156/23) incorporate specific rights of children. Beside those, the Act on International and Temporary Protection (OG, no. 33/23) also contains the specific provisions related to the protection of the children. Additionally, the Constitutional Law on the Rights of National Minorities (OG, no. 93/11) takes into consideration the protection of children provided by the Convention.
The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	No accession/succession/ ratification	–
The 2006 Convention on the Rights of Persons with Disabilities Optional Protocol to the Convention on the Rights of Persons with Disabilities	15 August 2007 (ratification) 15 August 2007 (ratification)	– The Constitution of the Republic of Croatia (OG, no. 05/14) notes that the State dedicates special attention to the protection of persons with disabilities and their inclusion in social life and guarantees their right to special protection at work. – The Anti-Discrimination Act not only safeguards equality as a fundamental value of the constitutional order in Croatia, but also establishes conditions for equal opportunities and protection against disability discrimination. It also defines discrimination to include the failure to accommodate persons with disabilities according to their specific needs concerning: access to public resources, participation in public and social life, access to the workplace and suitable working conditions. The Social Welfare Act (OG, no. 156/23), Article 15 defines the person with disabilities and regulates the social welfare needs of them more in detail. Other acts that are also important for regulating the status and rights of persons with disabilities are: The Act on the Croatian Sign Language and Other Communication Systems for Deaf and Deafblind Persons in the Republic of Croatia (OG, no. 82/15), The Act on Maternity and Parental Benefits (OG, no. 59/17), The Act on Child Allowance (OG, no. 58/18), The Family Act (OG, no. 103/15), The Act on the Mobility of Blind Persons with Assistance from Guide Dogs (OG, no. 131/08), The Act on a Unified Expert Body (OG, no. 95/15) and The Act on the Protection of Persons with Mental Disorders (OG, no. 76/14).

Source: The table is the result of the authors' individual research.

However, in addition to previously mentioned conventions, Croatia is also a party to several other significant international agreements. These include the 1948

Convention on the Prevention and Punishment of the Crime of Genocide,[131] the 1968 Convention on the Non-Applicability to Statutory Limitations to War Crimes and Crimes Against Humanity,[132] the 1962 Slavery Convention along with its 1953 Protocol,[133] the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery,[134] the 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,[135] the 1954 Convention Relating to the Status of Stateless Persons,[136] the 1952 Convention on the Political Rights of Women,[137] the 2000 Convention against Transnational Organised Crime,[138] the four Geneva Conventions of 1949 and their two Additional Protocols of 1977,[139] the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid,[140] and the 1960 UNESCO Convention against discrimination in Education.[141,142] Croatia has also become a member of numerous conventions adopted under the International Labour Organisation (ILO). Some of these include: Convention No. 29 on Forced or Compulsory Labour (1930),[143] Convention No. 102 on Minimum Standards of Social

131 Convention on the Prevention and Punishment of the Crime of Genocide, New York, 9 December 1948, United Nations, Treaty Series, vol. 1021.

132 Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, New York, 26 November 1968, United Nations, Treaty Series, vol. 754.

133 Slavery Convention, signed at Geneva on 25 September 1926 and amended by the Protocol, New York, 7 December 1953, United Nations, Treaty Series, vol. 212.

134 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva, 7 September 1956, United Nations, Treaty Series, vol. 266.

135 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Lake Success, New York, 21 March 1950, United Nations, Treaty Series, vol. 96.

136 Convention relating to the Status of Stateless Persons, New York, 28 September 1954, United Nations, Treaty Series, vol. 360.

137 Convention on the Political Rights of Women, New York, 31 March 1953, United Nations, Treaty Series, vol. 193.

138 Convention against Transnational Organized Crime, New York, 15 November 2000, United Nations, Doc. A/55/383.

139 See more in: Geneva Convention for the Improvement of the Condition of the Wounded and Sick in Armed Forces in the Field (GCI); Geneva Convention for the Improvement of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea (GCII); Geneva Convention Relative to the Treatment of Prisoners of War (GCIII); Geneva Convention Relative to the Protection of Civilians in Time of War (GCIV); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (API); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (APII).

140 International Convention on the Suppression and Punishment of the Crime of Apartheid, New York, 30 November 1973, United Nations, Treaty Series, Vol. 1015.

141 Convention against Discrimination in Education, Paris, 14 December 1960, UNESCO, CL/3933.

142 Mijić Vulinović, 2022, pp. 79–80.

143 Forced Labour Convention, Geneva, 1930, International Labour Organization, No. 29.

Security (1952),[144] Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948),[145] Convention No. 98 on the Right to Organise and Collective Bargaining (1949),[146] Convention No. 105 on the Abolition of Forced Labour (1957),[147] Convention No. 122 on Employment Policy (1964),[148] Convention No. 135 on Workers' Representatives (1971),[149] Convention No. 138 on the Minimum Age for Admission to Employment (1973),[150] Convention No. 100 on Equal Remuneration for Men and Women,[151] and Convention No. 111 on Discrimination (Employment and Occupation) (1958).[152,153]

3.1.2. Croatia before the UN Treaty Bodies

Finally, in order to illuminate key challenges in Croatia's human rights practices, it is essential to analyse the obligations toward, and the cases before the UN Treaty Bodies. Namely, when it comes to the International Covenant on Civil and Political Rights (ICCPR), and its Treaty Body, Human Rights Committee, it is important to emphasise that Croatia submits periodic reports and is subject to examinations concerning compliance with the Covenant. Also, as a party to the Optional Protocol, Croatia allows individual complaints, which will be examined in more detail. Secondly, Croatia also participates in the reporting process before the Committee on Economic, Social and Cultural Rights (CESCR), and as the Treaty Body of the International Covenant on Economic, Social and Cultural Rights (ICESCR), addressing its obligations related to economic, social, and cultural rights. Croatia is also a party to the Optional Protocol, although only limited communications have been reported under it so far. Thirdly, the United Nations High Commissioner for Refugees (UNHCR) monitors compliance with refugee rights, which includes Croatia's obligations under the Convention relating to the Status of Refugees and its Protocol. Fourthly, the Committee on the Elimination of Racial Discrimination (CERD) receives Croatia's reports on the application of the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), assessing adherence

144 Social Security (Minimum Standards) Convention, Geneva, 1952, International Labour Organization, No. 102.
145 Freedom of Association and Protection of the Right to Organise Convention, Geneva, 1948, International Labour Organization, No. 87.
146 Right to Organise and Collective Bargaining Convention, Geneva, 1949, International Labour Organization, No. 98.
147 Abolition of Forced Labour Convention, Geneva, 1957, International Labour Organization, No. 105.
148 Employment Policy Convention, Geneva, 1964, International Labour Organization, No. 122.
149 Workers' Representatives Convention, Geneva, 1971, International Labour Organization, No. 135.
150 Minimum Age Convention, Geneva, 1973, International Labour Organization, No. 138.
151 Equal Remuneration Convention, Geneva, 1951, International Labour Organization, No. 100.
152 Discrimination (Employment and Occupation) Convention, Geneva, 1958, International Labour Organization, No. 111.
153 Mijić Vulinović, 2022, pp. 79–80.

to the principles of the Convention. Fifthly, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) reviews Croatia's reports and considers its recommendations to improve the status of women in the country, to comply with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Also, the Optional Protocol allows for individual complaints regarding violations of women's rights, but there are no cases currently available on the relevant data bases. Furthermore, the Committee against Torture (CAT) receives periodic reports from Croatia, addressing issues related to torture and ill-treatment, referring to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). The Committee on the Rights of the Child (CRC) also reviews Croatia's policies and practices related to children's rights through periodic reporting based on the relevant Convention on the Rights of the Child (CRC) and its Optional Protocols. Also, The Committee on the Rights of Persons with Disabilities engages in reviewing Croatia's reports on the application of the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

However, besides the reporting procedures, Croatia has not been the subject of a numerous individual complaints, despite being a party of the abovementioned Treaties and its Optional Protocols. Nevertheless, in the following, the author provides an analysis of the cases brought before the UN Treaty Bodies against Croatia. This analysis will highlight recurring issues, especially those that affected the position of minority groups during and after the war.

3.1.2.1. Human Rights Committee, United Nations, *Dagmar Urbanetz Linderholm v. Croatia*, CCPR/C/66/D/744/1997, Communication No. 744/1997, 20 May 1996

Mrs. Dagmar Urbanetz Linderholm, residing in England, brought a Communication before the UN Human Rights Committee, alleging that Croatia had violated her rights under Articles 26 and 14(1) of the ICCPR. Her claim concerned the 1945/48 expropriation of her parents' hotel and subsequent irregularities in restitution proceedings under 1991 legislation. The Croatian state party responded to the Communication, but the HRC found it inadmissible under Article 5(2)(a) of the Optional Protocol. This was because a similar application had already been rejected by the European Commission of Human Rights. Therefore, the HRC did not consider the merits of Ms. Linderholm's claim.

3.1.2.2. Human Rights Committee, United Nations, *Paraga v. Croatia,* CCPR/C/71/D/727/1996, Communication No. 727/1996, 16 April 1996

Communication No. 727/1996 to the Human Rights Committee concerned allegations by Mr Dobroslav Paraga, a prominent Croatian human rights activist and a former president of the Croatian Party of Rights (HSP), of systematic violations of his rights under the International Covenant on Civil and Political Rights (ICCPR). Paraga's central argument posited a pattern of politically motivated state actions

dating back to 1991, aimed at silencing his political opposition and undermining his party. A key element of Paraga's claims involved his arrest and detention in November 1991 on charges of conspiracy, ultimately dismissed for a lack of evidence. He argued this arrest was not only arbitrary but also constituted a blatant attempt to suppress his political activities, violating his rights to liberty and a fair trial under Article 9 of the ICCPR. This was further supported by his claims regarding the inadequate investigation into the murder of his party's vice president, suggesting a possible government-sponsored assassination attempt aimed at eliminating a key political opponent. The lack of a thorough investigation, he argued, represented a failure of the state to protect his right to life and security of his person, further deepening the allegation of politically motivated persecution. Paraga also highlighted the strategically timed charges of illegal mobilisation and slander, presented as attempts to discredit him, publicly infringed upon his rights to freedom of expression (Article 19) and political participation (Article 25) by utilising the legal system for political suppression. The attempted ban of the HSP reinforced this pattern, demonstrating an effort to eliminate his political platform entirely, violating his right to freedom of association (Article 22). Finally, Paraga contended that the extended legal proceedings, including the protracted resolution of the slander charges and his eventual eviction from the party's office, demonstrated a deliberate strategy of delay and harassment, effectively denying him his right to a trial 'without undue delay' as stipulated in Article 14. The Croatian government's counterarguments focused on procedural issues, notably the timing of many events relative to the Optional Protocol's entry into force and the alleged failure by Paraga to exhaust domestic remedies. However, the Committee ultimately centred its decision on the merits of Paraga's claim that the lengthy legal processes constituted a violation of Article 14, paragraph 3(c), of the ICCPR.[154]

3.1.2.3. Human Rights Committee, United Nations, *Vojnović v. Croatia*, CCPR/C/95/D/1510/2006, Communication No. 1510/2006, 28 April 2009

Communication no. 1510/2006, was a case brought before the UN Human Rights Committee concerning alleged human rights violations including Dušan Vojnović, his wife Dragica, and their son Milan, by the Republic of Croatia. The core issues centred on the termination of their specially protected tenancy in a Zagreb apartment and subsequent alleged violations of their rights under the International Covenant on Civil and Political Rights. The Vojnović family, Croatian citizens of Serbian origin, resided in a state-owned apartment from 1986 until 1992. However, due to credible death threats, they were forced to leave in 1991 – Dušan and Milan relocated to Serbia, while Dragica remained in Croatia until October 1992. In 1995, a Zagreb Municipal Court ruled that their tenancy rights had been terminated

154 Human Rights Committee, United Nations, *Paraga v. Croatia*, CCPR/C/71/D/727/1996, Communication No. 727/1996, 16 April 1996.

due to non-occupancy exceeding six months, a decision they were not notified of until 1998. Despite attempts to repurchase the apartment in 1998, their request was denied. Subsequent legal proceedings, initiated with a successful review of the 1995 court decision in 2000, extended over several years and concluded with the family's unsuccessful appeal to the Croatian Constitutional Court in 2005. However, this communication detailed not only this protracted housing dispute but also several additional allegations of human rights abuses. Croatia challenged the admissibility of the complaint to the UNHRC, citing the exhaustion of domestic remedies, the matter already being before the ECHR (a claim later deemed invalid *ratione temporis* by the UNHRC), and claims deemed inadmissible on grounds of *ratione temporis* and *ratione personae*. The UNHRC, after a thorough examination, determined that while portions of the initial complaint were inadmissible for various reasons, the claims regarding violations of Article 2 (para. 1), Article 14 (para. 1), Article 17, and Article 26 of the ICCPR were admissible. Their analysis found violations of Article 14, para. 1 (right to a fair trial), and Article 17 (right to respect for the home), both in conjunction with Article 2 (para. 1) (right to life). The Zagreb Municipal Court's refusal to consider relevant evidence and witnesses, along with the significant and unjustified delay in the proceedings, amounted to an unfair trial. Moreover, the termination of the tenancy was deemed arbitrary, given the documented threats and the resulting duress forcing the family's departure. While Article 26 (equality before the law) was invoked, its violation was subsumed in the Court's findings on Articles 14 and 17. The UNHRC's decision concluded with a finding of human rights violations and an order for Croatia to provide an effective remedy, including appropriate compensation, to the Vojnović family within 180 days. The Vojnović case serves as a poignant example of the challenges faced by minority groups in the assertion of their rights and the importance of effective legal recourse in ensuring that fundamental human rights are upheld and protected.[155]

3.1.2.4. Human Rights Committee, United Nations, *M.L. v. Croatia*, CCPR/C/127/D/2505/2014, Communication No. 2505/2014, 27 November 2013

M.L., a Croatian national of Serbian ethnicity, filed Communication No. 2505/2014 with the UN Human Rights Committee, alleging that Croatia violated his rights by destroying his property in 1992 during the Croatian War of Independence and subsequently failing to provide compensation. His property, a tourist rental house, was deliberately destroyed by Croatian authorities. Despite pursuing various domestic legal avenues – including out-of-court settlements and administrative appeals – M.L. was unsuccessful in obtaining compensation, largely due to procedural obstacles, including the rejection of his claim by the High Administrative

155 Human Rights Committee, United Nations, *Vojnović v. Croatia*, CCPR/C/95/D/1510/2006, Communication No. 1510/2006, 28 April 2009.

Court on technical grounds related to his lack of an address or legal representation in Croatia. Croatia challenged the UNHRC communication's admissibility, citing insufficient domestic remedy exhaustion, and issues of *ratione materiae, ratione temporis,* and insufficient substantiation. While acknowledging the concerning allegations of discriminatory intent behind the property destruction, the Committee ruled that claims regarding the 1992 destruction were inadmissible *ratione temporis* as they predated the Optional Protocol's entry into force for Croatia. Additionally, claims regarding the right to property and compensation were deemed inadmissible *ratione materiae* as the Covenant does not independently guarantee these rights. The Committee also found aspects of M.L.'s claims regarding access to information and insufficiency substantiated. Therefore, the UNHRC declared the communication inadmissible under Articles 1, 2, 3, and 5(2)(b) of the Optional Protocol.

3.1.2.5. Human Rights Committee, United Nations, *D.V. v. Croatia*, CCPR/C/122/D/2859/2016, Communication No. 2859/2016, 14 July 2016

D.V., an Australian and Serbian citizen, alleged that Croatia violated his human rights through his protracted extradition and pre-trial detention-related war crimes charges. Arrested in Australia in 2006 based on a Croatian warrant, he fought extradition for years, ultimately being extradited in 2015 and then held in pre-trial detention for over a year before his trial commenced in 2016. He claimed violations of multiple articles of the ICCPR, primarily focusing on arbitrary detention and denial of a fair trial. However, the UNHRC found his communication inadmissible. While acknowledging the lengthy detention, the UNHRC stated it couldn't review the merits of his ongoing criminal trial or the legality of his detention while that trial was pending, emphasising its non-interference in domestic criminal proceedings. The Committee also found that D.V. did not sufficiently substantiate claims beyond his lengthy detention, concluding that the communication was inadmissible due to insufficient substantiation and incompatibility with the Covenant provisions. Therefore, the UNHRC declared the communication inadmissible under Articles 3 and 5(2)(b) of the Optional Protocol.[156]

4. Conclusion

Based on a comprehensive historical, contextual, legislative, and practical analysis of human rights protection in Croatia, it can be concluded that the country generally normatively aligns with the international human rights framework. As a party to numerous UN instruments and their affiliated bodies, Croatia is obligated to

156 Human Rights Committee, United Nations, *D.V. v. Croatia*, CCPR/C/122/D/2859/2016, Communication No. 2859/2016, 14 July 2016.

uphold a wide array of human rights and to implement these standards nationally. However, there remains a continuous call for the ratification of unratified international agreements, which would integrate the highest levels of human rights protection and non-discrimination into Croatian law. This includes the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Revised European Social Charter. In this context, the Ministry of Foreign Affairs has indicated that the draft Action Plan for the Protection and Promotion of Human Rights for 2024 and 2025, which is yet to be adopted, includes plans for a thorough assessment of the prerequisites required for the ratification of these instruments[157].

However, despite these normative commitments, reports from relevant institutions and an examination of cases before the UN Human Rights Committee indicate that Croatia still scores poorly regarding human rights protection, particularly in certain areas of enforcement. As a country with a post-communist history marked by low political accountability and challenging economic conditions, Croatia encounters considerable obstacles in realising its economic, social, and cultural rights, especially in relation to the right to a decent standard of living, education, and employment.[158] Reports from the Croatian Ombudsman illustrate how unfavourable economic circumstances adversely affect human rights protection. They also highlight the lack of awareness among Croatian citizens regarding their entitlements and the mechanisms available to claim these rights, leading to widespread inaction in defending against possible violations. Furthermore, the ineffectiveness of the judicial system is frequently cited as a significant barrier to achieving human rights and fundamental freedoms, particularly in relation to the right to a fair trial, which is often undermined by delays. Moreover, it is evident that public officials often lack the necessary training to fulfil their roles in protecting human rights and freedoms.[159] Discrimination – especially based on national and ethnic identity – also remains a crucial issue within Croatia's human rights framework, which has been highlighted in case proceedings before the UN Human Rights Committee. The prevalence of hate speech in public discourse further demonstrates a pervasive misunderstanding of the concepts of freedom of expression and hate speech.[160]

The struggle of European and international institutions to effectively promote human rights implementation, beyond establishing legal structures, along with the Croatian government's reluctance to extend these rights universally, and the challenges of capable NGOs to hold the government accountable, contribute to persistent human rights deficits – particularly affecting the ethnic

157 Pučka pravobraniteljica, 2024, pp. 320–321.
158 Mijić Vulinović, 2022, pp. 33–34.
159 Mijić Vulinović, 2022, p. 68.
160 Mijić Vulinović, 2022, p. 76.

Serb minority, women, and the LGBT community.[161] Although reports from the Ombudsman and Human Rights House indicate some progress, this advancement is still insufficient. Additionally, the challenges presented by the Covid-19 pandemic and the recent earthquakes in certain regions of Croatia have further intensified these issues.

In summary, Croatia, a relatively young and modern democracy, continues to grapple with the ideological legacy of its past, creating a disconnect between its human rights normative framework, which closely adheres to international standards, and the institutional shortcomings in upholding the principles of constitutionalism and legality in practice. By effectively implementing recommendations from both international and national bodies, enhancing institutional safeguards for human rights, and improving public education about these rights, Croatia has the potential to make significant strides in the protection of human rights.

161 Popović, 2013, p. 95.

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BÁLINT KOVÁCS*

The Universal Protection of Human Rights and Central Europe: Hungary

ABSTRACT: *This paper explores Hungary's evolving relationship with the universal protection of human rights. It traces this topic through its historical developments of the early 19th century to the present. It begins with Hungary's Reform Era for the purpose of exposing how the ideals of the Enlightenment influenced progressive legislative initiatives, such as the April Laws of 1848, which introduced groundbreaking reforms in suffrage, press freedom, religious equality, and judicial modernisation. Despite setbacks following the 1848 Revolution, many of these reforms resurfaced post-1867 Austro-Hungarian Compromise and laid the groundwork for Hungary's later human rights engagements. After World War I, Hungary joined the League of Nations, demonstrating an early commitment to minority rights protection, although domestically, it began implementing discriminatory legislation, especially against Jews. The atrocities committed during World War II and the Holocaust marked a devastating failure in human rights protection, prompting global efforts toward codification of human rights norms, which Hungary gradually joined. Under communism, Hungary's legal framework was aligned with Soviet ideology, emphasising social over civil rights, while individual freedoms were largely sidelined. However, from 1989 onwards, democratic reforms, constitutional changes, and international engagement – such as ratifying key UN treaties and joining the Council of Europe and the European Union – marked a significant shift toward aligning domestic law with global human rights standards. The paper also examines Hungary's dualist legal approach, which requires international treaties to be enacted through domestic legislation, and how this has influenced treaty implementation. Particular focus is given to Hungary's participation in the UN human rights system, including its engagement with treaty bodies, responses to individual complaints, and Universal*

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Periodic Review (UPR) procedures. Through an analysis of key cases and mechanisms, the paper underscores both progress and ongoing challenges in ensuring full compliance with international human rights obligations. It concludes by stressing the need for continual vigilance and adaptation to safeguard rights amid evolving political and social contexts.

■ **KEYWORDS:** *international law, universal human rights protection, treaty bodies, Hungary*

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

The idea of universal human rights, inspired by Enlightenment philosophers, became well known to politicians of the Hungarian Reform Era from the 1820s onward. In this period, the staen of the day attempted to effect modernisation, following the example of some Western European states. Since there was no chartered constitution in Hungary at that time, there was no constitutional regulation of human rights either. The legal thinking of that time can be found incorporated into numerous works describing Hungarian society and the various paths towards modernisation.[1] These works both contained and inspired numerous progressive legislative proposals, as presented briefly herein.

Some of the legislative proposals that resulted from the Revolution of 15 March 1848, and the national assemblies called together in this period, were included in the so-called *April Laws*,[2] a series of laws that were promulgated by King Ferdinand V of Hungary (also known as Ferdinand I. Emperor of Austria) on 11 April 1848. The April Laws include 31 Acts, which transformed Hungary into a parliamentary democracy and a constitutional monarchy. Amongst these, Act V of 1848 concerning the system of democratic elections offered the widest suffrage rights in Europe at that time, on par with Switzerland: 'men aged at least 20, meeting the property or income qualifications for voting, as well as members of the intelligentsia, were guaranteed voting rights and those above 24 could be elected representatives.'[3] Additional April Laws relevant to this paper are Act IX establishing a modern judiciary, Act XV regarding the abolishment of ancestral rights and the introduction of equality in the area of property rights, Act XVII concerning the abolishment of censorship and freedom of the press, Act XIX on

1 István Széchenyi's works such 'Credit' ('Hitel'), 'World' ('Világ'), or 'Phase' ('Stádium'), but also the works of other key figures of that period such as Lajos Kossuth, Ferenc Deák, József Eötvös, or Bertalan Szemere, amongst others. See also Lamm, 2022, pp. 1175–1177.

2 In Hungarian: *áprilisi törvények*.

3 Gerő, 2014.

freedom of education, or Act XX concerning the religious equality of established Christian churches. It is worth noting that these laws can be considered truly progressive for mid-19th century Central Europe, both in terms of content and intent. Lajos Kossuth, one of the most important political leaders at that time, noted that these laws did not contain all that was necessary for the nation's future, but rather constituted the foundations of its development.[4]

Following the elections organised pursuant to the new rules in June 1848, the newly elected national assembly commenced work in July 1848; they began drafting a constitution and adopted further laws that merit mentioning in the context of this chapter. Act VIII of 1849 concerning nationalities, provided the right of national minorities to use their mother tongue in their dealings with local authorities, and ensured access to education in the mother tongue. A second law of major importance was Act IX of 1849 which accorded equal political and civil rights to Jews. However, the abdication of King Ferdinand V in December 1848 led to his successor, Franz Joseph revoking all of these laws, and the crushing of the 1848 Revolution foiled the plans for the adoption of a French-inspired constitution containing numerous provisions on human rights.

Many of the above-mentioned legislative acts came to the fore once again after the Austro-Hungarian Compromise of 1867, and the ideas developed at that time were used during the adoption of laws on primary education (Act XXXVIII of 1868), and secondary school education for national minorities (Act XXX of 1883). Further laws were adopted aimed at improving equality of rights for Jews (Act XVII of 1867), and other national minorities (Act XLIV of 1868). A previously adopted act, intended to guarantee freedom of the press, was also reinstated. Reformist legislative ambitions within the Monarchy were also manifested in its foreign relations. In terms of international agreements, Hungary as part of the Austro-Hungarian Monarchy, contributed to the drafting of various international agreements, such as the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, and to its successor, the 1906 Geneva Convention, to the General Acts of the Berlin Conference (1885), and the Brussels Conference (1890), which were aimed at abolishing slavery and the slave trade.

Following the First World War, the newly independent Hungary became a member state of the League of Nations. This implicitly meant that Hungary adhered to the Covenant of the League of Nations. The Covenant referred to numerous, what we would today call fundamental human rights. It contained declarations such as the one pertaining to securing and maintaining fair and humane conditions of labour (Article 23(a)), or securing just treatment for the native inhabitants of territories under member states' occupation (Article 23(b)). The League of Nations, specifically the League Council, was also charged with supervising the so-called Minority Treaties, which were entered into at the end

4 Szabad, 2004.

of World War I, and – as suggested by their name – aimed to protect national minorities.[5] Hungary, as a country that lost much of its population and territory after World War I, became more homogeneous in terms of ethnic composition. The lost population included over three million ethnic Hungarians, which made Hungary especially interested in upholding the rights of national minorities, and thus the country was in favour of seeing the Minority Treaties enforced by the League. This had the added consequence that Hungarian politicians and legal professionals became very much involved in the minority rights protection system, establishing a legal tradition upheld to this day. Nevertheless, the international protection system was more than imperfect, with League Council recommendations formulated pursuant to complaints made by minorities often being ignored by the member states.

While preoccupied with the rights of minorities abroad, the Hungarian government, starting in 1920, adopted laws that severely restricted the rights of its Jewish citizens. The situation became increasingly acute by the end of the 1930s, and at the beginning of the 1940s, with the so-called *Jewish Laws* (*zsidótörvények*).[6] These laws were followed by the Holocaust against Jewish and Romani peoples, and other minorities, and the atrocities of World War II, resulting in the deaths of hundreds of thousands of Hungarian citizens.

The end of the Second World War saw the birth of fundamental human rights, enclosed in the Preamble of the United Nations (UN) Charter, which was drafted to 'reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women (...).'[7] The UN Charter's Article 1(3) defines the purpose of the UN as being to 'achieve international co-operation (...) in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.'

5 The term *Minority Treaties* includes unilateral declarations, bilateral, as well as multilateral treaties, all aimed at the protection of national minorities.

6 Act XXV of 1920, the so-called *numerus clausus* law, restricting the number of students of Jewish origin admitted to higher education (1920. évi XXV. törvénycikk a tudományegyetemekre, a műegyetemre, a budapesti egyetemi közgazdaságtudományi karra és a jogakadémiákra való beiratkozás szabályozásáról). The four Jewish Laws: Acts XV of 1938 (1938. évi XV. törvénycikk a társadalmi és a gazdasági élet egyensúlyának hatályosabb biztosításáról) and Act IV of 1939 (1939. évi IV. törvénycikk a zsidók közéleti és gazdasági térfoglalásának korlátozásáról) which restricted the civil and political rights of Jews, and their rights in conducting business; Act XV of 1941 (1941. évi XV. törvénycikk a házassági jogról szóló 1894:XXXI. törvénycikk kiegészítéséről és módosításáról, valamint az ezzel kapcsolatban szükséges fajvédelmi rendelkezésekről) which prohibited the marriage and sexual relations between Jews and non-Jews; Act XV of 1942 (1942. évi XV. törvénycikk a zsidók mező- és erdőgazdasági ingatlanairól) restricting the acquisition of real-estate pertaining to agricultural and forestry activities by Jews.

7 See full text of United Nations Charter.

As a direct consequence of the horrors of World War II, on 9 December 1948 the UN General Assembly (GA) adopted the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention). Supplementing the above-mentioned brief declaration of intent, UN members drafted and adopted the Universal Declaration of Human Rights (UDHR), which was published on 10 December 1948. In 1949 further treaties were adopted regarding humanitarian treatment in times of war, supplementing the existing conventions and also adding new rules. Hungary, not yet a member of the UN at the time, neither contributed to the drafting, nor did it vote on the adoption of the UDHR, and the other conventions mentioned. The UDHR was later adopted by the member states of the Council of Europe as part of the European Convention of Human Rights (ECHR), who thereby assumed an enforceable obligation to uphold these human rights. These obligations are enforced by way of a specialised court known as the European Court of Human Rights (ECtHR), which exercises powers of oversight guaranteeing the rights under the ECHR. Hungary became a member of the Council of Europe, and consequently adopted the ECHR and other human rights treaties, on 6 November 1990.

Following World War II, and the Paris Peace Treaty of 1947, Hungary undertook to 'take all measures necessary to secure to all persons under Hungarian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.'[8] Nevertheless, Hungary came under severe pressure and influence from the Soviet Union, resulting in the communists taking over political power and governing Hungary through the next four decades, giving a particular spin to the above-mentioned commitment. With a communist government, and under considerable influence from the Soviet Union, Hungary adopted its first-ever chartered constitution in 1949.[9] This was based on the 1936 Constitution of the Soviet Union, which used the terminology of *citizens' rights* instead of *human rights*, focusing on social and economic rights, rather than civil and political rights. During this period, repression and *show trials* became the order of the day, with an utter disregard for the right to life, freedom, property, religion, or due process.

Hungary eventually became a member of the UN in 1955, undertaking all of the human rights obligations that were attached to this membership. It must be noted, however, that with the defeat of the Hungarian Revolution of 1956 – with the assistance of the Soviet Union – and the reprisals that followed, fundamental human rights were repeatedly violated.

The codification of human rights at an international level progressed in the 1950s and in the following decades with the adoption of several conventions

8 Article 2(1) of the Paris Peace Treaty with Hungary.
9 Act XX of 1949 (1949. évi XX. törvény, a Magyar Népköztársaság alkotmánya).

and covenants. Hungary adhered to a number of these, such as the International Covenant on Civil and Political Rights[10] (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR),[11] the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),[12] the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[13] the Convention relating to the Status of Refugees,[14] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[15] While Hungary did eventually adhere to the mentioned covenants and conventions, it was not as active in the moulding of norms that were taking shape on the human rights front at that time, in contrast to the country's involvement in other areas of international cooperation, such as the unification of civil law undertaken at the United Nations Commission on International Trade Law.[16] Hungary ratified these international agreements, and submitted reports to the experts overseeing their implementation, making efforts to meet the expectations of the international community.

Some of the international human rights agreements were only ratified after the regime change that took place around 1989. The fall of communism and regime change also brought a series of amendments to the Hungarian Constitution, which included the introduction of civil and political rights, and the recognition of the inviolable and inalienable nature of fundamental human rights. Various other laws were passed pertaining to fundamental rights, such as Act II of 1989 concerning the freedom of association, Act III of 1989 concerning the freedom of assembly, Act XVII of 1989 concerning referendums, and Act IV of 1990 concerning freedom of conscience and religion. There was also institutional reform providing the infrastructure that would guarantee the respect of fundamental rights, such

10 Ratified via Act 8 of 1976 (1976. évi 8. törvényerejű rendelet az Egyesült Nemzetek Közgyűlése XXI. ülésszakán, 1966. december 16-án elfogadott Polgári és Politikai Jogok Nemzetközi Egyezségokmánya kihirdetéséről).

11 Ratified via Act 9 of 1976 (1976. évi 9. törvényerejű rendelet az Egyesült Nemzetek Közgyűlése XXI. ülésszakán, 1966. december 16-án elfogadott Gazdasági, Szociális és Kulturális Jogok Nemzetközi Egyezségokmánya kihirdetéséről).

12 Ratified via Act 8 of 1969 (1969. évi 8. törvényerejű rendelet a faji megkülönböztetés valamennyi formájának kiküszöböléséről New Yorkban 1965. december 21-én elfogadott nemzetközi egyezmény kihirdetéséről).

13 Ratified via Act 10 of 1982 (1982. évi 10. törvényerejű rendelet a nőkkel szembeni megkülönböztetés minden formájának felszámolásáról 1979. december 18-án New Yorkban elfogadott egyezmény kihirdetéséről).

14 Ratified via Act 15 of 1989 (1989. évi 15. törvényerejű rendelet a menekültek helyzetére vonatkozó 1951. évi július hó 28. napján elfogadott egyezmény, valamint a menekültek helyzetére vonatkozóan az 1967. évi január hó 31. napján létrejött jegyzőkönyv kihirdetéséről).

15 Ratified via Act 3 of 1988 (1988. évi 3. törvényerejű rendelet a kínzás és más kegyetlen, embertelen vagy megalázó büntetések vagy bánásmódok elleni nemzetközi egyezmény kihirdetéséről).

16 See Thirty-five Years of Uniform Sales Law: Trends and Perspectives, Introduction by János Martonyi, UNCITRAL, 2015.

as the Constitutional Court, the commissioner for citizens' rights, and the office of the commissioner for ethnic and national minorities, both in the Hungarian National Assembly.

Following the regime change, Hungary sought to become party to additional international treaties and European organisations which involve a robust commitment to enforcing the protection of universal human rights. Particularly impactful with regard to the human rights regime in Hungary were joining the Council of Europe (CoE) in 1990, and ratifying the ECHR and other human rights conventions under it, such as the Framework Convention for the Protection of National Minorities, and the European Charter for Regional and Minority Languages.[17] In 2004 Hungary became a Member State of the European Union (EU), so undertaking to adhere to all of the human rights norms adopted by members. This includes the EU Charter of Fundamental Rights applicable since 1 December 2009. The human rights regime under both the CoE and the EU have strict supervisory structures including, in some cases, the possibility of judicial review and enforcement. After the regime change of 1989, Hungary also proceeded to ratify further UN conventions, such as the Convention on the Rights of the Child,[18] the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the related Optional Protocol,[19] and the Convention on the Rights of Persons with Disabilities (CRPD).[20]

Hungary strives to ensure that its domestic legal system functions in line with the international human rights system. In this respect, Hungary regularly participates in the review and reporting mechanisms, by reporting and receiving the recommendations of the international human rights bodies of the UN. The obligations thus assumed are enshrined in the constitution (*alkotmány*) of Hungary, and guaranteed by its Constitutional Court (*Alkotmánybíróság*). In 2011 a new constitution, called the Fundamental Law (*Alaptörvény*) was adopted, which contains a set of civil, political, economic, social and cultural rights, as well as third generation human rights. These fundamental rights are included in the chapter titled 'Freedom and Responsibility' of the Fundamental Law.

17 Hungary ratified the ECHR on 5 November 1992, and published the law pertaining to this ratification in 1993 via Act XXXI of 1993 (1993. évi XXXI. törvény az emberi jogok és az alapvető szabadságok védelméről szóló, Rómában, 1950. november 4-én kelt Egyezmény és az ahhoz tartozó nyolc kiegészítő jegyzőkönyv kihirdetéséről).

18 Ratified via Act LXIV of 1991 (1991. évi LXIV. törvény a Gyermek jogairól szóló, New Yorkban, 1989. november 20-án kelt Egyezmény kihirdetéséről).

19 Ratified by Hungary via Act CXLIII of 2011 (2011. évi CXLIII. törvény a kínzás és más kegyetlen, embertelen vagy megalázó bánásmód vagy büntetés elleni egyezmény fakultatív jegyzőkönyvének kihirdetéséről).

20 Ratified by Hungary via Act XCII of 2007 (2007. évi XCII. törvény a Fogyatékossággal élő személyek jogairól szóló egyezmény és az ahhoz kapcsolódó Fakultatív Jegyzőkönyv kihirdetéséről).

Table 1: Full table of the ratification status of UN human rights treaties in Hungary[21]

Treaty	Signature Date	Ratification Date, Accession(a), Succession(d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment – CAT	28 Nov 1986	15 Apr 1987
Optional Protocol of the Convention against Torture – CAT-OP		12 Jan 2012 (a)
International Covenant on Civil and Political Rights – CCPR	25 Mar 1969	17 Jan 1974
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty – CCPR-OP2-DP		24 Feb 1994 (a)
Convention for the Protection of All Persons from Enforced Disappearance – CED		
Convention on the Elimination of All Forms of Discrimination against Women – CEDAW	6 Jun 1980	22 Dec 1980
International Convention on the Elimination of All Forms of Racial Discrimination – CERD	15 Sep 1966	4 May 1967
International Covenant on Economic, Social and Cultural Rights – CESCR	25 Mar 1969	17 Jan 1974
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – CMW		
Convention on the Rights of the Child – CRC	14 Mar 1990	7 Oct 1991
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict – CRC-OP-AC	11 Mar 2002	24 Feb 2010
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography – CRC-OP-SC	11 Mar 2002	24 Feb 2010
Convention on the Rights of Persons with Disabilities – CRPD	30 Mar 2007	20 Jul 2007

2. International treaties in the Hungarian legal system

Prior to its first written constitution, the contact between Hungary's domestic legal system and international law was scarcely regulated by Hungarian positive law in terms of the applicable procedure. The first written constitution, adopted in 1949, as with the previously applied unwritten *historic constitution* (in Hungarian: *történeti alkotmány*), was consistent in leaving this matter unaddressed. Previous to the 1949 Constitution, the judiciary served with case law that guided the interaction of domestic law and international law. Courts argued that international agreements, in order to produce effects domestically, must be adopted in the shape of domestic law, meaning they must be ratified. This tradition was continued under the Constitution of 1949, as it was also in line with the logic of soviet law: international agreements can produce effects domestically only if they are adopted through national legislation.

21 Based on the UN Treaty Body Database, as of November 2024.

Under this *dualist system*, Hungary promulgated several international human rights agreements, as also shown in the previous section. The Constitutional Court and the judiciary play a crucial role in the implementation of the international norms Hungary committed to. The judiciary has been described as regularly being concerned with the domestic legislative instrument that promulgates an international agreement, rather than with the text of the agreement itself.[22] The dualist approach was finally integrated into the positive law and elevated to the rank of constitutional law during the amendments to the 1949 Constitution that took place during the 1989 regime change. It was the amendment to Article 7 that introduced regulations containing the normative relationship between Hungarian domestic law and international law. Below is the author's translation of paragraph (1) Article 7 of the amended Constitution: 'The legal system of the Republic of Hungary accepts the generally recognised rules of international law, and ensures the consistency between domestic law and the international legal obligations assumed.'[23] This paragraph was maintained in the Constitution up until its abrogation, and the adoption of the 2011 Fundamental Law. The dualist tradition was carried on into the 2011 Fundamental Law, which is the latest iteration of the millennium-old Hungarian Constitution.

The process of adopting the 2011 Fundamental Law came under scrutiny both domestically and abroad, not least because it is a rare occurrence that an EU Member State adopts a new constitution in the post-accession phase. The Fundamental Law replaced the Constitution of 1949,[24] which had previously been revised during the transition and regime change of 1989,[25] and then amended extensively, most notably in the process of EU accession.[26] The 2010 parliamentary elections resulted in a landslide victory that allowed for the conservative government coalition to adopt a new constitution in the form of the Fundamental Law in April 2011. The new government, with a two-thirds majority in Parliament, considered that a new constitution was long overdue, partly due to comparisons made with neighbouring countries who had managed to adopt completely new constitutions after the regime change of 1989.[27] In terms of this new Constitution being called the Fundamental Law, is underpinned by the argument – as noted by one of its drafters – that the Fundamental Law is only *pars* of the Hungarian constitutional

22 Molnár, 2013, pp. 57–58, 61–64.

23 Paragraph (2) of Article 7 was a provision setting the two-thirds majority of MPs as necessary to adopt the act pertaining to the rules of the legislative process.

24 Act XX of 1949, the Constitution of the Hungarian Republic (1949. évi XX. törvény – A Magyar Népköztársaság Alkotmánya).

25 Act XXXI of 1989, regarding the revision of the Constitution (1989. évi XXXI. törvény az Alkotmány módosításáról).

26 Act LXI of 2002, concerning the amendment of Act XX of 1949 on the Constitution of the Hungarian Republic (2002. évi LXI. törvény a Magyar Köztársaság Alkotmányáról szóló 1949. évi XX. törvény módosításáról).

27 Szájer, 2014, pp. 635–640.

system spanning a thousand years.[28] The Fundamental Law entered into force on 1 January 2012.

The Fundamental Law contains various provisions pertaining to Hungary's obligations as a participant in the international community. Article Q) of the Fundamental Law, in its second and third paragraphs provides the obligation to align national law with the international norms Hungary adheres to:

(2) In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law.
(3) Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by promulgation in laws.

While there are certain similarities to the text of the Constitution as amended in 1989, the provisions of the Fundamental Law on this matter appear clearer. According to the explanatory memorandum to the original Bill on the Fundamental Law, the above provisions contain the obligation to ensure consistency between international legal rules binding Hungary and Hungarian law in order to ensure the *bona fide* fulfilment of international legal obligations. In other words, this is an expression of the *pacta sunt servanda* principle. It also means that Hungary adheres to the general principles of international law, customary international law, and the international *jus cogens*, as well as to international treaties, and decisions made by international organisations and judicial bodies. The explanatory memorandum further states that this provision is in line with the international law requirement according to which violations of international legal obligations cannot be justified by invocation of domestic law. It is the Constitutional Court that plays an integral role in ensuring harmony between domestic and international law.[29] While this role may appear straightforward, difficulties may yet occur, especially when it comes to determining the precise function of international law under the Fundamental Law.

Within the current constitutional system, the adherence to international treaties and the commitment to be bound by them, is governed – in addition to the Fundamental Law – by Act L of 2005 on the procedure relating to international treaties.[30] According to these sources of law, the authorisation for adhering to various international agreements must be given either by the National Assembly or by the Government, depending on their functions and powers.[31] The authorisation is included in the law pertaining to the ratification of the international

28 Szájer, 2014, p. 828.
29 Explanatory memorandum to the original Bill on the Fundamental Law (T/2627), explanation pertaining to Article P.).
30 Act L of 2005 (2005. évi L. törvény a nemzetközi szerződésekkel kapcsolatos eljárásról).
31 As per Article 7(1) of Act L of 2005.

agreement.[32] After the adoption of the ratifying law, it is the President of the Republic that promulgates the law, and the minister of foreign affairs proceeds to deposit or notify the instrument of ratification. Sometimes the consent to be bound by an international agreement must be expressed by the minister of foreign affairs, or by the head of government (the Prime Minister), in which case the instrument of ratification is once again deposited or notified by the minister of foreign affairs. In order for domestic courts to start interpreting an international agreement, it must take the form of Hungarian law. Act CXXX of 2010 on law-making, at Section 2(4), sets out certain conditions that must be adhered to when drafting laws:

> When making laws, it shall be ensured that laws
> a) comply with the requirements of form and content arising from the Fundamental Law,
> b) fit into the unity of the legal system,
> c) comply with obligations arising from international law and the law of the European Union, and
> d) comply with the professional requirements of law-making.[33]

The various multilateral agreements that Hungary is a party to which were enumerated in the previous section, were ratified prior to the entry into force of the 2011 Fundamental Law. However, these are upheld by the Fundamental Law, which notes in paragraph 8 of the Closing and Miscellaneous Provisions: 'The entry into force of the Fundamental Law shall not affect (...) international legal commitments undertaken before its entry into force.' In accordance with this, and the obligations assumed under the various international treaties ratified, Hungary participates in the monitoring and reporting programmes tied to some of these treaties. This work is regularly carried out by the Human Rights Working Group (*Emberi Jogi Munkacsoport*) established in 2012 and tasked with observing the human rights situation in Hungary, and consulting with stakeholders and government on human rights related matters.[34] The next section provides a brief outline of universal human rights protection under Hungarian domestic law.

3. Hungary as a state party to UN Human Rights Treaties

■ *3.1. The 1951 Refugee Convention*

The protection of refugees in Hungary relies on a system that combines internal laws, bilateral and multilateral international agreements, as well as EU norms and

32 As per Article 7(2) of Act L of 2005.

33 Act CXXX of 2010 (2010. évi CXXX. törvény a jogalkotásról), official translation to English is available online: https://njt.hu/jogszabaly/en/2010-130-00-00 (Accessed: 23 August 2024).

34 Government Decision 1039/2012. (II. 22.) (1039/2012. (II. 22.) Korm. határozat az Emberi Jogi Munkacsoportról).

agreements. This section will only focus on the international agreements Hungary is a party to, which were conceived at the level of the UN, namely the 1951 Refugee Convention and its 1967 Additional Protocol.

Law-decree no. 15 of 1989 ratified the 1951 Refugee Convention (Geneva Convention), and the 1967 Additional Protocol to that convention. 1989 marks a year of massive legislative reforms in Hungary, including the adoption of three laws amending the 1949 Constitution, and an expansion of fundamental rights and freedoms, such as freedom of assembly and freedom of association. The obligations pursuant to the Convention were implemented into national law by Law-decree no. 19 of 1989 on the legal status of persons recognised as refugees,[35] and Decree of the Council of Ministers no. 101/1989 (IX. 28.) on recognition as a refugee.[36] At the time, Hungary was the first state in the Eastern bloc to ratify the Convention. The ratification was mainly aimed at providing a framework for receiving ethnic Hungarians fleeing from the brutal dictatorship of neighbouring Romania, which was a growing concern during that period. This focus becomes evident from the geographical limitations of the ratification, excluding the application of the treaty to refugees fleeing events that occurred outside of Europe.[37] The Yugoslav Wars also resulted in many people fleeing and seeking asylum in Hungary.

The material support for refugees was arranged via Act no. XXVI of 1993 establishing the Refugee Fund (*Menekülteket Támogató Alap*)[38] which replaced the Resettlement Fund established in 1988. In terms of supporting state bodies, the Decree of the Council of Ministers No 64/1989 (VI. 30.) on refugee reception centres[39] established the structures that provided care and accommodation to refugees.[40] In terms of the procedure itself, the 1989 Act reorganised the administration of refugees, placing it under county-level police authority.

The geographical restriction on asylum seekers was subsequently lifted as a result of the adoption of Act no. CXXXIX on asylum in 1997.[41] This act also contained a mandate for establishing a comprehensive asylum system. The Act was complemented by Government Decree no. 25/1998 (II. 18.) regarding care and support for aliens under Act CXXXIX of 1997 on asylum.[42] Subsequently, competence in the area of asylum was transferred from the police to administrative

35 In Hungarian: 1989. évi 19. törvényerejű rendelet a menekültként elismert személyek jogállásáról.
36 In Hungarian: 101/1989. (IX. 28.) MT rendelet a menekültként való elismerésről.
37 Nagy, 1989.
38 In Hungarian: 1993. évi XXVI. törvény a Menekülteket Támogató Alapról.
39 In Hungarian: Minisztertanács 64/1989. (VI. 30.) számú rendelete a menekülteket befogadó állomásokról.
40 Klenner, 2017, pp. 52–54.
41 In Hungarian: 1997. évi CXXXIX. törvény a menedékjogról.
42 In Hungarian: 25/1998. (II. 18.) Korm. rendelet a menedékjogról szóló 1997. évi CXXXIX. törvény hatálya alá tartozó külföldiek ellátásáról és támogatásáról.

authorities, but were later handed over to the newly established Office for Migration and Citizenship of the Ministry of Interior.[43]

The latest iteration of the asylum regime in Hungary comes in the form of Act no. LXXX of 2007 on asylum, which replaces the Act of 1997, and is complemented by Government Decree no. 301/2007 (XI. 9.) on the implementation of this Act.[44] The right to asylum is also featured in Article XIV, para. (4) of the Fundamental Law, which provides the following:

> Hungary shall, upon request, grant asylum to non-Hungarian nationals who are persecuted in their country or in the country of their habitual residence for reasons of race, nationality, the membership of a particular social group, religious or political beliefs, or have a well-founded reason to fear direct persecution if they do not receive protection from their country of origin, nor from any other country. A non-Hungarian national shall not be entitled to asylum if he or she arrived in the territory of Hungary through any country where he or she was not persecuted or directly threatened with persecution.[45]

The 2007 Act contains not only the regime under the 1951 Refugee Convention and the Additional Protocol, but also serves to harmonise Hungarian legislation with the EU norms on the matter of asylum, as is also noted in its preamble. The Act was also amended several times, especially in the past decade, and as a consequence of the 2015 European migrant crisis. This crisis prompted the government to declare a state of emergency, which has been maintained ever since.[46] The legislative measures seeking to manage the crisis were criticised by many accusing the unnecessarily severe limitations on access to asylum.[47] The legislative measures also drew the attention of the UN High Commissioner for

43 Pursuant to Act no. XXXIX of 2001 (2001. évi XXXIX. törvény a külföldiek beutazásáról és tartózkodásáról).

44 In Hungarian: 2007. évi LXXX. törvény a menedékjogról; 301/2007. (XI. 9.) Korm. rendelet a menedékjogról szóló 2007. évi LXXX. törvény végrehajtásáról.

45 Translation provided by the Ministry of Justice of Hungary, available at: https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178 (Accessed: 24 August 2024).

46 Government Decree No. 41/2016 (III. 9.) on the declaration of a state of emergency due to mass immigration throughout the territory of Hungary and on the rules related to the declaration, existence, and termination of the state of emergency; 41/2016. (III. 9.) Korm. rendelet a tömeges bevándorlás okozta válsághelyzet Magyarország egész területére történő elrendeléséről, valamint a válsághelyzet elrendelésével, fennállásával és megszüntetésével összefüggő szabályokról. This state of emergency was prolonged until 7 March 2025, via Government Decree no. 265/2024 (IX. 2.) (265/2024. (IX. 2.) Korm. rendelet a tömeges bevándorlás okozta válsághelyzet Magyarország egész területére történő elrendeléséről, valamint a válsághelyzet elrendelésével, fennállásával és megszüntetésével összefüggő szabályokról szóló 41/2016. (III. 9.) Korm. rendelet módosításáról).

47 More recently Friedery and Molnár, 2024; Hoffmann, 2022.

Refugees, the UN Refugee Agency.[48] Hungary's asylum regime prompted numerous complaints against Hungary in front of the European Court of Human Rights.[49] It also resulted in a number of complaints being brought before UN treaty bodies, as also shown herein.

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

Hungary, or the Hungarian People's Republic at the time, signed the International Covenant on Civil and Political Rights (ICCPR) in 1974, and implemented its provisions into national law in 1976. At the time of its signature and ratification, Hungary made a declaration that Article 48(1) of the ICCPR, which refers to states that may become signatories of the Covenant, stating that it was discriminatory, incompatible with the Covenant itself, and inconsistent with the principle of sovereign equality of states. It sought to implement the rights contained therein 'in conformity with the principle of socialist legality'.[50] In 1988, Hungary also acceded to the First Optional Protocol which allows for individual complaints to be lodged before the UN Human Rights Committee. Hungary also ratified the Second Optional Protocol to the ICCPR which aims to abolish the death penalty, acceding to it in 1994, after the regime change.[51]

It is fair to say that neither granting the possibility of individual complaints, nor abolishing the death penalty, were topics that generated much interest in communist Hungary. Nevertheless, the human rights contained in the ICCPR were reflected in the Hungarian Constitution even at that time.[52] While the Covenant itself is not expressly mentioned in the 2011 Fundamental Law, the chapter titled 'Freedom and Responsibility' accurately reflects the fundamental rights enshrined in the ICCPR. Hungary abolished capital punishment in 1990,[53] and the Fundamental Law, in Article II provides that '[e]very human being shall have the right to life and human dignity'. This constitutes the basis for the prohibition of the death penalty in Hungary.

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

The Hungarian People's Republic ratified the ICESCR at the same time as it did the ICCPR.[54] At that time, Hungary took issue with the limitations contained in Article 26(1) and (3) of the ICESCR, which refer to states that may become signatories of

48 UNHCR, The UN Refugee Agency: UNHCR concerned by Hungary's latest measures affecting access to asylum, Press release, 10 March 2021.

49 E.g. *G.H. v. Hungary, SS and others v. Hungary, KP v. Hungary, H.M. and others v. Hungary, Shahzad v. Hungary,* etc.

50 HRC, Consideration of Reports submitted by states parties under Article 40 of the Covenant, CCPR/C/1/Add. 11, 25 May 1977, 1.

51 Act 8 of 1976.

52 See HRC, 1977.

53 Decision of the Constitutional Court of the Republic of Hungary No. 23 of 24 October 1990.

54 Act 9 of 1976.

the Covenant, making a declaration that these provisions were discriminatory, incompatible with the universal character of the Covenant itself, and inconsistent with the principle of sovereign equality of states.

The provisions of the Covenant are clearly reflected in the chapter of the Fundamental Law titled 'Freedom and Responsibility'. As noted in scholarly literature, the rights contained therein are not subjective rights, they are not actionable, but rather reflect the duties of the state related to those rights.[55]

Hungary did not ratify the Optional Protocol to the ICESCR. Thus, Hungary did not subject itself either to the inquiry procedure or the individual complaints mechanism that were adopted under the Optional Protocol.

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

Hungary ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) quite early, in 1969. The People's Republic of Hungary, upon signature of the treaty, made a declaration, similar to the case of ICCPR and ICESCR, regarding the limitation to the possibility of becoming a party to the Convention. The declaration states that the limitation imposed by Articles 17(1) and 18(1) of the Convention are in effect discriminatory and contrary to international law. It maintained the position that a multilateral Convention of a general character should be open to all states without discrimination of any kind, in accordance with the principle of sovereign equality of states.

The Fundamental Law of Hungary in Article XV provides that '[e]veryone shall be equal before the law', and expressly prohibits discrimination on grounds of 'race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.' The law on equal treatment and the advancement of equality of opportunity[56] provides a more ample basis for the prohibition of discrimination based on race as well as other markers. However, this Act serves as a tool for the harmonisation of Hungarian law with EU norms on the matter, and it fails to mention CERD as its basis.

While it ratified CERD early on, Hungary continues to face many challenges in terms of abolishing discrimination and promoting tolerance. Years of reporting and observing the implementation of CERD in Hungary provides ample material for anyone wanting to conduct in-depth research on the matter. The situation of the Roma communities is particularly dire, given that individuals belonging to these communities continue to face multiple forms of discrimination.

55 Hungler and Pozsár-Szentmiklósy, 2023, p. 184.

56 Act CXXV. of 2003 (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról).

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

The Convention was signed by Hungary in 1980, and ratified in 1982. The ratification act provides that the Convention should be considered as having been applicable since 3 September 1981.[57] Hungary also ratified the Optional Protocol of CEDAW in 2001,[58] thus becoming subject to the inquiry procedure under Articles 8 and 9.

Article XV(3) of the Fundamental Law states that '[w]omen and men shall have equal rights', and the law on equal treatment and the advancement of equality of opportunity also prohibits discrimination on the basis of gender. The Hungarian National Assembly adopted a resolution in 2003 on the creation of a national strategy for the prevention and the effective management of cases of domestic violence.[59] This resulted in the adoption of legal provisions on restraining orders in 2006 in pending criminal proceedings. A further act adopted in 2009 was adopted with a view to closing the gaps left by the previously adopted legislation. Thus, Act no. LXXII of 2009 on restraining orders on the grounds of violence between relatives was adopted.[60] The Criminal Code of Hungary also treats relationship and domestic violence as a crime. The 2003 national strategy was later replaced with a new strategy on relationship violence.[61]

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

Hungary signed the CAT in 1987 and ratified it in 1988. The Optional Protocol was also ratified in 2011.[62] At the time of the Optional Protocol's ratification, Hungary made a declaration that it would postpone the implementation of Part IV concerning national preventive mechanisms by three years.

The Fundamental Law provides in Article II that '[n]o one shall be subject to torture, inhuman or degrading treatment or punishment, or held in servitude.' The implementation into national law of the various obligations under the CAT is extensive, from criminal law and sentencing regulations, to policing, migration, protection of minors, and public health legislation.

57 Article 3 of Law – decree no. 10 of 1982.

58 Ratification via Act LX of 2001 (2001. évi LX. törvény a nőkkel szembeni hátrányos megkülönböztetés minden formájának kiküszöböléséről szóló, 1979. december 18-án, New Yorkban elfogadott Egyezmény Kiegészítő Jegyzőkönyve kihirdetéséről).

59 Decision of Parliament 45/2003. (IV. 16.) (45/2003. (IV. 16.) OGY határozat a családon belüli erőszak megelőzésére és hatékony kezelésére irányuló nemzeti stratégia kialakításáról).

60 In Hungarian: 2009. évi LXXII. törvény a hozzátartozók közötti erőszak miatt alkalmazható távoltartásról.

61 Decision of Parliament 30/2015. (VII. 7.) (30/2015. (VII. 7.) OGY határozat a kapcsolati erőszak elleni hatékony fellépést elősegítő nemzeti stratégiai célok meghatározásáról).

62 Act CXLIII of 2011.

3.7. Convention on the Rights of the Child

Hungary ratified the CRC in 1991 and adopted the Optional Protocols to the CRC on the involvement of children in armed conflict,[63] and on the sale of children child prostitution and child pornography.[64] The Optional Protocol providing for the possibility of individual complaints was not adopted by Hungary.

The protection of children has a long history in Hungary, with the first specific law to address this matter being adopted in 1901.[65] Today, the rights of children are regulated in multiple laws. Article XVI of the Fundamental Law provides that '[e]very child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development.' Article XVIII of the Fundamental Law prohibits child labour. There is also a single act that is an extensive regulatory instrument regarding the rights of the child, which was adopted in part in consideration of the CRC.[66]

Article XVI of the Fundamental Law also contains further provisions which place the choice in terms of the child's upbringing with the parents, provides an obligation of care of the child by the parents, but also vice versa. The mentioned provision also states that 'Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country.' This was inserted into the Fundamental Law as a consequence of a 2020 amendment. This amendment also resulted in the amendment to the Act on the rights of the child which prohibits providing access to content that portrays sexuality as an end in itself, or which promotes and portrays deviations from the identity of the sex at birth, gender reassignment and homosexuality.[67] This resulted in an infringement proceeding being launched against Hungary by the European Commission, which was followed by the referral of the case to the Court of Justice of the European Union.[68]

63 Act CLX of 2009 (2009. évi CLX. törvény a gyermekek fegyveres konfliktusba történő bevonásáról szóló, a Gyermek jogairól szóló egyezményhez fűzött Fakultatív Jegyzőkönyv megerősítéséről és kihirdetéséről).

64 Act CLXI of 2009 (2009. évi CLXI. törvény a gyermekek eladásáról, a gyermekprostitúcióról és a gyermekpornográfiáról szóló, a Gyermek jogairól szóló egyezményhez fűzött Fakultatív Jegyzőkönyv megerősítéséről és kihirdetéséről).

65 Act VIII. of 1901 (1901. évi VIII. törvénycikk az állami gyermekmenhelyekről).

66 Act XXXI of 1997 (1997. évi XXXI. törvény a gyermekek védelméről és a gyámügyi igazgatásról).

67 Section 6/A of Act no. XXXI of 1997. Considering the limitations of a proper translation of the legal text, this is reproduced in its current form in Hungarian: 'E törvényben foglalt célok és gyermeki jogok biztosítása érdekében tilos tizennyolc éven aluliak számára pornográf, valamint olyan tartalmat elérhetővé tenni, amely a szexualitást öncélúan ábrázolja, illetve a születési nemnek megfelelő önazonosságtól való eltérést, a nem megváltoztatását, valamint a homoszexualitást népszerűsíti, jeleníti meg.'

68 See Case C-769/22 European Commission v. Hungary (Union Values), pending as of the closing of this manuscript.

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

The CRPD was ratified in 2007 and in the same year Hungary also ratified the Optional Protocol which makes it possible to lodge individual complaints, as well as accepting the inquiry procedure.[69]

The Fundamental Law prohibits discrimination on the basis of disability. Article XV of the Fundamental Law also provides that special laws must be adopted for the protection of persons living with disabilities. The Act on equal treatment and the advancement of equality of opportunity also contains provisions prohibiting discrimination on the basis of disability. In terms of state policies in the area of disability, an advisory body was formed called the National Disability Council.[70] The legal protection of persons with disabilities spans numerous legislative acts, while the improving implementation of these presents an ongoing challenge for the government and administrative authorities.

4. The protection of universal human rights in Hungarian domestic law

According to the Fundamental Law, '[t]he rules for fundamental rights and obligations shall be laid down in an Act.'[71] The universal human rights treaties Hungary has adhered to are reflected in national law, principally by the ratifying legislative acts as noted above. These are implemented by administrative authorities and their implementation is supervised by the courts. The Fundamental Law lays down the basic rule that '[a] fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.'[72]

Human rights norms form part of Hungarian domestic legislation and are implemented by state bodies at the level of the central and local governments, and national minority groups' self-government bodies. Fundamental rights claims can be adjudicated directly in the judicial system, through judicial enforcement, and remedies in case of fundamental rights violations. The Constitutional Court reviews legislative norms in the *ex ante* process, but also in *ex post* control (also called *abstract control*), as well as through the process of constitutional complaints. Courts may also ask that the Constitutional Court review the conformity of the law with the Fundamental Law in a particular case. The Constitutional Court may

69 Act XCIII of 2007 (2007. évi XCII. törvény a Fogyatékossággal élő személyek jogairól szóló egyezmény és az ahhoz kapcsolódó Fakultatív Jegyzőkönyv kihirdetéséről).

70 *Országos Fogyatékosügyi Tanács*, established under Government Resolution 1330/2013 (VI. 13.) (1330/2013. (VI. 13.) Korm. határozat az Országos Fogyatékosságügyi Tanácsról).

71 Article I(3) Fundamental Law.

72 Ibid.

also act autonomously, and review the constitutionality of legal norms and judicial decisions on its own motion.

In addition, there are two state bodies that play an important role in the proper implementation of universal human rights norm: the Office of the Commissioner for Fundamental Rights of Hungary, and the Human Rights Working Group (HRWG).

The Office of the Commissioner for Fundamental Rights of Hungary[73] is the successor of the Parliamentary Commissioner for Civil Rights,[74] and is enshrined in the 2011 Fundamental Law. The Office includes the Commissioner for Fundamental Rights and two deputies acting as Ombudsman for the Rights of National Minorities, and Ombudsman for Future Generations, as well as three Directorates-General dealing with the rights of people with disabilities, equal rights and policing, respectively.[75] The Office is charged with ensuring 'the effective, coherent and most comprehensive protection of fundamental rights' the 'implement[ation of] the Fundamental Law of Hungary.'[76]

The Office may engage in a number of activities in its verification of the implementation of various international agreements pertaining to universal human rights protection. In the legislative process, any bill that contains regulatory proposals pertaining to the activities of the Office will come under its supervision. Any person may turn to the Office with a complaint for violations of their fundamental rights. This means that the Office may carry out investigations and lodge judiciary action in cases where it notes violations. The Office takes note of violations, gathers data for statistical purposes, and submits annual reports before the National Assembly.

The list of domestic laws adopted as a consequence of ratifying, and implementing the various universal human rights treaties would be difficult to exhaust, and lengthy to attempt enumerating. The various fields to which special attention is given can be observed in the activities of the HRWG.

The HRWG reviews and monitors the implementation and enforcement of the human rights treaties that Hungary is party to, including those at UN level. The HRWG is also tasked with monitoring the implementation of the recommendations of the various UN treaty bodies, evidently to the extent that these have been accepted. This activity also entails formulating recommendations regarding ways to better implement human right norms.

The HRWG brings together senior political and professional leaders from ministries such as that of the interior, the economy, defence, justice, culture and

73 Act CXI of 2011 (2011. évi CXI. törvény az alapvető jogok biztosáról).

74 Organised under Act LIX of 1993 (1993. évi LIX. törvény az állampolgári jogok országgyűlési biztosáról).

75 See organisational structure of the Office of the Commissioner for Fundamental Rights, available at: https://www.ajbh.hu/en/a-hivatal-szervezete (Accessed: 25 August 2024).

76 See website of the Office of the Commissioner for Fundamental Rights, available at: https://www.ajbh.hu/en/web/ajbh-en/about-the-office (Accessed: 25 August 2024).

innovation, foreign affairs and trade, the Prime Minister's Office, and EU affairs. The activity of the HRWG, organised in various thematic working groups, spans from equal rights matters, through the rights of children, the rights of the elderly, the rights of national minorities, women's rights, and the rights of Roma. In carrying out this activity, the HRWG operates the Human Rights Roundtable, bringing together over a hundred stakeholders consisting of NGOs and other organisations, along the lines of the topics outlined above in the thematic working groups.

The next section will briefly present some of the more notable results of treaty bodies' external oversight through reporting and recommendations.

5. Hungary's interaction with treaty bodies under universal human rights agreements

International agreements intended to protect universal human rights contain various obligations and duties that states have to abide by. The supervision of their implementation, including activities such as reporting, complaints, inquiries, formulating comments, and strengthening the implementation of the treaties overall, is carried out by the treaty bodies. There are ten such bodies at the level of the UN.[77] The treaty bodies are made up of independent experts that monitor the implementation by party states of a given human rights treaty.

Accordingly, in addition to the autonomous internal control provided by the Constitutional Court, the Office of the Commissioner for Fundamental Rights of Hungary, and the HRWG, Hungary's commitment to the implementation of international treaty obligations includes participating in the monitoring and reporting activities of treaty bodies. This constitutes the external control of the implementation of international commitments. As noted, Hungary ratified and implemented most all agreements on universal human rights, opening itself up to scrutiny under their respective treaty bodies. Among notable treaty exceptions, we find the Istanbul Convention[78] and the ambiguous situation of the Rome Statute, which despite ratification was not promulgated into domestic law.[79]

77 This paper will not focus on legislative provisions related to Hungary's membership of the Council of Europe and the EU.

78 Council of Europe Convention on preventing and combating violence against women and domestic violence.

79 On 17 July 1998, the Rome Statute establishing the International Criminal Court (ICC) was adopted by the representatives of states, including by Hungary, on the basis of the Government Decision 2014/1998 (V. 6.) authorising it. On 15 January 1999, the representative of the Hungarian Government signed the Rome Statute, on the basis of the authorisation contained in Government Decision 2296/1998 (XII. 30.). The National Assembly ratified the Rome Statute via Resolution 72/2001 (XI. 7.) of the Hungarian Parliament, and as a result the instrument of ratification was deposited on 30 November 2001. On 1 July 2002, the Rome Statute entered into force. Kovács, 2019.

Hungary takes its obligations vis-à-vis treaty bodies seriously, as demonstrated by the fact that it acts as one of the main sponsors of resolution A/HRC/36/21 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights'. This resolution also opened up Hungary to scrutiny, with allegations of intimidation and reprisals, to which responses were provided.[80]

Human rights monitoring in the UN treaty system is done under two sets of mechanisms. Under the treaty-based mechanism Hungary has a track record at the following treaty bodies: Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), Optional Protocol of the Convention against Torture (CAT-OP), International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), International Covenant on Economic, Social and Cultural Rights (CESCR), Convention on the Rights of the Child (CRC, CRC-OP-AC, CRC-OP-SC), Convention on the Rights of Persons with Disabilities (CRPD). Right after the adoption of the 2011 Fundamental Law, Hungary submitted its first report for the Universal Periodic Review (UPR), under the Human Rights Council (HRC) of the UN. This is part of the charter-based monitoring mechanism, which was mandated to 'undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States'.[81]

The activity of treaty bodies is of course transparent, country reports, recommendations, and other monitoring-related documents can be consulted online in the UN Treaty Body Database, for every treaty body separately. The charter-based monitoring mechanism, which is the UPR, brings all this information together. The UPR process secures information from a wide variety of interested stakeholders, starting with the state under review, civil society reports, and public law stakeholders, including the above-mentioned treaty bodies. Conducting this review, the UPR also analyses obligations assumed under the UN Charter, the UDHR, treaties, voluntary pledges, commitments, and applicable international humanitarian law.

The National report submitted in the 2021 UPR[82] provides Hungary's official viewpoint on a number of questions that are lined up in the Report of the Working Group on the UPR of Hungary.[83] The UPR report is nothing less than

80 For details, see Human Rights Council, Thirty-ninth session, Annual Report, Doc no. A/HRC/39/41 of 13 August 2018, paras. 51–59.

81 UNGA Resolution 60/251, Human Rights Council, Article 5(e).

82 Human Rights Council, National report, Hungary, A/HRC/WG.6/39/HUN/1, 1–12 November 2021.

83 Human Rights Council, Report of the Working Group on the UPR Hungary, A/HRC/49/8, 28 February – 1 April 2022.

a concise, concentrated account of the five years since the previous report. In this 20-page report, we find a brief account of Hungary's activities related to the implementation of the recommendations pursuant to the 2016 Report. It addresses the matter of new normative and institutional frameworks, obligations related to international human rights agreements, voluntary commitments, pledges, and the implementation of the previous recommendations.

The following subsections will briefly describe the UPR, and bring examples of cases [a]gainst Hungary at various treaty bodies.

■ *5.1. Universal Periodic Review*

The UPR mechanism is the framework in which the HRC meets three times a year for two-week sessions to review the human rights situation and performance of all UN Member States. During these sessions, Member States may make recommendations to the Member States under review, which will be featured in the review and report that must be made every five years.

Hungary last underwent review in 2021-2022 marking its third cycle. There is a wide range of topics that are addressed in the report. One in particular was selected for a brief account below.

5.1.1. Rights of Roma in Hungary

It is part of legal tradition that many Hungarian lawyers are knowledgeable regarding the human rights of national minorities. The evolution of minority rights legal thought over two centuries has resulted in the adoption of a human rights regime which appears rather fitting for Hungary: one that establishes a legal framework for non-territorial autonomy. There are thirteen established national minorities in Hungary: Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma, Romanian, Ruthenian, Serbian, Slovakian, Slovenian, and Ukrainian. The Act on the rights of national minorities provides that under it

> 'ethnic groups resident in Hungary for at least one century are nationalities which are in numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities.'[84]

84 Section 1(1) of Act on the rights of national minorities (2011. évi CLXXIX. törvény a nemzetiségek jogairól), official translation, available at: https://njt.hu/jogszabaly/en/2011-179-00-00 (Accessed: 25 August 2024).

The Act provides for a framework in which the sense of cohesion within a minority group can be put actively toward the preservation of the culture of the national minority group, in common action of the individuals that declare themselves as part of that group.

The Roma is the largest national minority group in Hungary. In the latest census in 2022, close to 210,000 people declared themselves as being of Roma heritage, although the European Roma Rights Centre previously put their numbers at 750,000.[85] The discrepancy between the estimate and the official census figures speaks volumes as to the challenges they face. As an ethnic group, the Roma have established their own institutions, within the Hungarian legislative framework, called *Országos Roma Önkormányzat*. This fact is also acknowledged in the second paragraph of the UPR *Summary of Stakeholders' Submissions on Hungary*.[86] However, enjoying the legislative framework ensuring cultural autonomy may appear as being far away from the daily realities for those stricken by deep poverty. The plight of individuals coming from Roma communities presents a multifaceted crisis, one that embodies violations across all three generations of human rights: civil and political rights, economic, social, and cultural rights, as well as collective rights. The comprehensive scope of human rights breaches underscores the severity of the situation. Recognising the depth of this crisis, various stakeholders have highlighted this toward UN treaty bodies, and specifically via the UPR process.[87] The document cited herein brings to light the pressing need for coordinated attention and action.

Key areas of concern include the persistent challenge of ensuring equal and effective access to education for Roma children, as well as robust protections against all forms of discrimination. Stakeholders expressed concerns about the portrayal of Roma in media and public discourse in ways that exacerbate societal biases. The treatment of Roma individuals by police forces remains another significant issue, characterised by practices that frequently contravene human rights standards.

The situation of Roma communities is Central and Eastern Europe's most persistent regional crisis. A comparative examination of reports from Hungary and its nine neighbouring countries reveals a disturbing consistency in the challenges faced by Roma communities across all countries in the region. These reports highlight parallel issues raised by stakeholders, featuring similar concerns about discrimination and rights violations. Concerted state action may be warranted in tackling the persistent human rights violations faced by Roma individuals and

85 See European Roma Rights Centre, 10 Fact About Hungarian Roma, 20 October 2015.

86 Human Rights Council, Summary of Stakeholders' submissions on Hungary, Report of the Office of the United Nations High Commissioner for Human Rights, Working Group on the Universal Periodic Review, Thirty-ninth session, A/HRC/WG.6/39/HUN/3, 25 August 2021, para. 2.

87 Ibid.

communities. It could also be that a comprehensive regional project benefitting from international support may be a better way to address deep-seated socio-economic, cultural, and political barriers which perpetuate inequality for Roma individuals and communities.

■ *5.2. Convention against Torture*

Under the CAT there are two public individual complaints that were lodged against Hungary, both of them concerning the application of the rule on non-refoulement.

5.2.1. E. H. versus Hungary

This 1996 case of E. H., a Turkish citizen belonging to the Kurdish minority who fled Turkey escaping execution ordered by his superiors in the armed wing of the Kurdistan Workers' Party (PKK). E. H. was arrested by Hungarian border police, while attempting to cross the border illegally into Austria. Subsequently, he applied for asylum.[88] His request for asylum was denied by administrative decision, as well as the court of first instance, with a pending appeal at the time his petition to the Committee Against Torture was submitted.[89] The appeal was also denied.[90] E. H. argued that his expulsion would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, alleging that 'torture is systematically practised' in Türkiye.[91]

Although E. H. had not been successful in the administrative and judicial proceedings, no other expulsion procedure had been lodged against him. However, he proceeded to argue that his case was unresolved, as granting him temporary residence – instead of asylum – would not enable him to obtain a work permit or claim social benefits.[92]

The Committee against Torture retained that with the granting of temporary residence in effect, and no other expulsion procedure being initiated against E. H., the communication was inadmissible under Article 22, paragraph 2, of the Convention as it was incompatible with the provisions of Article 3 of the Convention.[93]

5.2.2. D.I.S. versus Hungary

Another case concerns D.I.S., a Canadian national and resident of Hungary, who was in extradition detention in Budapest following an international arrest warrant issued by the U.S. for crimes including fraud and money laundering. D.I.S. filed

88 Communication no. 62/1996, CAT/C/22/D/62/1996, 3 June 1999, paras. 2.1–2.3.
89 Id., paras. 2.5–2.9.
90 Id., para. 4.6.
91 Id., paras. 3.1–3.3.
92 Id., paras. 5.1–5.5.
93 Id., para. 6.2.

for asylum in Hungary, arguing that extradition to the U.S. would subject him to torture and inhumane treatment due to past experiences in U.S. prisons. He cited instances of assault, rape, and inadequate protection, linking these abuses to his Jewish faith. The Hungarian authorities, however, rejected his asylum requests based on U.S. assurances of proper treatment and an investigation that did not substantiate his claims of faith-related assaults.

The Hungarian court ruled in favour of the extradition, considering the U.S. to be a safe country, and did not accept D.I.S.'s evidence, which included forensic psychiatric reports and testimonies from religious and legal figures. D.I.S. contested that these findings ignored crucial details, such as anti-Semitic death threats he received from the U.S. and his past solitary confinement which contravened international standards for humane treatment. Despite interim measures requested by the Committee against Torture to halt extradition, the Hungarian authorities proceeded with the transfer, citing domestic law constraints and pledges from the U.S. to ensure humane treatment.[94]

The Committee concluded that Hungary's action violated procedural obligations under the CAT, particularly by not adhering to interim protective measures. The State party justified its actions on the basis of extradition laws, but the Committee retained that it failed to respect the Committee's request. This non-compliance was deemed a serious breach of the cooperation expected from Hungary under international human rights standards. The Committee recommended Hungary prevent similar violations in the future.[95] However, due to judicial action pending in front of the European Court of Human Rights, the Committee concluded that the communication was inadmissible under article 22(5)(a) of the CAT.[96]

■ *5.3. Optional Protocol to the International Covenant on Civil and Political Rights*

Regarding the CCPR-OP1, there are several complaints that were lodged against Hungary, of which only the three most recent ones will be presented briefly below.

5.3.1. Safi Rehman v Hungary

The communication before the Human Rights Committee concerns Safi Rehman, an Afghan national, who claimed violations of articles 2 (3) (a) and 7 of the Covenant due to his deportation from Hungary to Bulgaria. Rehman fled Afghanistan in 2014 to escape persecution by the Taliban for his musical activities. After an unsuccessful stay in Türkiye, he moved to Bulgaria, where he was detained under poor conditions and suffered police abuse. He ultimately entered Hungary,

94 Communication No. 671/2015, CAT/C/56/D/671/2015, 10 February 2016, para. 2.
95 Id., paras. 11–12.
96 Id, para. 10.4.

seeking asylum, but Hungarian authorities applied the Dublin III Regulation and ordered his deportation to Bulgaria, claiming it was responsible for processing his application. Rehman argued that Bulgaria's reception conditions were inhumane and could exacerbate his trauma.[97]

Rehman's case emphasized inadequate procedural safeguards during the Hungarian asylum process. He stated that he was not given a full opportunity to explain the risk of return to Bulgaria and lacked legal assistance in court. The Hungarian authorities reportedly failed to conduct a personalized assessment of his case and did not consider his mental health or the documented inhuman conditions in Bulgarian facilities. Despite the Cordelia Foundation's psychological report supporting Rehman's claims, Hungary proceeded with his deportation, defying interim measures requested by the Committee to halt his removal until the case was reviewed.[98]

The Committee found procedural errors and noted Hungary's obligation under the Optional Protocol, criticising its failure to respect interim measures that protect against potential harm. Although it ultimately concluded that Rehman had not substantiated an imminent risk of inhuman treatment specific to his circumstances, the Committee acknowledged that Hungary violated its obligations by executing the deportation prematurely.[99] The case underscored the importance of thorough, individualized asylum assessments and compliance with international procedural safeguards.

5.3.2. X versus Hungary

The case involves X, a Pakistani national and unaccompanied minor, who fled to Hungary after facing severe persecution in Pakistan due to his Baloch ethnicity.[100] Following dangerous conditions in Bulgaria, where he experienced detention and mistreatment, X sought asylum in Hungary in June 2016.[101] However, Hungarian authorities, citing the Dublin III Regulation, planned his transfer back to Bulgaria, which raised concerns over potential violations of his rights under Article 7 of the ICCPR due to the inhumane conditions and lack of adequate support in Bulgarian asylum facilities.[102]

X's detention in Hungary was marked by errors, including misrecorded personal data and doubts about his age despite evidence submitted. The authorities failed to conduct an individual assessment of X's situation, and the courts upheld the transfer decision without considering the conditions in Bulgaria or X's mental

97 Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No. 2963/2017, CCPR/C/138/D/2963/2017, 22 January 2024, para. 3.
98 Id., paras. 7.1–7.2.
99 Id., para. 11–12.
100 Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2901/2016, CCPR/C/125/D/2901/2016, 22 May 2019, para. 2.1.
101 Id., para. 2.
102 Id., paras. 3.1–3.4.

health. This lack of due diligence led X to file a complaint with the HRC, claiming violations of his right to protection from cruel and inhuman treatment and the right to an effective remedy.

The HRC ultimately deemed the communication inadmissible, noting that Hungary had withdrawn its removal decision after interim measures were granted, and X had since left for Austria. The Committee determined that without the risk of imminent removal by Hungary, X no longer met the conditions for victim status under Article 1 of the Optional Protocol. The claim regarding ineffective remedies was similarly dismissed, as the general obligations under Article 2 of the ICCPR did not constitute a standalone basis for a communication.[103]

5.3.3. Shafaq Baharuddin versus Hungary

The communication was lodged by Shafaq Baharuddin, an Afghan national, who sought asylum in Hungary after fleeing persecution and threats by the Taliban in Afghanistan. He claimed that deportation to Bulgaria under the EU Dublin III Regulation would expose him to inhuman treatment, citing prior experiences of abuse and inadequate asylum conditions there. His legal arguments focused on violations of Articles 7 and 2(3)(a) of the International Covenant on Civil and Political Rights (ICCPR), alleging the failure of Hungarian authorities to assess his individual circumstances and the dire conditions awaiting him in Bulgaria.[104]

The author recounted entering Bulgaria in 2016, where he faced physical abuse by police, inadequate living conditions in refugee camps, and a lack of medical and mental health services, which exacerbated his asthma and post-traumatic stress disorder (PTSD). Despite his family ties in Hungary, including relatives with citizenship, Hungary deemed Bulgaria responsible for processing his asylum claim. He argued that Hungary ignored critical procedural safeguards and his vulnerabilities, while failing to perform a meaningful evaluation of the risk to him under Bulgarian asylum procedures.[105]

Hungary defended its decisions, stating that the procedures adhered to EU regulations and that the author had not provided sufficient evidence of health issues or risks during the asylum process. The State party questioned the credibility of his claims and argued that its courts reviewed his case fairly and thoroughly. Hungary also maintained that Bulgaria remains a designated safe country under EU standards.[106]

The HRC determined that Hungary did not violate Articles 7 or 2(3)(a) ICCPR. It found that Baharuddin failed to substantiate a personal risk of inhuman

103 Id., paras. 6.1–6.5.

104 Human Rights Committee, Views adopted by the Committee under Article 5 (4) of the Optional Protocol, concerning communication No. 2923/2016, CCPR/C/125/D/2923/2016, 3 June 2019, paras. 3.1–3.4.

105 Id., para. 2.

106 Id., para. 6.

treatment in Bulgaria and that the Hungarian authorities acted within legal frameworks.[107] However, the Committee encouraged Hungary to ensure Bulgaria is informed of the deportation and its responsibility to provide appropriate support to meet Baharuddin's medical and other needs.[108]

■ *5.4. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*

5.4.1. A. S. versus Hungary

The communication was submitted by A.S., a Hungarian Roma woman, who alleged violations of her rights under the CEDAW, following a coerced sterilisation at a Hungarian hospital in 2001. A.S. claimed she was asked to sign a consent form for sterilisation while in labour and in a state of shock, with incomplete information provided about the procedure's risks, permanence, and alternatives. She only realised the sterilisation's irreversible nature after inquiring about future pregnancies post-surgery.[109]

A.S. pursued legal action, claiming violations of her rights to informed consent, reproductive autonomy, and equal treatment. Domestic courts acknowledged procedural shortcomings, such as the lack of detailed information about the sterilisation and its alternatives, but denied her appeal for damages. They reasoned that sterilisation was not entirely irreversible, citing medical possibilities for reversal.[110]

The CEDAW Committee found that Hungary violated Articles 10(h), 12, and 16(1)(e) of the Convention, stressing that informed consent was not obtained, particularly given A.S.'s vulnerable state during labour. The Committee highlighted that sterilization is a significant and irreversible intervention requiring thorough counselling and explicit informed consent. It underscored that failing to provide adequate information and advice on family planning constitutes a violation of the Convention.[111]

The Committee recommended that Hungary provide A.S. with appropriate compensation and implement systemic changes to safeguard women's reproductive rights. These included revising legislation to align with international standards on informed consent, ensuring comprehensive counselling before sterilisation procedures, and monitoring health facilities for compliance. The

107 Id., para. 10.
108 Id., para. 11.
109 Committee on the Elimination of Discrimination against Women, Views Communication No. 4/2004, CEDAW/C/36/D/4/2004, 29 August 2006, para. 2.
110 Id., para. 6.
111 Id., paras. 11.1–11.4.

decision emphasised the need for measures to prevent coercive sterilisations and respect women's autonomy over reproductive health.[112]

5.4.2. G. H. versus Hungary

The case involves G.H., a Hungarian woman who alleged her rights were violated following her sterilisation during an emergency caesarean section in 2008. She argued that the sterilisation was carried out without her informed consent, violating Articles 2, 5, 10, 12, 15, and 16 of the CEDAW. G.H. also claimed discrimination based on perceived Roma association, as she was treated as Roma due to her husband's ethnicity.[113]

G.H. pursued legal action in Hungary, claiming breaches of her right to informed consent, reproductive choice, and privacy. Courts recognized procedural violations due to the lack of written consent and awarded her €3,300 and an apology but concluded she had orally consented to the sterilization. G.H. disputed this, asserting she was neither informed nor had consented, and argued that the sterilization was forced. The Hungarian courts, however, treated the issue as a procedural error, not a violation of her fundamental rights.[114]

The case was later brought to the ECtHR but declared inadmissible because the domestic courts had acknowledged the procedural breach and provided remedies. G.H. then submitted her complaint to the CEDAW Committee, emphasizing the lack of fully informed consent, alleged gender-based discrimination, and the impact on her reproductive autonomy.[115]

The CEDAW Committee ultimately deemed the communication inadmissible under Article 4(2)(c) of the Optional Protocol, stating that G.H.'s claims were insufficiently substantiated. It concluded there was no evidence that the Hungarian judicial process was biased or based on harmful gender stereotypes, arbitrary, or a denial of justice.[116]

■ *5.5. Optional protocol to the Convention on the Rights of Persons with Disabilities*

5.5.1. Zsolt Bujdosó, Jánosné Ildikó Márkus, Viktória Márton, Sándor Mészáros, Gergely Polk and János Szabó versus Hungary

The communication was submitted to the UN Committee on the Rights of Persons with Disabilities by six Hungarian nationals, who had been placed

112 Id., paras. 11.5–11.6.
113 Committee on the Elimination of Discrimination against Women, Decision adopted by the Committee under Article 4 (2) (c) of the Optional Protocol, concerning communication No. 114/2017, CEDAW/C/76/D/114/2017, para. 2.
114 Id., paras. 3.1–3.5.
115 Id., para. 3.6.
116 Id., paras. 7–8.

under guardianship due to intellectual disabilities. The authors alleged that Hungary violated their rights under Articles 12 and 29 of the Convention on the Rights of Persons with Disabilities. Specifically, they were automatically disenfranchised under Article 70(5) of Hungary's Constitution, barring them from voting in the 2010 elections, with no consideration for their individual abilities or circumstances.[117]

The authors argued that their disenfranchisement was discriminatory and unjustified, emphasizing that Hungarian law offered no effective remedy to restore their voting rights without challenging their guardianship status, which they did not seek to have revoked. The State party, in response, highlighted legislative changes enacted after the communication was filed. These changes replaced the automatic disenfranchisement with individualised court assessments of voting capacity. However, the authors maintained that this system continued to discriminate, as it targeted individuals with disabilities specifically.[118]

The Harvard Law School Project on Disability intervened, asserting that any form of disenfranchisement based on disability, including individualised assessments, violates Article 29 of the Convention, which guarantees an unconditional right to vote for persons with disabilities. The intervenor argued that capacity assessments inherently discriminate, disenfranchise capable voters, and perpetuate stereotypes against those with disabilities.[119] The Committee supported this view, determining that individualized assessments contravene the Convention's principles by discriminating based on disability status.[120]

Ultimately, the Committee found Hungary in violation of Articles 12 and 29. It recommended that Hungary compensate the authors for moral damages, amend relevant laws to prevent similar violations, and guarantee the right to vote for all individuals with disabilities, without capacity assessments. It also urged Hungary to ensure voting procedures are accessible and to provide assistance where needed to enable equal participation in elections.[121]

5.5.2. Magdolna Rékasi versus Hungary

The communication was submitted by Magdolna Rékasi, a Hungarian citizen, who claimed her rights under the CRPD were violated. She had been placed under full guardianship due to a psychosocial disability, which restricted her legal capacity. In 2012, her guardian, with the approval of the guardianship authority, arranged a life insurance contract without consulting her, aimed at covering funeral costs.

117 Committee on the Rights of Persons with Disabilities, Communication No. 4/2011, CRPD/C/10/D/4/2011, 16 October 2013, para. 2.
118 Id., paras. 3–4.
119 Id., para. 5.
120 Id., paras. 9.6–9.7.
121 Id., paras. 10–11.

Rékasi only learned of this decision years later when her legal capacity regarding financial matters was restored.[122]

The author argued that this decision disregarded her autonomy, as it was made without her input and did not serve her best interests. She contended that she was capable of expressing her will and preferences, but her guardian failed to include her in the decision-making process.[123] The State party claimed that consulting her was impossible due to her condition at the time and that her interests were protected by the guardian's actions. However, Rékasi emphasized that her exclusion violated her right to control her financial matters as outlined in Article 12 of the Convention.[124]

The Committee found that Hungary had not made sufficient efforts to ascertain Rékasi's will and preferences before authorising the contract. The Committee concluded that the State's approach prioritised substitute decision-making over supported decision-making, violating her rights to legal capacity and autonomy. The Committee underscored that measures relating to legal capacity should respect a person's will and preferences, apply safeguards against abuse, and not merely be based on 'best interests.'[125]

The Committee recommended that Hungary provide Rékasi with a remedy, including assistance with repurchasing the insurance contract if requested and compensating her for financial loss. It also advised broader legal reforms, suggesting that the country abolish guardianship practices and shift towards supported decision-making frameworks, along with training for officials to uphold the rights of persons with disabilities.[126]

5.5.3. Szilvia Nyusti and Péter Takács versus Hungary

The document concerns a communication submitted to the Committee on the Rights of Persons with Disabilities by Szilvia Nyusti and Péter Takács, Hungarian nationals with severe visual impairments. The authors alleged that Hungary violated their rights under Articles 5, 9, and 12 of the CRPD. Specifically, they claimed discrimination by OTP Bank, which failed to make its ATMs accessible for visually impaired users, forcing them to rely on assistance despite paying fees equivalent to sighted customers.[127]

The authors' legal battle began in 2005 when they requested OTP to retrofit nearby ATMs to meet their needs. The Metropolitan Court ruled in their favour in

122 Committee on the Rights of Persons with Disabilities, Views adopted by the Committee under Article 5 of the Optional Protocol, concerning communication No. 44/2017, CRPD/C/25/D/44/2017, 11 October 2021, para. 2.

123 Id., para. 3.

124 Id., paras. 4–5.

125 Id., para. 11.

126 Id., paras. 12–13.

127 Committee on the Rights of Persons with Disabilities, Communication No. 1/2010, CRPD/C/9/D/1/2010, 21 June 2013, para. 2.

2007, finding direct discrimination and ordering OTP to make specific ATMs accessible. However, upon appeal, the Metropolitan Court of Appeal in 2008 reduced OTP's obligation, citing potential risks and contractual freedom. The Supreme Court upheld this decision in 2009, determining that OTP's conduct constituted indirect, not direct, discrimination.[128]

Hungary acknowledged the importance of addressing ATM accessibility but maintained that its Supreme Court's decision adhered to national laws. Despite this, OTP committed to gradually retrofitting ATMs, and the government began exploring broader regulatory solutions. However, these steps were criticized as insufficient by the authors, who argued that Hungary had not met its obligations to ensure equal treatment and accessibility for persons with disabilities.[129]

The Committee concluded that Hungary failed to fulfil its obligations under Article 9(2)(b) of the Convention, as it had not ensured the necessary accessibility to banking services. It recommended Hungary establish enforceable standards for ATM accessibility, ensure judicial officials understand the Convention, and guarantee that domestic laws do not undermine the rights of persons with disabilities. The Committee also called for compensation to the authors for their legal costs, and dissemination of the findings.[130]

6. Concluding remarks

Hungary is a party to numerous international and European organisations which at their core have robust universal human rights protection regimes. These protections are reflected in domestic legislation and the Fundamental Law, offering extensive human rights protections. The fragmented international human rights regime, and especially the various treaty bodies and courts that have competence in such matters may pose a challenge in terms of access to remedies. Some of the cases sampled above show how the various human rights regimes may conflict: a complaint lodged at one international body may preclude another body from formulating its views on the same case. For example, due to the robust human rights regime at the level of the EU and the CoE, the number of complaints that have been lodged against Hungary at UN treaty bodies is significantly less than those that have reached the ECtHR.

Despite overlap, there have been certain alleged violations which have resulted in the filing of complaints at the UN treaty bodies as well, with more or less success for their authors. As always, the gap between the principles Hungary adhered to and their practical implementation lingers on. Hungary strives towards

128 Ibid.
129 Id., para. 3.
130 Id., paras. 10–11.

ensuring a better implementation of its human rights obligations. This effort is, in part, ensured by the various levels of protection, akin to safety nets. The domestic legislative framework, European commitments, and the UN treaties form a human rights protection system that should prevent violations from going unaddressed. The task of enforcing universal human rights principles is ongoing, and demands ever more attention. Rights are not self-executing, but are in need of constant acknowledgment, protection, and reinforcement. The continuously evolving mission of human rights protection needs continued attention and evaluation from both the state and stakeholders.

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DEYANA MARCHEVA*

The Universal Protection of Human Rights and Eastern Europe: Bulgaria

ABSTRACT: *After the collapse of the communist regime and the adoption of the new democratic Constitution of the Republic of Bulgaria in 1991, human rights assumed new significance as a foundation for affirming the rule of law. Integration of self-executing international norms into the domestic legal framework marked a substantial paradigm shift in Bulgaria's approach to human rights, emphasising the promotion of effective safeguards and remedies for the breach of individual rights and freedoms. Consequently, Bulgaria's relationship with the United Nations on human rights issues has undergone a significant transformation since the end of the Cold War, bringing domestic violations to the forefront of policy discussions. However, the paradigm shift towards universal human rights protection in Bulgaria after 1991 has not been included in international public law textbooks, while true and broad applicability of UN mechanisms has remained underappreciated. Discussions about the pros and cons of communication procedures before the UN treaty bodies or evaluations of their effectiveness have been generally avoided, and Bulgaria is yet to ratify the respective Optional Protocols to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). In general, Bulgarian international law scholarship lags behind in ongoing academic efforts to strengthen UN treaty bodies, mechanisms, and procedures. Since Bulgarian scholars did not take the lead in clarifying the conceptual changes in the UN's approach to human rights, new ideas and tools could only be introduced through the efforts of practitioners from three groups: policymakers from the executive branch, the judiciary, and NGOs and human rights activists. The Universal Periodic Review has completed three full cycles, evaluating Bulgaria's human rights records in 2010, 2015, and 2020, and has significantly influenced the reform of numerous domestic policies and legislative instruments. Only a small number of communications have been submitted against Bulgaria to UN treaty bodies,*

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specifically to the Human Rights Committee and under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

■ **KEYWORDS:** *Bulgarian Constitution of 1991, paradigm shift, UPR's impact, legislative and institutional reforms, strengthening human rights protection*

1. Introduction: The historical development of human rights in Bulgaria

After World War II, Bulgaria joined the Eastern Bloc, aligning economically and politically with the Soviet Union. Nikola Dolapchiev (1897–1966), a distinguished professor of criminal law, was expelled from the Bulgarian Academy of Sciences in 1948 for 'hostile activities' towards the People's Republic of Bulgaria. Later, he was deprived of Bulgarian citizenship and sought political asylum in England. On 6 November 1952, he delivered an address at Chatham House, the Royal Institute of International Affairs, titled 'Law and Human Rights in Bulgaria'.[1] He described the legal system in the communist country as akin to the mythical Janus,[2] with one face portrayed as relatively decent for external display, while the other, the true face, revealed a regime where the Communist Party dominated all aspects of life, substituting its rules for the rule of law.[3] Despite the Bulgarian Constitution of 1947 enumerating many 'fundamental rights of the citizen', these provisions were ultimately hollow and devoid of genuine content within the totalitarian regime.

The tragic experiences of World War II and the Holocaust led to the belief that the United Nations should spearhead international human rights protection. Human rights, with their universal appeal as a shared value, were envisioned to have the potential to transcend Cold War political divisions. However, both the Eastern and the Western Bloc exploited human rights issues for propaganda,[4] creating divergent post-war human rights narratives that influenced international law and politics. Western liberal democracies emphasised civil and political rights, while socialist states prioritised social and economic rights.[5]

In post-war Bulgaria, Marxist ideological discourse embraced the rhetoric that the socialist revolution led by the Soviet Union established a state model that realised a superior form of human rights.[6] The prevailing narrative depicted the

1 Dolapchiev, 1953.
2 Dolapchiev, 1953, p. 59.
3 Nakarada, 1990, p. 228.
4 Keys and Burke, 2013, p. 486.
5 Richardson-Little, Dietz, and Mark, 2019, p. 170.
6 Richardson-Little, Dietz, and Mark, 2019, p. 171.

imperialist West as creating 'slavery behind the veil of freedom',[7] with rights there being fictitious entitlements unavailable to the working class – a 'pale bourgeois imitation'[8] of the gender and racial equality already achieved in the Eastern Bloc or what could be accomplished in the future communist society. In the 1970s and 1980s, an extensive body of literature placed human rights at the forefront of socialism's ideological struggle with capitalism.[9] Propaganda messages were prominent in book titles such as 'The Truth about Human Rights',[10] 'Human Rights – Granted and Won',[11] 'Business with Human Rights',[12] 'Human Rights: Imaginary and Real',[13] 'The Communist Party of the Soviet Union and Human Rights' and so on.[14] Two notable activists from the Bulgarian Communist Party, Assen Kozharov (Institute for Contemporary Social Theories) and Boris Spassov (Institute for Legal Sciences), who set the ideological framework for scholarship in Bulgaria, had their works translated and published in English.[15] These writings became representative of Bulgarian human rights literature in the Human Rights Quarterly.[16]

At the same time, international legal scholars in Bulgaria began introducing the complex infrastructure of UN international treaties and institutions, highlighting the contributions of Soviet diplomacy.[17] They argued that socialist states exemplified the most consistent protection of human rights and steadfast implementation of international obligations.[18] The socialist legal concept that individual rights are always accompanied by corresponding duties was projected onto the framework of international human rights law.[19] According to socialist doctrine, the position of the individual was determined by internal law, not by international law; therefore, implementing international human rights norms was primarily a matter of each sovereign state's internal competence.[20]

In the 1980s, academic literature emphasised that international norms did not provide direct rights to individuals and explicitly rejected the notion of the universal protection of human rights within UN treaties and institutions. It argued that:

7 Болшаков [Bolshakov], 1982, p. 5.
8 Richardson-Little, Dietz, and Mark, 2019, p. 171.
9 Кожаров [Kozharov], 1977; Цеков [Tsekov], 1982.
10 Иванов [Ivanov], 1978.
11 Захаров, Ананиева, Петков, and Баламезов [Zaharov, Ananieva, Petkov, and Balamezov], 1979.
12 Болшаков [Bolshakov], 1982.
13 Михайлова [Mihaylova], 1987.
14 Черненко [Chernenko], 1983.
15 Kozharov, 1978; Spasov, 1979.
16 Greenfield, 1981, pp. 141–142.
17 Векилов [Vekilov] et al., 1982.
18 Векилов [Vekilov] et al., 1982, p. 9.
19 Векилов [Vekilov] et al., 1982, p. 10.
20 Przetacznik, 1971, p. 269.

> ...The specific content and implementation of individual rights and freedoms is a matter within the exclusive domestic competence of states. Hence, the norms in this area aim not to create a uniform, universally applicable international human rights regime, which is impossible in the current political environment, but to impose obligations on states (legal and political) to ensure in the domestic legal and political order the minimum of rights and freedoms assumed as fundamental in contemporary human society.[21]

Within this conceptual framework, Bulgarian researchers adopted and interpreted the 'fight against massive and gross violations of human rights' as one of the objectives of international regulation.[22] They sought to clarify why the UN repeatedly addressed these violations as a threat to international peace and security, thus contributing to the emerging doctrine of 'Common Concern of Humankind'.[23]

At the same time, academia deliberately avoided endorsing the idea of regular UN supranational oversight of human rights abuses,[24] which would undermine the sovereignty of the state. They vigorously opposed the view, deemed prevalent in bourgeois scholarship, that international organisations and their established committees and commissions were responsible for directly implementing international norms.[25] In socialist scholarship, UN bodies were regarded not as implementation bodies but as entities monitoring states' compliance with their international obligations.[26]

After the collapse of the communist regime in late 1989 and the peaceful transition to constitutional democracy in Bulgaria – facilitated by the Round Table of 3 January – 14 May 1990 –, human rights assumed a new significance as a foundation for affirming the rule of law. The new democratic Constitution of the Republic of Bulgaria, adopted on 12 July 1991, began with a Preamble pledging to elevate 'the rights, dignity, and security of the individual' as its foremost principle. Human rights were supposed to permeate the entire constitutional text.[27]

Furthermore, the 1991 Constitution introduced a new principle regarding the relationship between international and domestic law, radically altering the existing theory of 'realistic dualism'. The previous doctrine regarded international and domestic law as two independent legal orders without primacy for either system,[28] engendering ambiguities in the application of international law, especially concerning human rights. Under the 1971 Constitution, the People's Republic

21 Векилов [Vekilov] et al., 1982, p. 266.
22 Векилов [Vekilov] et al., 1982, p. 267.
23 Bogdanova, 2022.
24 Keys and Burke, 2013, p. 487.
25 Векилов [Vekilov] et al., 1982, p. 280.
26 Векилов [Vekilov] et al., 1982, p. 281.
27 Танчев [Tanchev], 2002, p. 36.
28 Радойнов [Radoynov], 1971, p. 72.

of Bulgaria applied the concept of 'abiding' by international treaties,[29] ensuring the application of international norms through express statutory referral.[30]

The new democratic Constitution of 1991 introduced a significant change in Article 5, paragraph 4 by incorporating all ratified, promulgated and enforced international instruments as part of domestic law, giving them precedence over parliamentary legislation. Additionally, the Constitution underscores the importance of international human rights treaties by authorising the Constitutional Court to assess the conformity of national laws with generally recognised international norms and treaties to which Bulgaria is a party (Article 148, paragraph 1, point 4). This integration of self-enforcement of international norms into the domestic legal framework marked a substantial paradigm shift in Bulgaria's approach to human rights. What was once an unacceptable notion of universal human rights protection has become a fundamental framework for interpreting and promoting effective safeguards and remedies for individual rights and freedoms. Consequently, Bulgaria's relationship with the United Nations regarding human rights issues has changed considerably, bringing domestic violations to the forefront of policy discussions.

2. The relationship between Bulgaria and the UN from a human rights perspective

The relationship between Bulgaria and the UN has evolved over the decades and can be historically divided into two distinct periods: before and after the end of the Cold War. In each phase, Bulgaria became a party to core UN human rights conventions; however, its differing constitutional and ideological frameworks shaped both the objectives of ratification and the methods of human rights enforcement.

■ *2.1. Bulgaria and the UN during the Cold War*

From Bulgaria's accession to the UN in 1955 until the late 1980s, the country was a member of the Eastern Bloc and closely associated with Soviet interests. A prioritisation of loyalty to the USSR heavily influenced Bulgaria's foreign policy, supporting resolutions that aligned with Soviet policies while opposing those that were perceived as threats to communist ideology.

During the Cold War, Bulgaria became a party to several key UN human rights treaties, including:

29 Decree No. 1496 on the participation of the People's Republic of Bulgaria in international treaties (prom. SG 62 of 12.08.1975) was repealed in November 2001 by the Act on International Treaties of the Republic of Bulgaria (prom. SG 97 of 13.11.2001).

30 Тодоров [Todorov], 2000, p. 316.

- 1965 International Convention on the Elimination of All Forms of Racial Discrimination, signed on 1 June 1966 and ratified on 8 August 1966.
- 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social, and Cultural Rights, both signed on 8 October 1968 and ratified on 21 September 1970.
- 1977 Convention on the Elimination of All Forms of Discrimination against Women, signed on 17 July 1980 and ratified on 8 February 1982.
- 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed on 10 June 1986 and ratified on 16 December 1986.

Under the 1947 Constitution of the People's Republic of Bulgaria, which remained in effect until 1971, the sole authority competent to ratify international instruments was the Presidium of the National Assembly[31]. This public body reflected the principle of unity of power inherent in communist ideology and served as the head of state. During that period and throughout the totalitarian regime in Bulgaria, no legislation existed to outline the terms and conditions for concluding, ratifying or denouncing international treaties.[32] These practices were conducted according to established international practice without a domestic procedural legal framework in place. Although the Constitution of 1947 states that it is the government that enters into international treaties, both theory and practice permitted certain departmental heads or delegation leaders to sign specific international agreements.[33] However, this was limited to agreements between administrative bodies related to postal services and railways, and did not extend to UN human rights treaties.

In 1966, the Presidium of the National Assembly ratified the International Convention on the Elimination of All Forms of Racial Discrimination,[34] followed by the ratification of both the ICCPR and the ICESCR in 1970 through a single

31 The Presidium of the National Assembly represents the People's Republic in its international relations, and besides receiving accredited foreign representatives, appoints and recalls diplomatic and consular representatives in foreign countries upon the government's proposal, (Article 35, point 8 of the Constitution of 1947). Additionally, it is responsible for ratifying or denouncing international treaties concluded by the government (Article 35, point 9 of the Constitution of 1947).

32 Спасов and Кутиков [Spassov and Kutikov], 2000, p. 64. The authors contrast this with the situation in the USSR, where such a law was adopted in 1938, and they include a draft law with four provisions as an appendix to the article. Such a law was enacted under the democratic regime in 2001 as the International Treaties Act (prom. SG 97/13.11.2001), which comprises 32 provisions governing the entire process of preparing, signing, ratifying, promulgating, implementing, preserving and registering international treaties.

33 Спасов and Кутиков [Spassov and Kutikov], 2000, p. 66.

34 Decree No 515 of 23 June 1966 of the Presidium of the National Assembly, prom. SG 51 of 1966.

decree.[35] There were no public debates regarding these ratifications or any aspects of foreign or human rights policies in Bulgaria during the totalitarian regime. In Bulgarian legal literature, the international prohibition of racial discrimination and apartheid was largely credited to the USSR's initiatives aimed at opposing these policies associated with capitalism.[36] The doctrine, in general, prioritised economic and social rights, which were also analysed in the context of the ideological struggle of socialism against capitalism.[37] The 1947 Constitution of the People's Republic of Bulgaria already enshrined various economic and social rights, including the right to work (Article 73), the right to rest and leave (Article 74), the right to pensions and benefits (Article 75), the right to education (Article 79) and the right to healthcare (Article 81). In this context, international treaties were viewed not as a means of enhancing these rights but rather as a step toward the advancement of international socialism.

Subsequently, the 1971 Constitution of the People's Republic of Bulgaria emphasised the significance of human rights within the socialist state by repositioning them in the constitutional text – placing them in Chapter Two, immediately after the fundamental provisions.[38] Although both the 1947 and 1971 constitutions proclaimed civil and political rights, the totalitarian regime suppressed their exercise by eliminating political pluralism, stifling dissenting voices, enforcing censorship, controlling the media, and employing intimidation and imprisonment through the pervasive influence of the State Security apparatus. Political dissidents, intellectuals and activists who challenged the regime's authority faced severe repercussions, including forced labour camps and exile. This environment of fear effectively silenced public debates and marginalised any form of political opposition, thereby undermining the fundamental civil rights of free expression and assembly. Neither the constitutional provisions promoting civil and political rights nor the ratification of the ICCPR or any formally enacted laws could ensure the effective exercise of those rights during the totalitarian regime, which operated arbitrarily to enforce the directives of the Communist Party.

Under the 1971 Constitution of the People's Republic of Bulgaria, no single constitutional body was empowered to ratify international treaties; instead, the

35 Decree No 1199 of 23 July 1970 of the Presidium of the National Assembly, prom. SG 60 of 1970.

36 Векилов [Vekilov] et al., 1982, p. 189.

37 Векилов [Vekilov] et al., 1982, p. 57.

38 In contrast, the Constitution of the People's Republic of Bulgaria of 1947, which comprises eleven chapters, listed citizens' rights in Chapter Eight, found at the end of the text.

National Assembly and the Council of State held this authority concurrently.[39] Nevertheless, the totalitarian state maintained the tradition of ratifying international human rights conventions through decrees issued by the Council of State, which embodied the principle of unity of power and the merger of state authority and the power of the Communist Party.[40]

During the Cold War, international efforts to enforce human rights were often 'paralysed',[41] as oppressive governments could rely on the superpowers to shield them from scrutiny and international condemnation. Additionally, it was not until the mid- to late 1980s that the institutions of UN human rights treaties had become fully operational, allowing for greater focus on human rights implementation.[42]

Due to the Bulgarian government's coercive assimilation policies targeting the ethnic Turkish minority (e.g. forced change of names, ban on the public use of the Turkish language, etc.), in March 1986, the CERD Committee reviewed the eighth periodic report of Bulgaria.[43] In retrospect, the discussion that addressed some inconsistences in Bulgaria's national report along with some alarming media reports is considered one of the last significant confrontations of the Cold War.[44]

The Bulgarian national report, submitted in October 1984, stated that 'Also living in our country are Bulgarian citizens of Turkish, Gipsy, Armenian, Jewish, Greek and other origins' and that 'all Bulgarian citizens have the right to declare their national affiliation, entitling them to study and speak their native tongue, develop their national culture, maintain their traditions, etc.' However, this report was withdrawn and replaced with a new version in January 1986, which omitted such passages.

Diplomats discussed the discrepancies between the most recent report and its predecessor, noting that while the earlier one referenced a Turkish minority, the new report's claim that Bulgaria was now an ethnically homogeneous state was inconsistent.[45] It was suggested that a group of observers from the Committee

39 The Council of State assumed the powers previously held by the Presidium of the National Assembly, thereby representing the People's Republic of Bulgaria in its international relations (Article 93, point 12 of the 1971 Constitution) and possessing the authority to ratify and denounce international treaties (Article 93, point 14 of the 1971 Constitution). Concurrently, the National Assembly held identical powers to ratify and denounce international treaties (Article 78, point 13 of the 1971 Constitution).

40 The Convention on the Elimination of All Forms of Discrimination against Women was ratified by Decree No 1944 of 18 September 1981 of the Council of State (prom. SG 76 of 1981). However, according to the UN database, Bulgaria ratified the convention in 1982, as per the information provided by the country to the organisation. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by Decree No 3384 of 9 October 1986 of the Council of State (prom. SG 80 of 1986).

41 Mégret and Alston, 2020, p. 8.

42 Buergenthal, 1997, p. 712.

43 Alston and Crawford, 2000, p. 73.

44 Banton, 1996, p. 134.

45 Ibid.

visit Bulgaria to obtain objective information, as many concerns about human rights abuses had surfaced. It was also pointed out that it was unlikely that a large group of people would suddenly decide to change their names voluntarily. Reports of the closure of over 1,000 mosques and restrictions on the observance of the Muslim religion were also discussed.[46]

Karl Joseph Partsch, a member of the CERD Committee from Germany, expressed his opinion that there was admissible evidence indicating that the Muslim minority in Bulgaria was being subjected to a coercive assimilation campaign in violation of their minority rights.[47] He recalled that Todor Zhivkov, the General Secretary of the Bulgarian Communist Party, had claimed that Bulgarian Muslims were Bulgarians forced to adopt Islam during Ottoman rule. Partsch insisted that the CERD Committee act.

At that time, Amnesty International obtained the names of over 100 ethnic Turks reportedly killed by security forces during the assimilation campaign. Many diplomats attended the conference chamber to follow the anticipated public dispute on this matter. Representatives of the Eastern Bloc argued that there were no grounds for sending observers, asserting that each State Party had domestic jurisdiction over such issues and could resolve internal problems using its own methods. They maintained that the Committee should follow its usual procedure. The Bulgarian representative assured that Bulgaria would always be very hospitable to experts from the Committee as guests, but 'under no circumstances would the government agree to a commission of inquiry'.[48]

The Chairman explained that the CERD Committee had completed the review of that round of reports and could not reopen them for further questions and dialogue until the receipt of the next report. This case demonstrated that while the Cold War's East–West opposition persisted, members of the UN Committees primarily saw their roles in diplomatic terms and could do very little to intervene meaningfully in the human rights situation in Bulgaria.

Therefore, despite Bulgaria's ratification of key UN treaties, the totalitarian regime systematically suppressed dissent and violated fundamental civil rights and political freedoms. The gap between the regime's rhetoric – its proclaimed commitment to human rights – and its actual repressive practices was intended to be offset by an emphasis on economic and social rights. This occurred in a context where the principle of 'socialist legality' supplanted the rule of law,[49] and guarantees and effective remedies for human rights protection were never given significant importance.

46 Banton, 1996, pp. 135–136.
47 Ibid.
48 Banton, 1996, p. 137.
49 Марчева [Marcheva], 2021, pp. 135–224.

■ *2.2. Changes in the relationship between Bulgaria and the United Nations after the end of the Cold War*

The end of the Cold War sparked a debate over the appropriate UN approach to human rights, resulting in a significant re-alignment of institutional responsibilities.[50] These profound conceptual changes were evident at the 1993 Vienna Conference on Human Rights, which declared that all human rights were 'universal, indivisible, interdependent and interrelated', rejecting cultural relativism.[51] The Vienna Declaration emphasised that, despite national and regional particularities, and various historical, cultural and religious backgrounds, states must promote and protect all human rights, regardless of their political, economic or cultural systems (paragraph 5). The declaration also dispelled the myth that any government, democratic or not, could inherently protect human rights,[52] asserting that 'democracy, development, and respect for human rights and freedoms are interdependent and mutually reinforcing' (paragraph 8). The conference recommended enhancing and harmonising the UN system's monitoring capacity, leading to the creation of the post of High Commissioner for Human Rights.

However, this paradigm shift towards genuine universal protection of human rights was neither addressed in Bulgarian academic discussions in the 1990s nor mentioned in international public law textbooks. The notion of the 'universal protection of human rights' is seldom used even to this day.[53] Instead, legal scholars favour the terms 'universal treaties' and 'universal mechanisms', stressing their formal attributes, primarily meaning 'applicable to everyone'. The concept of 'universal mechanisms' is rarely understood in its true sense as being broadly applicable and effective in diverse contexts and situations. Bulgarian legal scholarship has not yet openly acknowledged that the universal nature of human rights intrinsically involves rejecting cultural relativism, which is usually invoked to justify human rights abuses through reference to some special religious or cultural norms.

2.2.1. The democratic Constitution of 1991 and the new approach to human rights protection in Bulgaria

The Constitution of the Republic of Bulgaria, adopted after the collapse of communism, represented a significant shift in the nation's approach to human rights protection and its engagement with United Nations bodies and mechanisms. The catalogue of rights and freedoms enshrined in the 1991 Constitution closely aligns with those specified in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Since the rules of the Constitution have an immediate effect (Article 5, paragraph 2),

50 Mégret and Alston, 2020, p. 15.
51 Buergenthal, 1997, p. 714.
52 Ibid.
53 Дечкова-Миланова [Dechkova-Milanova], 2013.

everyone has the right to invoke them directly in defence of their fundamental rights in administrative and court procedures.

The table below demonstrates how the 1991 Constitution incorporates most of the fundamental rights outlined in the ICCPR and the ICESCR:

Human Rights in UN treaties	Fundamental rights underthe Constitution of 1991
Right to life Article 6 of the ICCPR	According to Art. 28, 'everyone shall have the right to life' and any attempt to take a human life shall be considered a grave crime and punished accordingly.
Prohibition of torture, cruel, inhuman or degrading treatment Article 7 of the ICCPR	Art. 29 reflects the language and principles of Article 7 of the ICCPR, asserting in para. 1 that no individual shall be subjected to torture, cruel, inhuman or degrading treatment, or forced assimilation. Para. 2 specifies that no one shall be subjected to medical, scientific or other experimentation without their free and informed written consent.
Prohibition of slavery, servitude and forced labour Article 8 of the ICCPR	The Constitution of 1991 has no explicit general provision for the prohibition of slavery and servitude, such as Art. 61 of the first Bulgarian Constitution of 1879.[54] Currently, the Constitution explicitly prohibits only forced labour in Art. 48, para. 4.
Right to liberty and security of persons Article 9 of the ICCPR	The Constitution of 1991 proclaims in Art. 30, para. 1 that 'everyone shall be entitled to personal freedom and inviolability'.[55] Para. 2 further prohibits arbitrary or unlawful arrest or detention[56], while para. 3 outlines constitutional guarantees[57] that align with Art. 9, para. 3 of the ICCPR. According to Art. 31, para. 1, anyone charged with a crime must be brought before a court within the timeframe established by law.

54 Tarnovo Constitution of 1879, Article 61. No one in the Bulgarian Kingdom shall buy or sell human beings. Every slave regardless of sex, religion or nationality shall be granted freedom upon setting foot on Bulgarian territory.

55 See the official translation of the Constitution of the Republic Bulgaria on the internet page of the Bulgarian Parliament. The official translation uses the term 'inviolability', which corresponds to the Bulgarian phrase '*лична неприкосновеност*', used in Article 30, paragraph 1 of the Constitution. In similar human rights instruments, this term is more commonly translated as 'privacy' or 'integrity'. However, other constitutional provisions, such as Article 32, explicitly enshrine the fundamental rights to privacy, prompting the translator to seek an alternative translation. It is unclear why the translator chose not to use the phrase 'security of the person' from Article 9 of the ICCPR, despite the close relationship between the meaning of the Bulgarian constitutional term and the one used in the ICCPR. One possible explanation could be that the official Bulgarian translation of Article 9 of the ICCPR employs different wording: '*право на лична свобода и сигурност*'. However, it could be argued that Article 30 of the Constitution provides a better translation of the first sentence in Article 9, paragraph 1 of the ICCPR.

56 The constitutional provision in Article 30, paragraph 2 explicitly prohibits arbitrary or unlawful searches, as well as 'inspections or any other infringements' on personal security or integrity.

57 The constitutional provision in Article 30, paragraph 3 stipulates that arrests may only be made by competent authorities under urgent circumstances explicitly defined by law. These authorities are required to notify the relevant judicial bodies (judges and prosecutors) who must assess the legality of the detention within 24 hours. These requirements are further detailed in the Criminal Procedure Code, which states that pre-trial detention ordered by a prosecutor can be extended for only an additional 72 hours, after which any further detention must be authorised by court order.

Liberty of movement and freedom to choose residence Article 12 of the ICCPR	According to Art. 35, everyone has the right to choose their place of residence and to enjoy freedom of movement within the country, as well as the right to leave and return to the country. This right may only be restricted by law for reasons of national security, public health or the rights and freedoms of other citizens.
Right to a fair trial Article 14 of the ICCPR	The Constitution does not explicitly proclaim the right to a fair trial but incorporates some of its essential elements. These include the presumption of innocence for anyone charged with a criminal offence until proven guilty according to law (Art. 31, para. 3), the right to legal counsel and confidential communication (Art. 31, paras. 4 and 5), and the right not to be compelled to confess guilt or to be convicted solely based on a confession (Art. 31, para. 2). Art. 14 of the ICCPR contains more detailed provisions regarding the right to a fair trial than those found in the Bulgarian Constitution.
Principle nullum crimen sine lege Article 15 of the ICCPR	The principle of legality in criminal law is enshrined in the first chapter of the Constitution as a fundamental provision. Art. 5, para. 3 states that no person shall be convicted for any action or omission that was not defined as a crime by law at the time it was committed.
Right to privacy Article 17 of the ICCPR	The right to privacy is established in three constitutional provisions: – Art. 32, para. 1 enshrines the right to individual privacy, stating that everyone is entitled to protection against unlawful interference in their private or family affairs, as well as against encroachments on their honour, dignity and reputation. Para. 2 of the same article stipulates that no one shall be followed, photographed, filmed, recorded or subjected to similar actions without their knowledge or against their express disapproval, except as permitted by law. – Art. 33 safeguards the privacy of the home, asserting that no one may enter or remain in a home without the occupant's consent, except in cases explicitly defined by law. – Art. 34 protects the freedom and confidentiality of correspondence from unlawful interference.
Freedom of thought, conscience and religion Article 18 of the ICCPR	Art. 37, para. 1 guarantees everyone the freedom of conscience, thought and the choice of religion, including religious and atheistic beliefs. The state is also tasked with promoting tolerance and respect among individuals of different faiths, as well as between believers and non-believers. Para. 2 clarifies that the freedom of conscience and religion[58] may not be exercised in ways that undermine national security, public order, public health and morals, or the rights and freedoms of others. Additionally, Art. 38 explicitly states that no one shall be persecuted or restricted in their rights due to their beliefs nor shall they be compelled to disclose their own or another person's views.
Freedom of expression Article 19 of the ICCPR	Art. 39 affirms the right to express opinions and disseminate them through various means, including written and oral communication, sound, images and other methods. Art. 41 further guarantees that everyone has the right to seek, obtain and disseminate information. These constitutional provisions also specify limitations on these rights, in line with Art. 19, para. 3 of the ICCPR, stating that they must not be used to harm the rights and reputation of others, incite forcible change to the constitutionally established order, promote criminal activity, or provoke enmity or violence against any individual.
Freedom of assembly Article 21 of the ICCPR	Art. 43 recognises the right to peaceful and unarmed assembly for meetings and demonstrations. It specifies that the procedures for organising and conducting such events shall be established by law,[59] and that no notice to municipal authorities is required for meetings held indoors.

58 In 2002, Bulgaria enacted a new Religions Act (prom. SG 120 of 29.12.2002), which established a more democratic framework for the freedom of religion compared with the provisions in place during the totalitarian regime.

59 The Assemblies, Meetings and Manifestations Act (prom. SG 10 of 2.02.1990) was one of the first pieces of legislation enacted to guarantee political freedoms in Bulgaria following the fall of communism, prior to the adoption of the new democratic constitution. It has undergone three reforms but continues to govern the subject.

Freedom of association Article 22 of the ICCPR	Art. 44 guarantees citizens the freedom to associate.[60] In accordance with democratic standards, the Constitution imposes certain restrictions on organisations, prohibiting actions that undermine national sovereignty, integrity or unity. Additionally, organisations must not incite racial, national, ethnic or religious enmity nor encroach upon the rights and freedoms of others. Furthermore, no organisation is permitted to establish clandestine or paramilitary structures or to pursue its objectives through violence.
Right to participate in public affairs Article 25 of the ICCPR	Art. 21 affirms the right to direct universal suffrage through secret ballot for all Bulgarian citizens aged 18 and older, except for those who are under full or partial guardianship or currently serving a prison sentence.[61] These citizens have the freedom to elect state and local authorities and participate in referendums. Additionally, specific constitutional provisions recognise the rights of Bulgarian citizens who meet certain criteria to be elected as members of parliament (Art. 65) or as President (Art. 93, para. 2), as well as to be appointed as ministers (Art. 110).
Right to equality before the law and equal protection Article 26 of the ICCPR	The principle of equality is enshrined in Art. 6, which asserts that all individuals are born free and equal in dignity and rights. It also establishes that everyone is equal before the law, prohibiting any privileges or restrictions of rights based on race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status, or property status.[62]
Right of the child to non-discrimination and protection Article 24 of the ICCPR	According to Art. 47, the raising and upbringing of children until they reach legal age are both a right and an obligation of their parents, with support from the state. Children born out of wedlock have the same rights as those born within marriage. Additionally, the article stipulates that abandoned children are entitled to protection by the state and society.
Protection of family Article 23 of the ICCPR *Right to family life* Article 10 of the ICESCR	The Bulgarian Constitution broadly states that 'the family, motherhood and children shall enjoy the protection of the state and society' (Art. 14). It also defines marriage as 'a free union between a man and a woman' (Art. 46, para. 1), focusing on the different sexes of the spouses rather than their free will. Art. 46 recognises as legal only the civil marriage, and emphasises equal rights and obligations in matrimony and the family.
Right to work Article 6 of the ICESCR	Art. 48 affirms the right to work and mandates the state to create conditions that enable the exercise of this right, including for individuals with physical or mental disabilities. The Constitution explicitly states in Art. 48, para. 3 that everyone is free to choose their occupation and workplace.

60 During the totalitarian regime and the initial decade of Bulgaria's transition to democracy, NGOs, known as associations and foundations, were regulated by the Persons and Family Act (prom. SG 182 of 9.08.1949). A comprehensive reform to guarantee the freedom of association was implemented at the end of 2000 with the introduction of the Non-Profit Legal Entities Act (prom. SG 81 of 6.10.2000), which took effect on 1 January 2001.

61 There is ongoing debate about whether Bulgaria's blanket constitutional ban on voting rights for incapacitated persons and prisoners aligns with the standards of reasonable restrictions of the right to participate in public affairs. This discussion is particularly relevant in the light of judgments against Bulgaria by the European Court of Human Rights in cases such as *Kulinski and Sabev*, among others.

62 The Protection against Discrimination Act (prom SG 86 of 30.09.2003) came into effect on 1 January 2004.

Right to just and favourable conditions of work Article 7 of the ICESCR	Art. 48, para. 5 stresses the provision of healthy and safe working conditions, guaranteed minimum wages, remuneration for actual work performed, and appropriate rest and leave, all as defined by law.[63] The Constitution does not specifically reference equal pay, equal opportunities for promotion, reasonable limitations on working hours or decent living conditions for workers and their families.
Right to form and join trade unions and right to strike Article 8 of the ICESCR	Art. 49 recognises the right of workers and employees to freely form trade union organisations and alliances to defend their interests related to work and social security. Art. 50 guarantees the right to strike in defence of their collective economic and social interests, to be exercised in accordance with the conditions and procedures established by law.[64]
Right to social security Article 9 of the ICESCR	According to Art. 51, citizens have the right to social security and welfare assistance, with the state providing social security for the temporarily unemployed in accordance with the conditions and procedures established by law.[65] Para. 3 of Art. 51 stipulates that elderly people without relatives who are unable to support themselves, as well as persons with disabilities and the impoverished shall receive special protection from the state and society.
Right to education Article 13 of the ICESCR Compulsory primary education Article 14 of the ICESCR	Art. 52 affirms the right to education but does not specify the aims of education, as detailed in Art. 13, para. 1 of the ICESCR. The Bulgarian Constitution mandates school attendance up to the age of 16 and establishes that primary and secondary education in state and municipal schools shall be free of charge. Under certain conditions defined by law, higher educational institutions are also required to provide education at no cost. The state promotes education by establishing and funding schools, supporting capable students at both school and university levels, and offering opportunities for vocational training and retraining.
Right to health care Article 12 of the ICESCR	While the ICESCR guarantees 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health', the Bulgarian Constitution presents a more limited version of the right to health care. Art. 52, para. 1 affirms the right to medical insurance, ensuring access to affordable medical care and free medical care in accordance with the conditions and procedures established by law. Para. 2 outlines the sources of funding for medical care, while para. 3 generally declares that the state is responsible for safeguarding the health of its citizens and encouraging the promotion of sports and tourism. Similarly, Art. 55 recognises the right to a healthy and favourable environment that meets established standards and norms.
Right to participate in cultural life Article 15 of the ICESCR	Art. 54 asserts that every individual has the right to access national and universal cultural values and to cultivate their own culture in line with their ethnic identity, which shall be recognised and protected by law. Furthermore, the law will also safeguard artistic, scientific and technological creativity.

The Constitution of 1991 does not specifically address several rights enshrined in the ICCPR, including the right to recognition as a person before the law (Article 16), the prohibition of propaganda (Article 20), the right to marry (Article 23) and the rights of minorities (Article 27). Additionally, the concept of the right to an

63 The first Healthy and Safe Working Conditions Act (prom. SG 124 of 23.12.1997) was enacted in 1997.

64 The right to strike was established in March 1990, prior to the adoption of the 1991 Constitution, when the National Assembly enacted the Settlement of Collective Labor Disputes Act (prom. SG 21 of 13.03.1990).

65 Initially, the right to social security and welfare assistance was governed by amendments and supplements to the old Pensions Act (prom. SG 91 of 12.11.1957). This framework underwent a comprehensive reform with the enactment of the Social Security Code (prom. SG 110 of 17.12.1999), which came into effect on 1 January 2000.

adequate standard of living, which includes access to adequate food, clothing and housing as outlined in Article 11 of the ICESCR, is also absent from the Constitution. While Article 23 of the ICCPR and Article 10 of the ICESCR emphasise that the family is the natural and fundamental unit of society entitled to protection by both society and the state, as well as the necessity of free and full consent for intended spouses to enter into marriage, the Bulgarian Constitution broadly states that 'the family, motherhood and children shall enjoy the protection of the state and society' (Article 14). Furthermore, it defines marriage as 'a free union between a man and a woman' (Article 46, paragraph 1), focusing on the different sexes of the spouses rather than their free will.

The 1991 Constitution established the principle of the rule of law and significantly transformed the framework for human rights protection, emphasising guarantees and effective remedies. While it prompted numerous legislative reforms, it cannot be conclusively stated that these new laws or reforms were directly linked to the provisions of UN human rights treaties, as their reasoning did not make such references. Additionally, Bulgaria ratified the European Convention on Human Rights in 1992, which provides for rights and freedoms similar to those in the ICCPR and the ICESCR. Many of Bulgaria's legislative reforms can be linked to the corresponding judgments of the European Court of Human Rights.

The 2006 constitutional amendments established the Ombudsman as an advocate and defender of human rights, empowered to petition the Constitutional Court to declare any law that violates citizens' rights and freedoms unconstitutional. In Bulgaria, without the option of an individual constitutional complaint, the only means of seeking human rights protection before the Constitutional Court is presently through indirect referral by the Ombudsman, the Supreme Bar Council or the courts of all instances.

In this context, Bulgarian human rights lawyers primarily rely on international human rights courts, particularly the European Court of Human Rights, to address issues such as legislative shortcomings, systemic defects and structural discrimination in Bulgaria. Furthermore, they seek support from UN monitoring mechanisms to pressure the government and legislature into reforming the legal framework and policies to better promote and protect human rights.

2.2.2. UN human rights conventions ratified by Bulgaria in the late 20th and early 21st century and their corresponding major legislative reforms

The 1989 Convention on the Rights of the Child was ratified by the Grand National Assembly[66] just before the adoption of the new democratic Constitution of the Republic of Bulgaria on 12 July 1991. In March 1991, the government[67] expressed its consent to accede to the convention and proposed its ratification to the Grand National Assembly. The convention was included on the agenda for the plenary session on 11 April 1991, and was ratified almost unanimously.[68] All participants in the parliamentary debate stressed that the ratification should not be viewed as a mere formality but as a vital step in a long process aimed at ensuring the effective protection of children's rights and aligning Bulgarian legislation with international standards. It was noted that some of the requirements outlined in the Convention on the Rights of the Child were 'far beyond the current practices' in Bulgaria, particularly in schools and correctional institutions.[69] The debate also highlighted the need for significant reforms of many existing laws,[70] as well as the adoption of a comprehensive child law by future parliaments.[71] However, despite this understanding and enthusiasm at the outset of democratic governance in Bulgaria, the new Child Protection Act was not adopted until 2000,[72] and many reforms in the child justice system are still awaiting legislative action. Amid significant economic and democratic reforms, the government proposed[73] to parliament – the sole competent body under the new Constitution – the ratification of the 1951 Convention relating to the Status of Refugees and its Protocol of 1967. On 22 April 1992, the National Assembly held the two votes necessary for the ratification

66 The 1971 Constitution was amended and supplemented in 1990 to facilitate the transition to democracy. The April amendments established the Grand National Assembly, which was authorised to adopt the new Constitution while also serving as the National Assembly until its enactment. This body possessed full legislative powers, including the authority to ratify international treaties.

67 Decision No 67 of the Council of Ministers of 26 March 1991 on accession to the Convention on the Rights of the Child.

68 Among the members of parliament present at the plenary session, 217 voted in favour of ratifying the Convention on the Rights of the Child, one voted against it and two abstained.

69 See Ira Antonova's speech in the Transcript of the Plenary Session of the Seventh Grand National Assembly on 11 April 1991, 77–78.

70 Several laws, including the Family Code and the Civil Procedure Code, were referenced in Metodi Nedialkov's speech. The MP emphasised the necessity of establishing a new framework for exercising parental rights in divorce cases to ensure that children maintained meaningful contact with both parents. He also stressed that the divorce process should recognise the child as a party to the proceedings and prioritise their protection. (See the Transcript of the Plenary Session of the Seventh Grand National Assembly on 11 April 1991, 78–79.) However, no legislative reforms in this area have been undertaken in the years since.

71 See Petar Taslakov's speech in the Transcript of the Plenary Session of the Seventh Grand National Assembly on 11 April 1991, 80.

72 Prom. SG 48 of 13.06.2000.

73 Decision No 40 of 28 January 1992 of the Council of Ministers.

of the Convention without any discussions, and no MP voted against it. It was noted during the presentation of the ratification law that implementing the Convention required the adoption of domestic legislation governing the status of refugees shortly after ratification.[74] However, no parliamentary law was enacted until 1999 – the Refugees Act[75] – and in the meantime, only secondary domestic legislation was adopted and in force.[76] This law was short-lived, as it was repealed three years later with the adoption of a new Asylum and Refugees Act by parliament in 2002,[77] followed by numerous reforms related to Bulgaria's EU membership.

Although Bulgaria signed the 2006 Convention on the Rights of Persons with Disabilities shortly after its adoption on 27 September 2007, the government did not propose its ratification to parliament until the end of 2011.[78] On 26 January 2012, the National Assembly held the two readings of and unanimous votes on the ratification law in the presence of representatives from NGOs advocating for the rights of people with disabilities. The parliamentary report on the ratification emphasised that the Convention was a new legal instrument that clearly and explicitly outlined the obligations, mechanisms and minimum measures which Bulgaria must adopt to ensure the human rights of persons with disabilities.[79] The parliamentary discussion highlighted that numerous additional decisions would be required following ratification, such as obtaining financial resources and ensuring accessible environments. Two years later, parliament enacted the first comprehensive law – the Act on the Integration of People with Disabilities.[80] However, the implementation revealed that alignment with international and EU standards required further legislative reforms in Bulgaria, resulting in the concurrent enactment of the People with Disabilities Act[81] and the related Personal Assistance Act[82] at the end of 2018.

On 18 December 2008, Bulgaria signed the 2006 Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP to CRPD), but it remained unratified for over fifteen years, with the government failing to take the necessary measures for ratification. In the 2020 annual report on the activities of the monitoring board established under the People with Disabilities Act, the ombudsman expressed deep concern about the prolonged delay in ratification, which deprived

74 Transcript of the Plenary Session of the Seventh Grand National Assembly on 22 April 1992.
75 Prom. SG 53 of 11.06.1999, in force from 1 August 1999.
76 Decree No 207 of 23 October 1992 of the Council of Ministers on the establishment of the National Bureau for Territorial Asylum and Refugees (prom. SG 90 of 6.11.1992). The decree was repealed with the enactments of the Refugees Act.
77 Prom. SG 54 of 31.05.2002.
78 Decision No 967 of 30 December 2011 of the Council of Ministers.
79 Transcript of the Plenary Session of the Seventh Grand National Assembly on 26 January 2012.
80 Prom. SG 81 of 17.09.2004.
81 Prom. SG 105 of 18.12.2018, in force from 1 January 2019.
82 Prom. SG 105 of 18.12.2018.

affected individuals of the opportunity to lodge complaints with the Committee on the Rights of Persons with Disabilities. The government's Action Plan for Implementation of the Final Recommendations made to the Republic of Bulgaria by the Committee on the Rights of Persons with Disabilities (2021–2026) outlines the steps needed to expedite the ratification process of the 2006 OP to CRPD.

To date, Bulgaria has not ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families nor the optional protocols related to the ICESCR and CRC that provide access to communication procedures. Additionally, there has been no academic discourse in Bulgaria regarding the potential for the country to join these agreements. Bulgarian scholars have largely ignored the question of how individual communication procedures followed by UN bodies could enhance the implementation and protection of human rights. These procedures are well known for highlighting specific human rights violations, encouraging public involvement (especially of NGOs) and increasing state accountability. Despite this, contemporary Bulgarian international law studies rarely go beyond a basic overview of existing UN institutional structures and human rights monitoring mechanisms.[83] Discussions about the pros and cons of communication procedures or evaluations of their effectiveness are generally avoided, leading to a failure in advocating for their ratification. As a result, Bulgaria lags behind in ongoing academic efforts to strengthen UN treaty bodies, mechanisms and procedures.[84]

2.2.3. Contributions of practitioners in Bulgaria to strengthening the universal protection of human rights

Since Bulgarian scholars did not take the lead in clarifying the conceptual changes in the UN's approach to human rights after the Cold War, new ideas and tools could only be introduced through the efforts of practitioners from three groups.

First, practitioners in the executive branch, particularly the Ministry of Foreign Affairs, have maintained an ongoing dialogue with UN bodies and human rights monitoring mechanisms. They coordinate the preparation of periodic national reports for these mechanisms within the national institutional framework. The government is tasked with ensuring the implementation of the UN committees' recommendations that Bulgaria has agreed to. In March 2024, the Council of Ministers established a National Coordination Mechanism for Human Rights through a decree. This mechanism is expected to improve interaction between

83 Друмева, and Каменова [Drumeva and Kamenova], 2000, pp. 56–85; Хюфнер, Константинов and Ройтер [Hyufner, Konstantinov and Royter], 2001; Илиева [Ilieva], 2005; Белова-Ганева [Belova-Ganeva], 2013; Ковачева [Kovacheva], 2018, pp. 372–382; Видин [Vidin], 2020, pp. 217–237; Йочева [Yocheva], 2020; Мулешкова [Muleshkova], 2020.

84 Alston and Crawford, 2000; Alfredsson, Grimheden, Ramcharan and de Zayas, 2009; Verdirame, 2010; Keller and Ulfstein, 2012; Subedi, 2017; Oberleitner, 2018; Sarkin, 2020; Subedi, 2017.

the Bulgarian government and UN mechanisms, align Bulgarian legislation, policies and practices with universal and European human rights standards, develop specialised expertise on human rights issues, and maintain an open dialogue with the academic community and civil society.

Second, the judiciary has increasingly incorporated provisions from ratified UN human rights treaties into case law. It has become standard practice for court judgments to reference all relevant domestic and international norms when fundamental rights and freedoms are in dispute. This shift was primarily influenced by Article 5, paragraph 4 of the 1991 Constitution, which integrated ratified international conventions into the Bulgarian legal system. Courts have been expected to apply international norms ex officio,[85] without requiring these norms to be specifically cited by the parties involved or known to the individuals or entities to whom they apply. While comparative analysis between constitutional and international provisions is often absent, the fact that Bulgarian judges have begun to embrace the concept of universal human rights protection is undeniable progress. Some take this further by considering General Comments from UN treaty bodies, which clarify the content of human rights, identify potential violations and recommend compliance measures.

The Constitutional Court of the Republic of Bulgaria (CC) has recognised the importance of General Comments as soft law and has utilised some of their interpretative conclusions in its jurisprudence, as demonstrated in Decision No 10 of 23 July 2020 in case No 7/2020. During the COVID-19 pandemic, the President requested the CC to declare certain legal provisions unconstitutional, where the legislature had delegated its authority to the government to set time limits and restrict rights during emergency epidemic situations. In its decisions, the CC noted that Article 4 of the ICCPR allowed for derogations from certain rights in times of war or other emergencies. The CC further explained that key terms in international treaties were clarified in various soft law instruments, including the Human Rights Committee's General Comment No 29 on Article 4 of the ICCPR, the Syracuse Principles on the Limitation and Derogation of Provisions of the ICCPR, and the Paris Minimum Standards on Human Rights Norms in the State of Emergency. The CC emphasised that General Comment No 29 explicitly stated that not every public upheaval or catastrophe qualified as a public emergency that threatened the existence of the nation. Overall, the CC's recognition of General Comments as soft law raises awareness among judges, lawyers and the public about international human rights standards. Employing these interpretative tools to clarify and enhance domestic legal norms fosters more elaborate and well-informed judicial decision-making in human rights cases.

Third, human rights activists and NGOs have played a crucial role in sensitising lawyers and the public about international human rights standards. Since

85 Тодоров [Todorov], 2000, p. 319.

the mid-1990s, they have primarily pressured the government to reform policies and institutions to align Bulgarian legal practices with the imperatives of the universal protection of human rights. The vigorous advocacy efforts of the Bulgarian Helsinki Committee initiated inspections in institutions for children with mental disabilities in 2010, uncovering a disturbing number of deaths due to neglect, as well as cases of malnourishment, violence, physical restraint through binding and treatment with dangerous drugs. These revelations triggered a comprehensive reform aimed at the deinstitutionalisation of children.[86]

The NGOs in Bulgaria lack the resources to consistently participate in the Universal Periodic Review conducted by the United Nations Human Rights Council and the monitoring mechanisms of other UN treaty bodies. However, the Bulgarian Helsinki Committee managed to submit 'alternative reports' to supplement the official ones, such as the 2012 Alternative Report to the UN Committee of Economic, Social and Cultural Rights and the 2017 Alternative Report to the UN Committee on the Rights of Persons with Disabilities. The Bulgarian Helsinki Committee's annual reports on human rights in Bulgaria, published in English since 1994, are also a valuable source of information on key human rights issues in the country.

The government appoints prominent human rights activists from Bulgaria to UN bodies due to their international recognition. One such nominee is Velina Todorova, an associate professor specialising in civil and family law, and an author of strategies and bills aimed at reforming policies concerning the rights of children and persons with disabilities. She has served as a member of the UN Committee on the Rights of the Child (CRC) for two consecutive terms, from 2017 to 2021 and from 2021 to 2025.

In 2018, Genoveva Tisheva, longtime managing director of the Bulgarian Gender Research Foundation and director of the Women's Human Rights Training Institute, was nominated as the Bulgarian candidate for the Committee on the Elimination of Discrimination against Women (CEDAW). She was elected to the CEDAW for the term starting in 2019 and was re-elected for a second term in 2022.

Bulgaria completed its inaugural term as a member of the Human Rights Council from 2019 to 2021 and has been re-elected for the term of 2024–2026.

UN human rights mechanisms are often underestimated and even neglected in Bulgaria. These instruments are not designed to offer direct remedies to victims of human rights violations; rather, they focus primarily on monitoring state compliance. The interactions of UN bodies predominantly occur with governments rather than individuals, causing these mechanisms to be perceived more as political tools than judicial ones. Furthermore, the UN human rights machinery encounters significant challenges in today's multi-polar world, and

86 Ivanova and Bogdanov, 2013.

its effectiveness has long been considered problematic.[87] This situation partly explains the scarcity of theoretical research on the impact of universal human rights protection in Bulgaria.

3. The impact of UN mechanisms on Bulgaria's domestic policies

■ *3.1. Human Rights Council special procedures for Bulgaria since 1998*

Bulgaria has been the focus of special UN mechanisms on several occasions. In November 1998, the Special Rapporteur on extreme poverty visited Bulgaria as part of a 'case study' that also included Portugal and Yemen.[88] The ensuing report highlighted that vulnerable groups such as disabled individuals, street children, Roma children and very poor women[89] received insufficient attention in the country. Recommendations were put forth to enhance the involvement of local communities in identifying poverty and delivering social welfare. The Special Rapporteur on extreme poverty also pointed out the need for monitoring the growing impact of organised crime and corruption, which often exploit disadvantaged populations.

After visiting Bulgaria in May 2011, the Special Rapporteur on the independence of judges and lawyers concluded that achieving true judicial independence required a clearer separation of roles and functions of the prosecution and investigative services from that of the courts, along with distinct career paths for judges and prosecutors.[90] She also urged the Bulgarian government to identify methods to eliminate undue political and external influence on the Supreme Judicial Council. Specifically, she stressed the need to reform the Council's election process to enhance transparency and integrity. The Special Rapporteur presented a comprehensive list of recommendations aimed at advancing judicial reform in Bulgaria to establish an independent, impartial and transparent justice system that upholds human rights for all.

The Special Rapporteur addressed sensitive topics in greater detail and with less diplomatic language compared with the EU Cooperation and Verification Mechanism reports on similar issues at the time.[91] For instance, she underscored the importance of strengthening criminal investigations and establishing a coordinated mechanism for cooperation among police, investigative bodies and

87 Subedi, 2017, pp. 2, 28.

88 UN doc. E/CN.4/1999/48, 29 January 1999. Bulgaria was part of a case study, alongside Portugal and Yemen.

89 See Илиева [Ilieva], 2005, pp. 175–176. Irena Ilieva discusses the concept of 'vulnerable groups' in the context of safeguarding women's human rights within UN mechanisms.

90 UN doc. A/HRC/20/19/Add. 2, 21 May 2012, 94, 97 (b).

91 The Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania was established following their accession to the European Union in 2007 and continued until September 2023.

prosecution offices. Additionally, she stressed the necessity of restricting wiretapping and ensuring that the evidence obtained through it always supplemented other evidence. She pointed out that it was essential to ensure that courts were properly resourced and equipped, including facilities for persons with disabilities, and that adequate workspace was provided to prevent interference in judicial functions. The Special Rapporteur recommended measures to abolish secondment arrangements as a substitute for the promotion of judges, and proposed actions to evaluate the performance, integrity, transparency and accountability of the judicial system, along with its human rights aspects.

Despite two successive constitutional amendments and numerous legislative changes aimed at reforming the judiciary, most of the issues identified by the Special Rapporteur on the independence of judges and lawyers persist today. Bulgaria's primary focus has been on major structural changes through constitutional reform. In 2015, the Supreme Judicial Council was divided into two colleges – one for judges and the other for prosecutors and investigators. By the end of 2023, two constitutional bodies were established: the Supreme Judicial Council and the Supreme Prosecutorial Council. However, despite these extensive reform efforts, the anticipated improvements have not yet been realised. Issues such as undue external influence on the judiciary appear to have worsened rather than resolved.

After a mission to Bulgaria in July 2011, the UN independent expert on minority issues reported to the Human Rights Council[92] that despite long-standing policies for Roma integration, this minority group continued to face 'discrimination and exclusion in all walks of life', perpetuating ongoing marginalisation and persistent poverty. In critical areas such as education, employment, healthcare and housing, the Roma occupy the lowest socio-economic status. The Bulgarian Government's efforts have been severely rebuked as inadequate and superficial, relying solely on an inconsistent, pilot project-based approach that fails to achieve the transformative tipping point needed to address these issues.

In response to strong criticism from a UN independent expert and pressure from the EU, the Bulgarian parliament adopted the National Strategy of the Republic of Bulgaria for Roma Integration (2012–2020). Although the strategy was praised for setting specific targets in critical areas, it lacked an effective monitoring and evaluation mechanism,[93] resulting in insufficient tangible results. To address these shortcomings, the Council of Ministers adopted the subsequent National Strategy of the Republic of Bulgaria for the Equality, Inclusion and Participation of the Roma (2021–2030). This new strategy aims to enhance national efforts through rigorous monitoring and more effective implementation, supported by adequate funding.

92 UN doc. A/HRC/19/56/Add. 2, 3 January 2012.
93 Kolev et al., 2021.

In 2019, Bulgaria hosted two special mechanisms: the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material in April,[94] and the Special Rapporteur on violence against women, its causes and consequences in September.[95] These special procedures aligned with the efforts of other universal mechanisms under the United Nations, such as the Universal Periodic Review, and the observations and recommendations of the CRC and the CEDAW. These mechanisms often reference one another and work together to pressure Bulgaria to reform its existing system, which fails to protect children and women from human rights abuses.

■ *3.2. Key conclusions and recommendations concerning Bulgaria in the Universal Periodic Review*

The Universal Periodic Review (UPR) was established in 2006 by the UN Human Rights Council (HRC) as a state-led, peer-review mechanism designed to enhance human rights globally through non-confrontational means.[96] The UPR process consists of several distinct phases: (I) preparation and compilation of reports for review; (II) state review by the HRC Working Group; (III) issuance of a draft outcome report; (IV) adoption of the final outcome report; and (V) the implementation period.[97] All UN member states undergo this review every four and a half years. Since its inception, the UPR has completed three full cycles, with Bulgaria's human rights records reviewed in 2010, 2015 and 2020.

In the second cycle, Bulgaria fully or partially accepted 174 out of 182 recommendations, and in the third cycle, it did the same for 193 out of 233.[98] In 2015, Bulgaria grouped certain recommendations under 'Not accepted/Noted recommendations'[99] if they seemed non-applicable or irrelevant (e.g. Timor-Leste urged Bulgaria to consider ratifying the CAT, which it had already ratified in 1986) or were influenced by historical and cultural controversies in the Balkans (e.g. Turkey requested the adoption of legislation to remove Bulgarian-Slavic names forcibly given to Turkish and Muslim minorities under the communist regime during the assimilation campaign; and executive decisions on the restitution of properties confiscated from the Muslim community, including the Saint Alexander Nevsky Cathedral).

94 UN doc. A/HRC/43/40/Add. 1, 14 February 2020.
95 UN doc. A/HRC/44/52/Add. 1, 19 May 2020.
96 Etone, Nazir and Storey, 2024, p. 1.
97 Etone, Nazir and Storey, 2024, p. 5.
98 See Infographic [Online]. Available at: https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session36/BG/infographic-BULGARIA.pdf (Accessed: 9 July 2024).
99 See Addendum 1 to Outcome of the Review, Second Cycle, pp. 5–6 [Online]. Available at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/30/10/Add.1&Lang=E (Accessed: 13 July 2024).

In 2020, recommendations that were not fully or partially accepted were classified as 'Recommendations noted'.[100] This category included those deemed unfeasible to implement for legal or constitutional reasons, those whose content was not supported and those outright rejected. During this period, Bulgaria's views and responses were influenced by anti-gender ideology, as reflected in the Constitutional Court's decision declaring the Istanbul Convention unconstitutional. Bulgaria rejected all suggestions to strengthen the protection of migrants' human rights. Additionally, Bulgaria stated that there were no immediate plans to introduce new legislation on civil partnerships to protect the rights of LGBT individuals.

During the first two cycles of the UPR for Bulgaria, recommendations mainly emphasised the ratification of international human rights instruments and the strengthening of institutions like the ombudsman and the Commission for Protection against Discrimination. Bulgaria largely addressed these recommendations through legislative reforms of the relevant laws. Following amendments to Bulgarian legislation in 2018,[101] the national ombudsman achieved 'A' status, fully complying with the Paris Principles. However, in the third cycle, attention shifted to Bulgaria's failure to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

The outcome of the UPR Bulgaria's first cycle[102] highlighted the necessity of reforming the judicial system and implementing consistent measures to combat corruption, organised crime and conflicts of interest. In response, Bulgarian authorities introduced numerous new pieces of legislation, institutions and policies.[103] The fight against corruption and organised crime advanced through various institutional and legislative reforms. In 2011, the Commission for the Prevention and Ascertainment of Conflict of Interest was established under existing law, followed by the adoption of the Act on Forfeiture of Unlawfully Acquired Assets in Favour of the State in 2012, which created a corresponding commission. These entities were later merged into a unified institutional framework.

100 See Addendum 1 to Outcome of the Review, Third Cycle, pp. 4–5 [Online]. Available at: https://undocs.org/en/A/HRC/46/13/Add.1 (Accessed: 13 July 2024).

101 In 2018, the Ombudsman Act was reformed to highlight the ombudsman's role as a human rights advocate rather than merely a mediator between citizens and public administration (Article 2). A new requirement was introduced for the ombudsman's electability, mandating experience in human rights protection (Article 9). Additionally, the ombudsman's powers were strengthened to enable monitoring and promotion of the effective implementation of ratified international human rights treaties (Article 19, paragraph 1, point 12).

102 See Report of the Working Group, First Cycle [Online]. Available at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/16/9&Lang=E (Accessed: 9 July 2024).

103 See National Report for the second cycle, pp. 5–7 [Online]. Available at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WG.6/22/BGR/1&Lang=E (Accessed: 9 July 2024).

The Legal Assistance Act was also amended to broaden the scope of socially disadvantaged groups with effective access to justice. With financial support from the Norwegian Financial Mechanism, the National Legal Aid Bureau launched a 'Legal Aid Hotline' and Regional Legal Aid Centres in 2013 to provide free legal advice. By 2017, these improvements had been legally institutionalised.

The outcomes of all three completed cycles of the Universal Periodic Review indicated that Bulgaria was expected to intensify efforts to combat xenophobia, racism and hate-based acts, including hate speech and hate crimes. Suggested measures included educational programmes and criminal justice reforms to ensure the effective investigation and prosecution of such acts.

Recommendations from the second[104] and third[105] cycles were more specific, extending the focus beyond ethnic minorities, such as the Roma, to include LGBT individuals, refugees and asylum-seekers. These rounds highlighted the need to address the rights of LGBT individuals and called for legislative amendments to broaden the definition of hate crimes and speech to encompass sexual orientation. Consequently, such amendments were adopted in the Bulgarian Criminal Code in August 2023.

It should be noted that between the second and third UPR cycles, some recommendations regarding the prevention of ill-treatment of prisoners and detainees by the police were likely omitted due to the active work and effective efforts of the ombudsman as the National Preventive Mechanism. However, the focus shifted to the conditions in the reception centres for asylum-seekers and their compliance with prohibitions of torture and cruel, inhuman or degrading treatment. This includes ensuring the provision of adequate food and essential non-food items, strengthening social services for all migrant children, particularly their right to education, and identifying vulnerable asylum-seekers to provide them with safe accommodation and appropriate support.

Children's rights have been a central topic in all three cycles of UPR Bulgaria. The UN bodies commended Bulgaria for its efforts in the deinstitutionalisation of children from 2011 to 2020, which aimed to replace existing shelters with alternative housing and care better suited to the needs of orphans and individuals with mental disabilities. Bulgaria was also urged to continue improving the quality of children's education, especially in rural areas, and to take steps toward a more sustainable reduction in school dropouts.

In 2011, in response to recommendations to reform the juvenile justice system, the government adopted a Concept for State Policy in the Field of Juvenile

104 See Matrices of Recommendations, Outcome of the Review, Second Cycle [Online]. Available at: https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session22/BG/UPR22_Bulgaria_recommendations.doc (Accessed: 9 July 2024).

105 See Matrix of Recommendations [Online]. Available at: https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session36/BG/UPR36_Bulgaria_Thematic_List_of_Recommendations.docx (Accessed: 9 July 2024).

Justice. This envisioned specialisation within the judicial system without creating specialised courts. However, recommendations in this regard persist in the outcomes of subsequent UPR cycles, indicating that this area is not a priority for Bulgaria. Suggestions to incorporate restorative justice principles into the juvenile justice system have not yet been implemented, and punitive measures continue to be the main response to juvenile crimes.

During the second cycle, a proposal urged Bulgaria to establish a children's ombudsman to safeguard, protect and promote the rights of the child. However, such institutional changes were not implemented. Instead, legislative amendments were introduced to expand the competence of the national ombudsman, with a specific focus on children's rights.

A recommendation from the second and third cycles of the UPR stated that Bulgaria should eliminate all forms of child marriage. The country explained that exceptions to the minimum marriage age were granted by the court to persons aged 16 and over only in extraordinary and strictly defined cases, justified by strong reasons. The authorities stated that they had no immediate plans to amend the relevant provisions of the Family Code. However, at the end of 2023, the Bulgarian parliament amended the Family Code to remove exceptions allowing marriage before the age of 18, thereby complying with the recommendation.

Protection of children and women from domestic violence and human trafficking remains a priority within the Universal Periodic Review. In the third round of UPR for Bulgaria, many states called attention to the importance of reconsidering the decision not to ratify the Istanbul Convention to strengthen legislation against gender-based violence. However, ratification was halted after the Constitutional Court ruled that the Istanbul Convention was incompatible with the Constitution, citing its terms 'gender' and 'gender identity' as ambiguous and unacceptable.[106]

Bulgaria's national reports to the UPR reveal that over the years, a series of national strategies and action plans for promoting equality between women and men have been adopted and implemented. These initiatives include measures to improve the work-life balance for parents, provide vocational training for unemployed women, encourage entrepreneurial activities among women, particularly those with disabilities, support raising children with disabilities, and enhance the legal framework against violence towards women.

Bulgaria has made significant efforts to demonstrate strong engagement in preventing and combating domestic violence. In February 2019, legislative amendments to the Criminal Code were adopted, categorising offences committed 'under conditions of domestic violence' as special cases warranting more severe penalties. In August 2023, the Protection against Domestic Violence Act underwent

106 Decision No 13, issued on 27 July 2018 by the Constitutional Court of the Republic of Bulgaria in Case No. 3/2018.

a major reform, addressing most of its procedural deficiencies, making access to justice easier, improving the enforcement of protection orders, etc. The new law has expanded the legal definition of domestic violence to include not only cases between individuals related by blood, marriage or de facto cohabitation but also those in an 'intimate relationship'. Initially, the new legal term was expected to cover most of the protected cases under the Istanbul Convention, including relevant relationships of LGBT people. However, during the parliamentary debates, the concept of an intimate relationship was narrowed down only to heterosexual relationships (regardless of whether the partners share the same household) and to ones lasting at least 60 days. So far, the reforms have not addressed the existing structural discrimination. Despite the presence of legislative frameworks, internal guidelines and training, the police and prosecutors fail to follow the appropriate procedures. Consequently, the burden of protection against domestic violence in Bulgaria still falls largely on NGOs, which provide shelters, legal aid and psychological support on a project basis.

One of the most visible areas where the UPR has affected human rights in Bulgaria is the protection of persons with disabilities. Following the recommendations after the first cycle, parliament ratified the Convention on the Rights of Persons with Disabilities (CRPD) and amended the existing legislative framework to strengthen their national protection. Moreover, between 2011 and 2015, the government allocated resources and implemented several policies to reform the care of people with disabilities, including the introduction of personal assistants funded by national programmes. A Long-term Strategy for the Employment of Persons with Disabilities (2011–2020) was developed, and the governmental agency supported projects in three areas: first, the startup of enterprises by persons with disabilities; second, ensuring access, adaptation and equipment for their workplaces; and third, financing targeted projects for specialised enterprises and cooperatives. Bulgaria also took steps to increase the number and variety of community-based social services.

In 2014, the government adopted a National Strategy for Long-Term Care aimed at creating the conditions for an independent and dignified life for the elderly and persons with disabilities. This strategy initiated the process of deinstitutionalising their care, with a deadline set for closing all existing homes for adults with disabilities by 1 January 2035.

Following the second cycle of UPR recommendations, Bulgaria sustained and further deepened the rights-oriented approach to issues affecting persons with disabilities. Several new legal acts were adopted to improve their quality of life. Notably, the new Persons with Disabilities Act, effective from 1 January 2019, was introduced to provide a comprehensive legal framework aimed at promoting, protecting and safeguarding their human dignity and other rights, while also supporting their social inclusion. A new Monitoring Council was set up, comprising representatives from all relevant institutions, NGOs and the academic community,

to coordinate national efforts. Numerous regulations and methodologies have also been implemented to streamline procedures and practices in various areas, such as conducting individual assessments and providing auxiliary devices for persons with disabilities. Specific focus was given to inclusive education for children with disabilities within the Bulgarian general school system.

One area where Bulgaria falls behind in complying with the UPR recommendations[107] is the revision of the laws concerning the legal capacity of individuals with mental disabilities to comply with Article 12 of the CRPD. The National Strategy for Persons with Disabilities 2021–2030[108] acknowledges the need for legal reform to put in place measures supporting decision-making by individuals with mental disabilities rather than appointing guardians to decide for them. Compliance with Article 12 is essential for exercising other rights, such as political participation, access to justice and family rights. This reform, however, requires a radical shift from the persisting law and practice of 'incapacitation' where individuals are stripped of their legal capacity, excluded from social and legal activities and have a guardian appointed to make all decisions on their behalf. The new approach is expected to introduce concepts such as supported decision-making and protective measures, ensuring that individuals with mental disabilities can exercise their rights independently, have their will and personal choice respected and are provided with protection in high-risk situations.

4. Cases against Bulgaria before the monitoring bodies of the UN treaties

Since Bulgaria has not ratified the optional protocols on communication procedures under the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, only a small number of communications have been submitted against Bulgaria to UN treaty bodies, specifically the Human Rights Committee and CEDAW.

■ *4.1. Naidenova et al. vs Bulgaria, Communication No 2073/2011, Human Rights Committee*

The case of *Naidenova et al. vs Bulgaria*[109] involved an impoverished Roma community that had resided for over 70 years in an informal settlement on municipal land in Sofia. They faced an eviction order because their buildings were erected

107 See Matrices of Recommendations, Outcome of the Review, Second Cycle, pp. 123, 143.

108 NSHU 2021–2030 [Online]. Available at: https://www.mlsp.government.bg/uploads/41/test/nshu-2021-2030-translated.pdf (Accessed: 9 July 2024).

109 *Naidenova et al. vs Bulgaria*, Communication No 2073/2011, UN doc. CCPR/C/106/D/2073/2011 (2012).

without proper permits. The public authorities recognised their housing by providing individual mail services, police registration of their addresses and publicly regulated services such as electricity.

In July 2006, the city mayor requested the authors of the communication to voluntarily leave their housing, citing that it had been constructed without proper permits on municipal land. When they failed to comply, the mayor issued an eviction order, which was appealed in all court instances. During the court proceedings, an injunction was granted to prevent any eviction pending the examination of the appeals. However, following the final court judgment in October 2009, which upheld the eviction order as lawful, it was set to be imminently enforced. In March 2011, the eviction order was scheduled for execution, with the protocol handed to the community on 23 June 2011.

By the time the communication was submitted to the Human Rights Committee, ten households in the Roma community were facing imminent forced eviction and demolition of their dwellings. None of them had been offered alternative housing and no meaningful consultation had taken place. In this instance, the Human Rights Committee issued its initial request for interim measures to halt forced evictions,[110] asserting that such actions would constitute unlawful interference with the right to home (Article 17 of the ICCPR).

Despite this, the Bulgarian authorities allowed the community's water supply to be cut off in May 2012. In response, the Human Rights Committee reminded the state that the interim measures were still active and requested the reinstatement of water service for the community. It also noted that cutting off the water supply could be considered an indirect means of achieving eviction.[111]

In November 2012, the Committee issued a permanent injunction to prevent the eviction until the authorities and the community agreed on satisfactory alternative housing. The key point in this decision was that an 'effective remedy' had to, at least, involve refraining from evicting the community until satisfactory replacement housing was immediately available.[112] It was emphasised that the state had a general obligation to prevent similar violations in the future. Hence, Bulgaria is required to guarantee the immediate provision of adequate alternative housing before any future evictions of communities from their illegal residences. The Human Rights Committee's responsiveness to the critical developments, in this case, has been praised in academic analyses as 'lessons of good practices'.[113]

110 Langford et al., 2016, p. 311.
111 Ibid.
112 *Naidenova et al. vs Bulgaria*, Communication No 2073/2011, UN doc. CCPR/C/106/D/2073/2011 (2012), para. 16.
113 Langford et al., 2016, p. 311.

■ *4.2. VK vs Bulgaria, Communication No 20/2008, CEDAW*

In the case of *VK vs Bulgaria,*[114] the author of the communication alleged that she experienced systematic domestic violence, including economic and emotional control, and was isolated from social contacts by her husband. Before and especially after the family moved to Poland in 2006 for her husband's work, she was not allowed to work despite her education and qualifications. Upon expressing her intention to divorce, her husband threatened to deny her custody of their children.

On 31 December 2006, while on holiday in Sofia, the husband became aggressive and violent during an argument, insulting and hitting her, and VK's parents intervened by calling the police. In the following months, the physical abuse escalated, including incidents of attempted strangulation and locking the children in a room. In April and May 2007, VK filed an application with the Warsaw District Court for protective measures and financial support for basic needs, but these proceedings remained unresolved. She decided to leave her husband and seek refuge in a shelter in Warsaw for herself and her children. On 27 July 2007, she returned to the family apartment to collect her belongings, but her husband arrived early and locked the children inside. The police intervened, allowing VK to take her daughter, but her son remained with her husband.

VK and her daughter stayed at a shelter in Warsaw until 23 September 2007. During this time, her husband visited twice, becoming aggressive and violent on the second visit, prompting the staff to call the police. Meanwhile, she was denied any contact with her son. On 21 September 2007, she discovered her son's location and went to see him at the kindergarten, but the director refused her access, therefore she called the police. Her husband arrived and behaved violently, resulting in the police restraining him.

Subsequently, VK took her son and, along with her daughter, left Poland for Bulgaria to seek protection and support from her family. Initially, she and her children stayed with friends in Bulgaria, as no shelter could accommodate them immediately. The CEDAW found that the lack of shelters for VK and her children upon their return to Bulgaria in September 2007 constituted a violation of Bulgaria's obligation to provide immediate protection for women from violence.

On 27 September 2007, VK filed an application with Bulgarian courts for an immediate protection order against her husband and temporary custody of their children, which was granted the same day. However, after the conclusion of the court proceedings, VK's request for a permanent protection order was denied because no act of domestic violence had occurred during the relevant one-month period before the application, and there was no imminent threat to her life or health.

114 *VK vs Bulgaria*, Communication No 20/2008, UN doc. CEDAW/C/49/D/20/2008 (2011).

The CEDAW concluded that the Bulgarian courts' interpretation of the one-month application period for protection orders lacked gender sensitivity and reinforced the notion that domestic violence is a private matter. In addition, the courts' narrow focus on physical violence and immediate threats, along with stereotypical views of women's roles, led to the denial of a permanent protection order for VK. Furthermore, the courts' interpretation of procedural requirements excluded consideration of past incidents of violence and imposed an excessively high standard of proof, contrary to international human rights and anti-discrimination standards.

The Committee acknowledged that VK suffered moral and financial harm, fear and anguish due to the absence of state protection and the gender-based stereotypes inherent in the court decisions, albeit not enduring physical violence after her protection order was denied in April 2008. Consequently, the Committee recommended that Bulgaria provide VK with adequate financial compensation commensurate with the severity of the rights violations she experienced.

The case *VK vs Bulgaria* highlighted significant deficiencies in the country's response to domestic violence, emphasising the urgent need for comprehensive reforms to protect victims. The CEDAW made several recommendations to Bulgaria, including amending legislation to remove the one-month restriction for submitting protection order requests. The Committee also stressed the need to reduce administrative and legal burdens on applicants and to ease the burden of proof for victims. Bulgaria was urged to ensure sufficient state-funded shelters and support NGOs providing refuge, legal aid and assistance to domestic violence victims. Mandatory training was recommended for judges, lawyers and law enforcement officials on the law, definitions of domestic violence, gender stereotypes and relevant international protocols.

■ *4.3. Isatou Jallow vs Bulgaria, Communication No 32/2011, CEDAW*

In the case of *Isatou Jallow vs Bulgaria,*[115] the Committee once again addressed significant failures by the Bulgarian authorities to protect victims of domestic violence.

In February 2007, Jallow, a Gambian citizen, married a Bulgarian national, gave birth to a child and moved to Bulgaria. There, she and her minor daughter endured severe physical, psychological and sexual abuse. Her husband tried to force her into pornographic films and photos, withheld her documents and did not allow her to leave the house without his permission or seek employment. He repeatedly asserted that her stay in Bulgaria depended on him and threatened to have her imprisoned, confined to a mental institution or deported to Gambia

115 *Isatou Jallow vs Bulgaria*, Communication No 32/2011, UN doc. CEDAW/C/52/D/32/2011 (2012).

without her daughter if she resisted. He also began abusing their daughter by masturbating in front of her and watching pornographic films in her presence.

Social workers visited Jallow's home, saw pornographic pictures and called the police who responded immediately, seized the photographs and notified the prosecutor's office. Jallow was advised to take her daughter and leave her husband, but no further guidance or protection was offered by the social workers or the police. She and her daughter sought refuge in two different shelters for a few days, but her husband located them and convinced her to return home. In March 2009, the prosecutor's office declined to continue the investigation, citing insufficient evidence, as the photos were considered part of the husband's private collection and consensually taken. Jallow was never interviewed during the investigation.

In the following months, the police were repeatedly called to stop the husband's domestic violence but they only issued verbal warnings. The husband then filed applications for protection, claiming that he and their daughter were victims of Jallow's violence, requesting her admission to a mental hospital. Initially, these applications were rejected, but after adding new allegations and testimonies, the court issued an emergency protection order on 29 July 2009. This order removed Jallow from the family home and placed their daughter under her father's temporary custody. When the police executed the order, they did not provide Jallow with a translation or appeal option. She later sought help from various authorities but was repeatedly denied information and assistance.

In the court hearings from September to October 2009, Jallow denied the allegations and asserted that she and her daughter were victims of her husband's abuse. However, the official social report omitted references to domestic violence and did not assess her parental capacity. In December 2009, the court dismissed the husband's application for a permanent protection order due to insufficient evidence, yet the emergency order remained in effect as the husband appealed. In late 2009, he initiated divorce proceedings seeking custody of their daughter. By March 2010, Jallow felt forced to agree to disadvantageous terms for a divorce by mutual consent to obtain custody of her daughter.

The CEDAW noted that Bulgarian authorities failed to act with due diligence in Jallow's case, neglecting her vulnerable position as an illiterate migrant woman with a young daughter, lacking local relatives or knowledge of Bulgarian. The Committee found Bulgaria in violation of multiple CEDAW Convention articles and recommended appropriate monetary compensation for the victims of domestic violence. It urged effective access to protection services and justice, including document translation for migrant women. Bulgaria was advised to ensure that incidents of violence are considered in child custody and visitation decisions, prioritising the rights and safety of victims and children. Strong emphasis was put on the need for regular, gender-sensitive training on the Convention, its Optional Protocol and General Recommendations for judges, prosecutors, the State Agency for Child Protection staff and law enforcement personnel focusing on

cross-sectoral discrimination to ensure that complaints of gender-based violence are adequately addressed.

■ *4.4. V.P.P. vs Bulgaria, Communication No 31/2011, CEDAW*

The case of *V.P.P. vs Bulgaria*[116] involved a seven-year-old girl who was sexually assaulted by an adult neighbour in 2004. This attack resulted in severe psychological disorders, lasting trauma and developmental issues, necessitating her attendance in a special needs school.

It took two years for the prosecutor's office to indict the perpetrator for 'sexual molestation', which at the time was not considered a serious offence. The court approved a plea bargain that resulted in a three-year suspended sentence. Due to this plea bargain, the victim was denied the opportunity to claim moral damages in the criminal proceedings.

Subsequently, the victim's mother filed a civil lawsuit seeking compensation for the trauma inflicted on her daughter and was awarded 30,000 leva (approximately 15,000 euros) by the court. However, the execution of this judgment was problematic, as efforts to recover the awarded compensation from the perpetrator's assets largely failed. The victim's family incurred significant costs in attempting to enforce the judgment, yet only a small portion of the compensation has been collected.

Furthermore, despite the conviction of the child molester, no measures were taken to ensure the girl's ongoing safety. The perpetrator continues to live nearby, causing the victim constant fear and distress. The author of the communication to CEDAW highlights the inadequacy of Bulgarian legislation in protecting victims of sexual crimes post-trial and ensuring the enforcement of court judgments for compensation.

The Committee concluded that Bulgaria had failed to adopt adequate criminal law provisions to effectively punish rape and sexual violence. The investigation and prosecution of perpetrators were neither diligent nor effective. The Committee also noted that Bulgaria lacked mechanisms to protect victims of sexual violence from re-victimisation, such as restriction orders. Furthermore, the state had not provided a reliable system for compensating victims of sexual violence for moral damages or for offering proper rehabilitation services and counselling.

The CEDAW recommended that Bulgaria provide reparations to the victim, commensurate with the gravity of the violations of her rights under the Convention. Specific legislative amendments were mentioned. First, criminal legislation needs to ensure that all sexual violence against women and girls, especially rape, is defined in line with international standards, is effectively investigated, and perpetrators are prosecuted and sentenced in proportion to the gravity of their crimes. Second, effective mechanisms to prevent re-victimisation, including

116 *V.P.P. vs Bulgaria*, Communication No 31/2011, UN doc. CEDAW/C/53/D/31/2011 (2012).

protection and restriction orders against perpetrators, are expected to be implemented. Additionally, the Committee recommended amending the law to ensure that legal aid is provided for executing judgments that award compensation to victims of sexual violence. Bulgaria was urged to enact and apply policies, including healthcare protocols and hospital procedures, to adequately address sexual violence against women and girls.

5. Conclusion

The analysis underscores that the universal protection of human rights offered by UN treaty bodies and mechanisms should not be underestimated. Their impact on Bulgarian national legislation and policies is unequivocal and undeniable. These mechanisms establish and uphold global standards for human rights, providing Bulgaria with a benchmark to assess its progress and identify areas for improvement. They serve as a vital platform for state and civil society stakeholders to report on human rights issues and to receive feedback and guidance for enhancement. They also foster transparency and accountability. Regardless of whether UN mechanisms evolve towards judicialisation, they will continue to serve as invaluable sources of moral authority in human rights matters. They play a crucial role in raising awareness and mobilising both international and local actors to advocate for change.

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Universal Protection of Human Rights in the Czech Republic: Overview, Architecture of Implementation and Main Challenges

ABSTRACT: *The chapter examines the human rights framework in the Czech Republic, focusing on its institutional architecture and the critical aspects of the implementation of the UN human rights treaty system. Since its establishment as an independent state in 1993, the Czech Republic has built a legal and institutional framework aligned with international human rights standards. This focus has positioned the country as an active participant within United Nations human rights frameworks, with membership in the Human Rights Council at multiple intervals. The country has ratified key international human rights treaties inherited from Czechoslovakia, such as the ICCPR, ICESCR, and CAT, while implementing domestic legislative changes to uphold these international obligations. Notable reforms include measures for inclusive education following criticism from the UN CRC and CERD Committees, and the passing of the 2021 law providing compensation for victims of forced sterilisation, addressing the long-standing human rights violations against Romani women. However, the UN treaty bodies have persistently highlighted flaws, such as the absence of a comprehensive National Human Rights Institution and the lack of the explicit prohibition of corporal punishment in all areas. The Human Rights Committee and other bodies have criticised the failure to implement treaty recommendations fully, especially concerning the definition of torture in national law and the persistent discrimination, notably in property restitution and the educational system for Romani children. Recent legislative initiatives, such as amendments to the Civil Code to explicitly ban corporal punishment and enhance child protection, reflect ongoing efforts to align national law with international human rights standards. The Constitutional Court and the Ombudsperson play further critical roles in human rights oversight, although the latter's transformation into a fully accredited NHRI remains debated. Despite these advancements, challenges persist, requiring further legislative and systemic changes to fully integrate human rights principles into Czech law and practice.*

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1. Introduction

Since the dissolution of Czechoslovakia in 1993, the Czech Republic has embraced democratic values, positioning itself as a significant player in the international human rights protection system. According to the Ministry of Foreign Affairs, the state recognises the active promotion of democracy, the protection and development of human rights, and the rule of law as cornerstones of Czech foreign policy. The Czech Republic has promoted and continues to promote these principles in this international arena, mirroring ambitions and active participation in UN structures, mainly the Human Rights Council.[1] The Czech Republic was a member of the UN Human Rights Council during the period of 2006-2007, 2011-2014, 2019-2021 and most recently 2022-2023. Moreover, the Czech Republic has its candidacy to the Council for the term 2025-2027.

The country's commitment to upholding human rights is rooted in its post-communist transition, where it sought to align with global governance norms, the rule of law, and fundamental freedoms. The Czech Republic's integration into the international human rights framework began with its accession to the United Nations on 19 January 1993, soon after its independence.

Over the years, the Czech Republic has ratified several major international human rights treaties foundational to the universal protection of human rights. These include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both already ratified by Czechoslovakia and accessed by the Czech Republic in 1993. The country has also committed to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture (CAT), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD), among others. Most recently, in 2021, the Czech Republic ratified the Optional Protocol to the CRPD, allowing the UN CRPD Committee to examine individual communications. However, the Czech Republic has not yet ratified the Optional Protocol to the ICESCR of 2008, allowing the receipt and processing of individual complaint procedures for the Czech Republic concerning violations of the ICESCR.

1 For more information on the official policy see Czech Ministry of Foreign Affairs: Czechia in the UN Human Rights Council [Online]. Available at: https://mzv.gov.cz/jnp/en/foreign_relations/human_rights/human_rights_council/index.html (Accessed: 10 July 2024).

2. The historical development of human rights in the country under study: a contextual introduction

The constitutional order in the Czech Republic mirrors the pivotal role of human rights protection, which can be understood as a legacy of the country's struggle in the communist era and of the dissident movement that had emerged in 1977 around the Charter 77 declaration.[2] Indeed, as Samuel Moyn noted, the message of the Charter 77 was 'very powerful' because of its emphasis on international human rights law, and precisely two UN Covenants that had been ratified by Czechoslovakia in 1975 and became legally binding in January 1977.[3] Article 112 of the Czech Constitution, adopted in December 1992, provides that the Charter of Fundamental Rights and Basic Freedoms of 1991 (hereinafter 'the Charter') is an essential component of the Czech constitutional order. The rights and freedoms are characterised as 'inherent, inalienable, non-prescriptible, and irrepealable.' The Charter is structured into chapters that address various categories, including civil rights, political rights, the rights of national and ethnic minorities, economic, social, and cultural rights, as well as judicial and legal protections. Notably, economic, social, and cultural rights can generally only be exercised within the scope defined by the laws that implement the Charter's provisions.

Adopting the Charter reflects the unsatisfactory guarantee of the protection of human rights in Czechoslovakia, as provided in the Constitution adopted in 1960. At the beginning of 1990 and after the regime's fall in the November 'Velvet' revolution of 1989, there was a question of adopting a new human rights document. These discussions fell into a feverish period when numerous expert teams (including foreign experts) began to work on drafting the new Constitution for Czechoslovakia. However, due to the political situation and the risk of dissolution, it could not have succeeded.[4] Thus, in this period, the most successful feat, at best, was, the adoption of the Charter in 1991. Jan Filip asserts that the Charter is 'not an original document,' much like the U.S. Constitution and its Bill of Rights. Originality was neither the aim of its drafters nor that of the Members of the Parliament who approved it.[5] This intent is reflected in the Charter's preamble, which states,

> drawing on the universally shared values of humanity and the democratic and self-governing traditions of our peoples… and expressing the will that the Republic of Czechoslovakia should rank worthily among the States that honor these values, the Federal Assembly

2 See, in more detail, Bolton, 2012.
3 Moyn, 2010, p. 163.
4 Kühn, 2022, p. 34. See also Stein, 1999.
5 Filip, 2010, p. 315.

> has resolved on the present Charter of Fundamental Rights and Freedoms.[6]

Remarkably, when it was adopted in 1991, the Charter attracted little attention in the media, overshadowed by other events, such as Saddam Hussain's aggression against Kuwait and the domestic political turmoil.[7] Already in 1992, political representatives from the Czech Republic and the Slovak Republic, two federal republics of Czechoslovakia, agreed to dissolve the federal state. The Czech Republic came into existence as of 1 January 1993, preceded by the Constitution of the Czech Republic, adopted on 16 December 1992.

Article 4 of the Constitution guarantees that judicial authorities protect fundamental rights and basic freedoms. The system of general courts and the Constitutional Court is in place. Under Article 83, the Constitutional Court, consisting of 15 judges appointed by the President for a term of ten years, is allocated the task of safeguarding constitutional integrity. In fulfilling this role, the Constitutional Court ascertains whether legal norms comply with the constitutional *order*, drawing on the Charter and international human rights treaties as key reference points.[8]

The domestic architecture of human rights protection in the Czech Republic is anchored in the constitutional order, which enshrines fundamental rights and freedoms and mandates their judicial safeguarding. This structure is reinforced by the Constitutional Court, which plays a central role in ensuring compliance with constitutional standards and addresses violations by public authorities, aligning the Czech legal framework with international human rights principles. Besides the Constitutional Court, there are general courts that all individuals and legal persons can turn to with specific cases in which they believe their human rights have been violated. All courts are bound by the law, including the Constitution and the Charter, guaranteeing fundamental human rights and having the highest possible legal force. The Constitutional Court is competent in abolishing legal norms if considered to be in contradiction with the Constitutional order, that international human rights treaties, including the UN human rights treaties, are part of.

The position of the Constitutional Court is thus unique, and it operates alongside the general judicial system. It decides on constitutional complaints that can be lodged after all other judicial remedies have been exhausted. In a constitutional complaint, it is always necessary to invoke a specific right guaranteed by the constitutional order, that was violated, and the Constitutional Court only then assesses whether the violation has occurred and, consequently, whether such

6 The Preamble is considered an inherent part of the Charter. See, e.g. Šimíček, 2023, p. 48.
7 Kühn, 2022, p. 37.
8 See, Scheu and Brodská, 2024, p. 289.

violation is contrary to the constitutional order, and not another instance of the general proceedings.[9]

Further, there is the institution of the Ombudsperson.[10] The institution was established by Act No. 349/1999 Coll., on the Public Defender of Rights. The act was approved by the Parliament in 1999, and in 2000, the first Ombudsperson was sworn into office. The Ombudsperson is elected for a period of six years; the office relies on its own budget. Since 2000, the competencies have been significantly extended. The most recent competence relates to the monitoring of the UN CRPD, introduced in 2018, pursuant to Article 33 (2) of the CRPD. In 2006, the Ombudsperson was also nominated as the national preventive mechanism under the Optional Protocol to the UN Convention against Torture (OP-CAT.).

The Ombudsperson has its own complaints system, primarily intended for complaints against the actions of authorities and institutions exercising state administration. However, regarding discrimination, the Ombudsperson's scope of competence is broader and extends to employers and municipalities, for example. The reason is that it has been designated as an equality body, following the relevant EU law. Thus, it may be concluded that the Ombudsperson plays a crucial role in protecting human rights in the Czech Republic. At the same time, it has soft competencies.[11] The Ombudsperson has no power to alter or annul decisions of state bodies or to initiate or intervene in court cases apart from a specific competence to initiate proceedings in the public interest before the administrative courts. In practice, the Ombudsperson plays a supportive role by issuing opinions and statements that can serve as evidence in further proceedings (e.g. court proceedings) or an authoritative role, where the conclusion and a call for remedy may itself be sufficient motivation to discontinue the undesirable conduct. In addition to the complaints system, the Ombudsperson is also active in the legislative process, commenting on legislation and other materials submitted to the government. It also has the power to petition the Constitutional Court to repeal sub-legislation or parts thereof[12]. The Ombudsperson also conducts research, investigations and studies on the human rights situation in the Czech Republic, which can serve as a basis and catalyst for changes and improvements to the current state of affairs.

Regarding internal government institutions focusing on the protection of human rights, it is essential to mention two: the Government Commissioner for Human Rights and the Government Human Rights Council. The Government Commissioner for Human Rights promotes and monitors human rights within the State administration. His/her responsibilities include, in particular, conceptual work, where, in cooperation with the Government Council for Human Rights – an advisory body to the Government, he/she prepares long-term concepts for

9 See, Šimíček, 2018.
10 For details, see, e.g., Sládeček, 2011.
11 Chamráthová et al., 2019.
12 Section 64(2)(f) of the Constitutional Court Act 1993.

the protection of human rights, makes proposals and suggestions for improving the human rights situation and draws up reports on the implementation of the Czech Republic's international human rights obligations. There is also a position of a plenipotentiary on the rights of the Roma minority. In 2002, the Government established the position of the Minister for Human Rights, Equal Opportunities and Legislation. However, it ceased to exist within the Government structure in 2017.

The Government Council for Human Rights is a body that monitors the Czech Republic's compliance with its international obligations in the area of the protection of human rights and fundamental freedoms, as well as compliance with the Constitution and the Charter of Fundamental Rights and Freedoms[13]. The Council, which has 33 members from the various areas of public life, is chaired by the Prime Minister[14]. It plays a vital role in the legislative process, taking positions on drafted governmental, ministerial and other measures related to protecting human rights. The Council may also set up expert committees and working groups to address specific issues. These committees provide the Council with suggestions for improving the situation in their areas of expertise and develop proposals for action or carry out other tasks assigned by the Council. Currently there are nine committees, each focusing on a different area of human rights, such as the national Committee against Torture or the Committee on the Rights of the Child.

Finally, the last key human rights institution in the Czech Republic is the so-called Government Agent for the Representation of the Czech Republic before International Human Rights Bodies, who, in accordance with the statute recently adopted by Government Resolution No. 420 of 14 June 2023, is also the Director of the Department of the Office of the Government Agent of the Ministry of Justice.

The Government Agent represents the state before the ECtHR and the UN treaty bodies and is primarily responsible for executing decisions, including those adopted by the UN treaty bodies. The Agent is a specific civil servant, an employee of the Ministry of Justice, who is managerially and administratively subordinate to the Secretary of the Ministry of Justice. The Agent is functionally linked to the central state administration, representing a mixed system (institutional-personal). Until 2023, the Agent acted upon the Statute adopted by Government Resolution no. 1024 of 17.08.2009. In 2015, a major institutional development ensued when the so-called Collegium of Experts was established as an advisory body to the Agent related to the execution of the UN treaty bodies' opinions as well. It was established as a body of experts composed of the representatives of all the main actors concerned, i.e. the various Ministries, Courts, Parliament, the Ombudsman, the Public Prosecutor, the Bar Association, the academy and civil society.

13 Statute of the Government Council for Human Rights, no date, Art. 2.
14 Statute of the Government Council for Human Rights, no date, Art. 3.

3. Relationship between the Czech Republic and the UN from a human rights perspective

The Czech Republic has maintained an active presence within United Nations human rights bodies.[15] Since 1993, the Czech Republic has consistently engaged with various UN platforms to advocate for human rights principles and address recommendations to enhance domestic protections. The Czech Republic has served as a member of the Human Rights Council (HRC) four times: between 2019–2021, 2011–2014 (during which it held one of the four vice-chair positions), and 2006–2007. In May 2022, the Czech Republic was elected to the Human Rights Council once again, filling the seat left vacant due to Russia's suspension, with its current term concluding in 2024. Its repeated election to the Council highlights the central role of human rights in Czech foreign policy and the positive international esteem for the Czech Republic's contributions to global human rights protection. This continuing commitment is further underscored by the Czech Republic's successful candidacy for the 2025–2027 term.

According to the Ministry of Foreign Affairs, the long-term thematic priorities in human rights emphasise civil and political rights. Namely, among others, (I) support for international human rights mechanisms and the systematic consideration of human rights (mainstreaming), (II) support for civil society, including human rights defenders, (III) support for freedom of expression and access to information, including media freedom, (IV) support for equal and the broadest possible political and public participation, support for building institutions of the rule of law, (V) support for equality and non-discrimination, and support for human rights in employment and environmental issues. More precisely, the Ministry of Foreign Affairs noted that at the 2013, 2014, 2018 and 2021 Council sessions, the Czech Republic submitted (together with Botswana, Indonesia, Peru and the Netherlands) draft *resolutions on equal political and public participation*, which were adopted by consensus and supported by a high number of States. Subsequently, in

15 During the most recent session of the UN Human Rights Council, the 57th session, held from 9 September to 11 October 2024, the Czech Republic delivered 11 national speeches, including on Afghanistan, Ukraine, Russia, Belarus, Myanmar, the elderly, climate change and retaliation. On the penultimate day of the session, the RLP adopted by consensus a resolution on equal participation in political and public affairs, which is regularly submitted by the Czech Republic together with the Netherlands, Peru, Indonesia and Botswana. The issue of participation is one of the main human rights priorities of the Czech Republic, similar to the right to assembly and association. During the five-week session, the Permanent Mission of the Czech Republic to the UN in Geneva co-organised side events on child participation and the human rights situation in Crimea. Information published by the Permanent Representation of the Czech Republic to the UN, Ministry of Foreign Affairs, Ministerstvo zahraničních věcí ČR [Online]. Available at: https://mzv.gov.cz/mission.geneva/cz/lidska_prava/rada_osn_pro_lidska_prava/rada_osn_pro_lidska_prava_ukoncila_sve_1.html (Accessed: 10 July 2024).

2019 and 2022, a resolution was successfully pushed through *on the right to freedom of assembly and association* in cooperation with other states (Indonesia, Lithuania, Maldives, Mexico, and the USA).[16]

The Universal Periodic Review (UPR) process is crucial for the Czech Republic's interaction with the UN's human rights system. The last review took place in January 2023, when over 90 countries participated in assessing the Czech Republic's human rights situation and making recommendations. The review initiated 242 recommendations, with the Czech Republic supporting 207 of these. Several crucial issues were discussed and proposed. There is a need to strengthen protections against discrimination and hate speech, primarily aimed at Roma and migrant communities. The review emphasised promoting women's rights, including ratifying the Council of Europe Istanbul Convention, addressing compensation for victims of unlawful sterilisation – which is a reoccurring human rights issue, as we will explain below – and advocating for improved gender equality measures. Recommendations also called for changes in the legal definition of rape, aligning it with international standards to better protect victims. Further, another central and recurring theme was discussed, namely establishing a formal national human rights institution to reinforce domestic human rights architecture.

There is no National Human Rights Institution in the Czech Republic that is compliant with the Paris Principles. In recent years, the UN has continuously recommended a structural change to strengthen human rights protection in the Czech Republic, namely establishing an NHRI. It has been addressed to the Czech Republic by treaty bodies such as the UN Human Rights Committee[17] and several states within the framework of the previous UPR in 2017.[18] Currently the Ombudsperson (the Public Defender of Rights), as the Government understands, essentially plays the role of the Czech national human rights institution.[19] Even if the Ombudsperson complies with several principles of NHRI according to the Paris Principles, the accreditation is still under consideration,[20] and, as several national experts have recommended, the competencies of the Ombudsperson must be transformed to convert into a NHRI, in compliance with the UN Paris Principles of 1993.[21] In 2024, the Parliament has opened a discussion about significant changes concerning the introduction of a child rights commissioner into the Ombudsperson office's structure and widening the Ombudsperson's competencies to become a proper NHRI[22] in compliance with the UN recommendations.

16 See, Ministerstvo zahraničních věcí ČR: Členství v Radě pro lidská práva [Online]. Available at: https://mzv.gov.cz/jnp/cz/zahranicni_vztahy/lidska_prava/clenstvi_v_rade_pro_lp/index.html (Accessed: 10 July 2024).

17 CCPR/C/CZE/CO/4, para. 8.

18 A/HRC/37/4, p. 12.

19 A/HRC/WG.6/42/CZE/1, para. 6.

20 Scheu and Brodská, 2024, p. 290.

21 Lhotský, 2021; Doubek, 2023, pp. 353–379.

22 For more detail see, Doubek, 2023, pp. 353–379.

Another example of a successful implementation of the UN human rights bodies' recommendations concerns the problem of the systemic practice of forced sterilisation of Romani women. As Albert and Szilvasi[23] noted, the activism of Romani women before the UN started in 2006 when the spokesperson for the informal Group of Women Harmed by Forced Sterilisation spoke to the UN Committee on the Elimination of Discrimination against Women (CEDAW). Subsequently, CEDAW recommended the state to take 'urgent action' to compensate the victims.[24] Other UN human rights bodies followed suit. In 2007, the UN Committee on the Elimination of Racial Discrimination (CERD) echoed CEDAW's findings,[25] and in 2008, the UN Human Rights Council's Universal Periodic Review (UPR) called on the Czech government to make reparations.[26] Those calls have been reiterated by an increasing number of countries involved in the UPR processes of 2012 and 2017. In 2009, the Czech government formally acknowledged the fact and issued an apology for the forced sterilisations but did not provide financial reparations so far. International pressure continued, and in 2021, the Czech Parliament passed a compensation act permitting victims to apply for financial redress. According to the explanatory report, the law also reflects the recommendations made by the UN human rights bodies.

As it will be discussed in more detail below, other concerns of the UN human rights bodies have, however, not been contemplated, and there are several crucial and persisting human rights problems.

As far as the relationship with the treaty bodies is concerned, it has been reported, in general, that the Czech Republic fulfils its reporting obligations, having submitted a total of 31 reports: seven to CERD, four to CCPR, three to CESCR, six to CEDAW, five to CAT, four to CRC, one to CRPD, and one to CED. Scheu and Brodská noted that although some reports have been delayed, these delays are gradually being reduced.[27] Regarding the treaty body membership, in 1996, the term of Ms Margerita Vysokajová, elected as a CESCR Committee member, expired. In 2007, Mr Zdeněk Hájek was elected as a member of the Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).

23 Albert and Szilvasi, 2017, pp. 23–34.
24 CEDAW/C/CZE/CO/3, para. 24. For recurring recommendations, see CEDAW/C/CZE/CO/5, para. 35 and CEDAW/C/CZE/CO/6, para. 28.
25 CERD/C/CZE/CO/7, para. 14.
26 A/HRC/8/33, p. 13.
27 Scheu and Brodská, 2024, p. 298.

4. UN human rights treaties which the Czech Republic is a party to

The Czech Republic is founded based on the respect for the international human rights framework. Under Article 1(2) of the Constitution, the Czech Republic shall comply with its obligations under international law. The Czech Republic has acceded and ratified all key international human rights treaties, with the exception of the Council of Europe Istanbul Convention and the Optional Protocol to the UN ICESCR. Consequently, the Czech Republic is a party to all fundamental international human rights treaties. Of these, half are the original texts of the conventions, and the other half are their optional protocols. The Czech Republic has ratified and is bound by 16 of the UN human rights UN instruments referred to above, with the most recent ratification having taken place in 2021. The ratified documents are as follows:

Ratified documents	Year of ratification
International Convention on the Elimination of All Forms of Racial Discrimination	1993
International Covenant on Civil and Political Rights (ICCPR)	1993
Optional Protocol to the International Covenant on Civil and Political Rights	1993
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	2004
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1993
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	1993
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	2001
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1993
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	2006
Convention on the Rights of the Child (CRC)	1993
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	2001
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	2013
Optional Protocol to the Convention on the Rights of the Child on a communications procedure	2015
International Convention for the Protection of All Persons from Enforced Disappearance (CED)	2017
Convention on the Rights of Persons with Disabilities (CRPD)	2009
Optional Protocol to the Convention on the Rights of Persons with Disabilities	2021

As referred to earlier, the Czech Republic has neither ratified nor signed the Optional Protocol to the ICESCR, which would guarantee the possibility of filing communications against the State Party as an individual or group of persons. Furthermore, similar to almost all of Europe, the Czech Republic has neither signed

nor ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Government expressed that it was not 'planning the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families because it believes these rights are ensured by the existing legislation and the measures described below'. Moreover, the Government has not ratified ILO Convention No. 189 on Domestic Workers.[28]

Six key treaties—the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC)—were ratified by the former Czechoslovak Socialist Republic. Following the dissolution of the Czech and Slovak Federative Republic, constitutional law no. 4/1993 established that the Czech Republic would assume, as of 1 January 1993, all international legal obligations of the former Czechoslovak federation, excluding those specific to the Slovak territory. Accordingly, in February 1993, the Czech Republic formally notified the UN Secretary-General, the depositary of these Conventions, of its succession to these human rights treaty obligations.[29]

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

The country's implementation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol began with its historical involvement in refugee protection through Czechoslovakia, which ratified the Convention and the Protocol in 1992, shortly before the split of the former Czech and Slovak Federal Republic. Precisely, based on Article 43(2), it entered into force for the Czech and Slovak Federative Republic on 24 February 1992. This background influenced the Czech Republic's adoption of the Convention in 1993 after gaining independence. Further, the pathway to implementing the 1951 Convention was shaped by a broader commitment to international human rights obligations. Following its independence as of January 1993, the Czech Republic inherited Czechoslovakia's treaty obligations under Constitutional Law No. 4/1993 Coll., confirming its adherence to previously ratified treaties, including the Refugee Convention. The accession to the 1951 Convention was accompanied by the implementation of domestic laws aligned with the Convention's principles, most notably Asylum Act No. 325/1999 Coll., which created a framework for asylum procedures and defined the rights and obligations of asylum seekers and refugees in the Czech Republic.

28 A/HRC/WG.6/28/CZE/1, para. 4.
29 Scheu and Brodská, 2024, p. 295.

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

On 19 December 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were opened for signature in New York. Both Covenants were signed in New York on 7 October 1968 by the Czechoslovak Socialist Republic.

Both Covenants were assented to by the Federal Assembly of the Czechoslovak Socialist Republic on 11 November 1975. The President of the Republic ratified the International Covenant on Civil and Political Rights, with a declaration on Article 48, paragraph 1, and the International Covenant on Economic, Social and Cultural Rights, with a declaration on Article 26, paragraph 1. The instruments of ratification of the Czechoslovak Socialist Republic were deposited with the Secretary-General of the United Nations, the depositary of both Covenants, on 23 December 1975. The International Covenant on Civil and Political Rights entered into force according to Article 49 on 23 March 1976 and entered into force in the Czechoslovak Socialist Republic on the same date.

Regarding the Optional Protocol, the Federal Assembly of the Czech and Slovak Federative Republic expressed its consent to the Optional Protocol, and the instrument of accession of the Czech and Slovak Federative Republic to the Optional Protocol to the International Covenant on Civil and Political Rights was deposited with the Depositary of the Secretary-General of the United Nations on 12 March 1991. On acceding to the Optional Protocol, a declaration was made that the Czech and Slovak Federal Republic declares, by Article 41 of the ICCPR, that it recognises the competence of the Human Rights Committee, established under A, to receive and consider communications from a State Party to the Covenant to the effect that another State Party is not fulfilling its obligations under the Covenant. The Optional Protocol entered into force on 23 March 1976 and in the Czech and Slovak Federal Republic on 12 June 1991.

The Czech Republic formally adopted the ICCPR and its Optional Protocol under Constitutional Law No. 4/1993 Coll., which affirmed the Czech Republic's assumption of international treaties ratified by Czechoslovakia, including the ICCPR.

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

The International Covenant on Economic, Social and Cultural Rights entered into force according to Article 27 on 3 January 1976 and entered into force in the Czechoslovak Socialist Republic on 23 March 1976. The full text of the Covenant was published in the Collection of Laws under No. 120/1976 Coll. Consequently, the text of the Covenant became available to everyone and was generally binding. According to Article 10 of the Constitution of the Czech Republic, the Covenant takes precedence over the law.

The Czech Republic formally adopted the ICESCR under Constitutional Law No. 4/1993 Coll., which affirmed the Czech Republic's assumption of international

treaties ratified by Czechoslovakia. Since 1998, the Government Commissioner for Human Rights and the Czech Government Council for Human Rights have been the coordinating body of the Government, which is responsible for the national monitoring and evaluation of the fulfilment of obligations under international human rights treaties. The Czech Republic's initial report for the period 1993-1999 was submitted to the UN Secretary-General in 2000.

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

Pursuant to decree no. 95/1974 Coll. of the Minister for Foreign Affairs of 15 August 1974 on the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention was adopted by a resolution of the United Nations General Assembly on 21 December 1965. On behalf of the Czechoslovak Socialist Republic, the Convention was signed in New York on 7 March 1966. The National Assembly of the Czechoslovak Socialist Republic approved the Convention, which was subsequently ratified by the Republic's President, according to Articles 17 and 22. The instrument of ratification was deposited with the Secretary-General of the United Nations, the depositary of the Convention, on 29 December 1966. The Convention entered into force according to Article 19 on 4 January 1969 and also entered into force in the Czechoslovak Socialist Republic on the same date.

In 2002, the Ministry of Foreign Affairs formally notified the Parliament of the Czech Republic's consent, according to Article 14(1) of the International Convention on the Elimination of All Forms of Racial Discrimination, and recognised the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals subject to its jurisdiction who filed a complaint that they have been victims of a violation of any of the rights set forth in this Convention. The instrument of declaration, signed by the President of the Republic, was deposited with the Secretary-General of the United Nations, Depositary of the Convention, on 11 October 2000. On 22 February 1993, the Czech Republic notified the Secretary-General of the United Nations, the Depositary of the Convention, of the Czech Republic's accession to the Convention, effective as of 1 January 1993.

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

The Convention on the Elimination of All Forms of Discrimination against Women was signed by the former Czechoslovak Socialist Republic in Copenhagen on 17 July 1980. The instrument of ratification was deposited by the President on 16 February 1982, following the consent of the Federal Assembly of the Czechoslovak Socialist Republic and ratification by the President. The Convention entered into force on 18 March 1982, and was published in the Collection of Laws as Decree

No. 62/1987 Coll. of the Minister of Foreign Affairs of the Czechoslovak Socialist Republic.

Compliance with and implementation of the Convention on the Elimination of All Forms of Discrimination against Women is now monitored by a separate Gender Equality Unit in the Human Rights Section of the Office of the Government. On 26 July 2023, the Government of the Czech Republic approved the seventh periodic report on the implementation of the Convention. The report covers the period from 1 August 2014 to 31 August 2022.

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

The Convention was signed in New York on 8 September 1986 on behalf of the Czechoslovak Socialist Republic. The Convention was consented to by the Federal Assembly of the Czechoslovak Socialist Republic and ratified by the President of the Czechoslovak Socialist Republic, with the reservations that the Czechoslovak Socialist Republic does not recognise the jurisdiction of the Committee against Torture provided for in Article 20 of the Convention and that the Czechoslovak Socialist Republic does not consider to be bound by the provisions of Article 30, paragraph 1, of the Convention. The instrument of ratification was deposited with the Secretary-General of the United Nations, the Depositary of the Convention, on 7 July 1988. The Convention entered into force under Article 27(1) on 26 June 1987 and entered into force in the Czechoslovak Socialist Republic according to Article 27(2) on 6 August 1988.

On behalf of the Czech Republic, the Optional Protocol (OPCAT) was signed in New York on 13 September 2004. The Czech Parliament subsequently approved it, and the President ratified it. The instrument of ratification was deposited with the United Nations Secretary-General as the Depositary of the Optional Protocol on 10 July 2006. The Optional Protocol entered into force internationally on 22 June 2006 under Article 28(1) and became effective in the Czech Republic on 9 August 2006.

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

The Czech Republic acceded to all international obligations of the Czech and Slovak Federal Republic upon its foundation on 1 January 1993. Since its foundation, the Czech Republic has been a party to the Convention on the Rights of the Child, which the former Czech and Slovak Federal Republic signed on 30 September 1990. The instrument of ratification was deposited on 7 January 1991 after the consent of the Federal Assembly of the Czech and Slovak Federal Republic and ratification by the President.

Three Optional Protocols to the Convention have been adopted:

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,

- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and
- Optional Protocol to the Convention on the Rights of the Child establishing a communications procedure.

The Czech Republic acceded to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 12 February 2002. The Optional Protocol obliges States not to recruit young people under the age of 18 into the armed forces and to ensure that volunteers under that age do not directly participate in combat. Likewise, other armed groups are not to conscript child soldiers under the age of 18 and use them in combat operations. The initial report on implementing the Optional Protocol was submitted to the Committee in 2005. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was ratified by the Czech Republic on 26 September 2013. The Optional Protocol sets out binding international standards to prevent, suppress and punish acts related to the sale of children for sexual exploitation, forced labour or illegal adoption, and acts related to child prostitution and child pornography. The Czech Republic ratified the Third Optional Protocol, establishing a notification procedure in 2015.

Since 1998, the Czech Government's coordinating body in charge of the national monitoring and evaluation of the fulfilment of obligations under international human rights treaties has been the Government Commissioner for Human Rights and the Czech Government Council for Human Rights.

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

The Czech Republic is not a signatory to the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

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

On 13 December 2006, the Convention on the Rights of Persons with Disabilities, as well as the Optional Protocol, were adopted in New York. On 30 March 2007, the day both documents were opened for signature, the Czech Republic was among the first signatories to sign both the Convention and the Optional Protocol at the UN Headquarters in New York.

Immediately thereafter, the process of ratification of the Convention was initiated in the Czech Republic. The procedure for the national negotiation of the Convention was carried out under the Czech Government's Directive No. 131 of 11 February 2004 on the negotiation, national negotiation, implementation and termination of international treaties and following the Czech Government's Resolution No. 284 of 19 March 2007 on the proposal to sign the Convention and

the Optional Protocol to the Convention. The Optional Protocol entered into force in the Czech Republic on 23 September 2021.

5. National implementation

The UN treaties on human rights are reflected in national law in two ways. First, there is the question of the accession to obligations of the former Czechoslovakia. Second, there is the question of the status of UN treaties in national constitutional order. Regarding the accession, the issue regulates constitutional Act no. 4/1993 Coll., on measures related to the dissolution of the Czech and Slovak Federative Republic, and provides that: 'The constitutional laws, acts and other legal regulations of the Czech and Slovak Federative Republic in force on the date of the dissolution of the Czech and Slovak Federative Republic on the territory of the Czech Republic shall remain in force. However, provisions conditional only on the existence of the Czech and Slovak Federative Republic and the Czech Republic's affiliation to it shall not apply.' With regard to Constitutional Act no. 4/1993 Coll., the Czech Republic is also bound by the same international treaties the Czechoslovak Republic was bound by, except for treaties connected exclusively to the territory of the Slovak Republic. In other words, there is a principle of continuity in human rights protection.

Concerning the constitutional order, it has to be noted that the Constitution distinguishes between the legal and constitutional orders in the Czech Republic. The international treaties that the Parliament of the Czech Republic has ratified, to which the Czech Republic is bound, form part of the *legal order* (Article 10 of the Constitution). After the intervention of the Constitutional Court in 2002 (Pl. ÚS 36/01), it has become clear that international human rights and fundamental freedoms treaties also have a special status in, and form part of the Czech *constitutional order*.[30] It has a significant consequence of allowing general judges to discontinue the proceedings and request the Constitutional Court to examine the compliance of any legal norm with the Constitution, in view of the fact that the general incorporation norm recognised in Article 10 of the Constitution also concerns UN human rights treaties.[31]

These provisions and principles apply to all the UN human rights treaties referred to above. Considering specific laws, the UN human rights treaties have not been implemented by a concrete law, rather, over the years, these treaties affected the adoption of concrete acts or legislative changes. Before discussing implementation concretely, we will pause to raise the question how the general

30 It is understood as the unenclosed body of all applicable constitutional laws, establishing the Constitution in the broader sense. See, Pavlíček, 2020, p. 113.

31 See Bartoň et al., 2016, pp. 141–143.

comments of the UN treaty bodies have been taken into consideration in the Czech Republic. Pavel Caban[32] argues that the obligation to contemplate the views of the UN treaty bodies is not explicitly specified in human rights treaties and is derived from the principle or obligation to cooperate in good faith. According to Caban, only a consistent 'pattern' of non-cooperation with the treaty bodies, rather than an individual disregard of the opinions addressed to the State Party in question, could be considered a breach of the duty to cooperate under the relevant human rights treaties, depending on the specific wording of those treaties. Further, he suggests a distinction between a direct obligation of cooperation between a Contracting Party and an expert body at the international level and the indirect consideration of the opinions of expert bodies by national courts and other authorities of the Contracting Parties applying the relevant human rights treaty also seems justified. In this regard, as referred to by Caban, also in the context of the Czech Republic and the protection of Czech constitutional order by the Constitutional Court, general comments of the UN treaty bodies should be understood as a legally non-binding but authoritative source of argumentation, a comparative interpretive aid with which the public authority applying the law should deal argumentatively.[33]

Concerning the UN human rights treaties listed above, the problem of national implementation can be broken down along two axes: cross-cutting issues and exclusive issues under particular treaties. In this section, we will discuss both.

International Covenant on Civil and Political Rights: In 2019, the Human Rights Committee considered the fourth periodic report of Czechia (CCPR/C/CZE/4). One of the major issues under the ICCPR was the concern that the Czech Republic had failed to implement the Human Rights Committee's decisions (Views) under the Optional Protocol to the International Covenant on Civil and Political Rights, particularly regarding cases of nationality-based discrimination in property restitution. In its most recent concluding observations of 2019, the Committee has reiterated that its Views, as outlined in General Comment No. 33 (2008), hold characteristics similar to judicial decisions and represent authoritative interpretations by the body responsible for applying the Covenant.[34] Thus, implementing remedies specified in these Views is considered an essential aspect of the State's obligations under Article 2 (3) of the Covenant and Article 2 of the Optional Protocol. Consequently, the Human Rights Committee has urged the Czech Republic to re-evaluate its position and meet its obligations under the Optional Protocol by promptly implementing all outstanding Views to ensure victims can access effective remedies when their rights under the Covenant are violated. In this

32 Caban, 2021, p. 841.
33 Kratochvíl, 2018, pp. 77–79.
34 CCPR/C/CZE/CO/4, para. 4.

context, the Committee suggests that the Czech Republic consider offering *ex gratia* compensation to individuals for whom violations have been confirmed and continue efforts to establish a mechanism for financial compensation in cases where UN treaty bodies find violations and recommend reparations and coverage of costs and expenses.[35]

Indeed, among the most frequent violations reported to the Human Rights Committee, as we will list below, is the violation of Article 26 of the ICCPR, particularly in connection with decisions on the restitution of property in the context of post-totalitarian restitution. Other topical issues under the ICCPR concern the recurring problem of the NHRI's absence. Currently, the government has introduced a significant legislative proposal – in line with the treaty body's recommendations – that proposes that the Ombudsperson become the NHRI. Further, the UN Human Rights Committee, as well as other human rights bodies, have consistently raised concerns regarding the Czech Republic's approach to corporal punishment, noting that it lacks explicit prohibition in all settings, including the home (CCPR/C/CZE/CO/3, para. 19).

In early April 2024, the Ministry of Justice announced the introduction of a new amendment to the Civil Code, reflecting the position of the CCPR. By June 2024, the amendment had been approved by the Government and submitted to the Parliament. The proposed changes aim to explicitly prohibit corporal punishment. The new law is expected to take effect on 1 January 2025. Specifically, amendments to Section 858 of the Civil Code will require parents to care for their child's well-being without using corporal punishment or other degrading measures, and Section 884(2) will clarify that educational measures must respect the child's dignity, explicitly prohibiting corporal punishment or actions that cause mental distress. Moreover, the Constitutional Court has relied in several cases directly on the ICCPR, for example, concerning the freedom of expression (II. ÚS 2051/14), the right to privacy (II.ÚS 1414/07) or the prohibition of ill-treatment (I.ÚS 733/05).

International Covenant on Economic, Social and Cultural Rights: According to the most recent report of the CESCR Committee from 2022, the Committee has welcomed the legislative, institutional and policy measures taken to increase the protection of economic, social and cultural rights in the State Party, including its 'Strategic Framework Czech Republic 2030' and the national recovery plan. The Committee also welcomes specific health, education, employment and social inclusion strategies up to 2030. Further, the Committee has taken note of the legislative and policy efforts made by the State Party to reduce institutionalisation and strengthen foster care, including the national strategy for the protection of children's rights for 2021–2029 and the legislation putting an end to the placement of children under three years of age into institutional care. However, the Committee has remained concerned about ongoing issues, such as the very high number

35 CCPR/C/CZE/CO/4, para. 5.

of institutionalised children, especially those with disabilities and Roma and the fragmentation of the child-care system.[36]

Another problematic area is the right to adequate housing. The Czech Republic still lacks a law on social housing and, therefore, a comprehensive social housing system. The Committee mentions, in particular, rising prices and the insufficient number of available flats and houses. It also mentions the poor situation in the housing market, where Roma and migrants often face obstacles that the majority population does not. Finally, the UN CESCR Committee touches on the problem of homeless people, with a considerable number in the Czech Republic. It therefore recommends that the Czech Republic, in particular, adopt a law on social housing, increase the number of available apartments and houses and thoroughly investigate the allegations of discrimination in the housing market. Consequently, on 12 June 2024, the Government approved a law on housing support. The next step is the adoption of the law in Parliament. The process is still pending. Concerning the right to housing, the Czech Constitutional Court has recognised the significance of the ICESCR, acknowledging the right to housing. However, according to the Constitutional Court, Article 11 of the ICESCR is not self-executing (e.g. II. ÚS 2533/20 of 25 April 2023).

International Convention on the Elimination of All Forms of Racial Discrimination: Most recently, the CERD Committee has expressly welcomed the amendment to the Victims of Crimes Act, in January 2017, which classifies victims of racially motivated crimes as particularly vulnerable victims entitled to free legal aid and the amendment to the Criminal Code, in December 2018, that enables the prosecution of the denial, questioning, approval or justification of Nazi and communist crimes against humanity and war crimes.[37] However, the most significant legislative changes, also following the CERD Committee's position – apart from addressing the problem of sterilisations – concern the segregation of Romani children in education. It has undeniably been a persistent challenge in the Czech Republic. For many years, Romani children were disproportionately placed in so-called 'special schools,' which were initially intended for children with intellectual disabilities. This practice systematically marginalised Romani children, limiting their access to quality education and perpetuating cycles of exclusion and poverty. The problem of educational segregation came to international attention through the case of *D.H. and Others v. the Czech Republic,* a landmark judgement by the European Court of Human Rights that highlighted systemic discrimination in the Czech education system.

Following the *D.H.* judgment, as well as UN treaty bodies' recommendations, the Czech Republic was required to reform its education system to eliminate discriminatory practices and ensure equal access to education for Romani

36 E/C.12/CZE/CO/3, paras. 3 and 30.
37 CERD/C/CZE/CO/12-13, para. 3.

children. In 2016, a new legislation was introduced to promote inclusive education, mandating that children with mild disabilities, including many Romani children who had previously been placed in special schools, should be integrated into mainstream classrooms with appropriate support. This law marked a significant shift towards inclusion, although its effectiveness has been subject to debate. Introducing teaching assistants, individualised education plans, and support services for students with diverse needs were among the measures to ensure that Romani children could thrive in mainstream education.

The Convention on the Elimination of All Forms of Discrimination against Women: Major legislative change concerning CEDAW is related to the problem of the forced sterilisation of Romani women. As we emphasised above, it is an example of successfully implementing the UN human rights bodies' recommendations. As early as 2006, the CEAW Committee recommended that the Czech Republic develop measures to compensate the victims of involuntary or coercive sterilisation and provide compensation to them.[38] The Committee reiterated this conclusion in 2010, stating that the Government of the Czech Republic should address the possibility of extending the statute of limitations or consider introducing a compensation procedure for victims of coerced or non-consensual sterilisations whose claims were time-barred.[39] In its 2016 recommendation, the Committee repeatedly criticised the Czech Republic for failing to take the previously recommended measures on unlawful sterilisations.[40] In 2021, Parliament adopted an Act that regulates the conditions for the provision of a lump sum of money to persons sterilised in violation of the law and sets out specific details of the procedure for the provision of this sum and particular tasks for the Ministry of Health. In this Act, unlawful sterilisation means a fertility-preventing medical procedure that the persons concerned have not given their consent to or have given their consent in breach of the law governing the fertility-preventing medical procedures during the relevant period, or in under circumstances that precluded or seriously impaired the freedom and did not guarantee that the consent given was error-free.

The violation of the law includes, but is not limited to, the effect on the person entitled to any coercion, compulsion or persuasion to undergo the fertility-preventing medical procedure, as well as the fact that the person concerned has not been informed in an intelligible manner and to a sufficient extent about their medical condition and about the purpose, nature, expected benefits, possible consequences and risks of the proposed medical procedure and other options for dealing with the medical condition, its suitability, benefits and risks. The

38 CEDAW/C/CZE/CO/3, para. 24.
39 CEDAW/C/CZE/CO/5, para. 35.
40 CEDAW/C/CZE/CO/6, para. 29.

sum of the awarded compensation is 300,000 Czech korunas (approximately EUR 12,000).

Convention against Torture: In response to recommendations from the UN Committee against Torture, the Czech Republic has undertaken significant legislative reforms to strengthen protections for vulnerable groups and to better align its laws with international human rights standards. Key among these changes are amendments to the Education Act and the adoption of the Act on Victims of Crime.[41] However, when it concerns major legislative changes, the UN Committee Against Torture has remained concerned that the Czech Republic's current definition of torture in section 149 (1) of its Criminal Code does not fully align with the comprehensive elements, including specific purposes, outlined in Article 1 of the Convention against Torture. This discrepancy has been a recurring issue highlighted by the Committee, as noted in previous recommendations (CAT/C/CZE/CO/4-5, para. 7). The Committee has strongly urged the Czech Republic to amend its legal definition of torture to incorporate all aspects of Article 1 CAT.

More concretely, in its Concluding Observations on the fourth and fifth periodic report of Czechia of 2012, the Committee expressed its concern that the Czech Criminal Code merely established the crime of torture and other inhuman and cruel treatment but did not define torture in terms of the Convention, and, therefore, recommended that Czechia 'amend its Criminal Code to adopt a definition of torture that covers all the elements contained in Article 1 of the Convention.' The Committee also repeated this finding and recommendation in its Concluding Observations on the sixth periodic report of Czechia of 2018, in which it urged Czechia 'to adopt a definition of torture that covers all the elements contained in Article 1 of the Convention' and drew Czechia's attention to its general comment no. 2 stating 'that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity.'

In 2016 and 2017, the Government's Committee Against Torture introduced a proposal to: i) explicitly criminalise degrading treatment, ii) criminalise acts committed by gross negligence, iii) punish acts of ill-treatment of lower intensity as administrative offences, iv) criminalise acts committed not only by public authorities but also by determined private persons, namely health care facilities, social care facilities, and similar facilities; v) include prohibited discriminatory grounds in the form of disability or gender among circumstances justifying the imposition of higher sanction; vi) enact exclusion of the crime of torture from the limitation period; and finally vii) formulate a new provision criminalising torture separately from inhuman or other cruel or degrading treatment that would fully correspond to Article 1 CAT.

41 CAT/C/CZE/CO/6, para. 5.

This proposal was only partially adopted in October 2019 by the Government's Human Rights Council. The Council approved the motion only in part requiring administrative punishment for acts of ill-treatment of lower intensity. It returned the rest of the proposal, concerning all other proposals in the field of criminal law, back to the Government's Committee against Torture for further elaboration. Since then, these proposals have not been discussed again by the Government's Committee against Torture or the Government's Human Rights Council. The Government currently does not plan any amendment to the Criminal Code.

Concerning the case law of the Constitutional Court, the court relied expressly on the CAT in cases relating to extradition (see, e.g., II.ÚS 1221/13, I.ÚS 2462/10).

The Convention on the Rights of the Child: A number of legislative changes have been implemented. In the most recent Concluding Observations, the CRC Committee welcomed the legislative amendments promoting inclusive education, reinforcing the child's right to be heard and prioritising family-based care over institutionalisation, the introduction of compulsory and free preschool education, the adoption of the Law On Victims of Crime, in 2013, which includes specific measures to protect children from secondary victimisation, and the efforts undertaken to tackle bullying at school and to promote breastfeeding. Many of these reforms concern the implementation of various human rights treaties. Nevertheless, the significant development mainly associated with the CRC is the closure of institutions for young children. The new legislation has definitely put an end to the placement of children under 3 years of age into institutional care. The amendments to the Act on the Social and Legal Protection of Children and the Civil Code strengthened foster care, providing that institutionalisation should remain a last resort, applied only for a limited time, to be decided upon and be periodically reviewed by a court and transitional foster care should be established for crisis situations.

Moreover, the CRC has been repeatedly directly invoked by the Constitutional Court, particularly in cases concerning the participatory rights of the child (e.g. III. ÚS 1068/22 and II. ÚS 2225/23).

The Convention on the Rights of Persons with Disabilities: The significant legislative changes following the ratification of the CRPD are twofold. The first concerns the problem of institutionalisation, and second the issue of guardianship.

UN treaty bodies have urged the Czech Republic to adopt targeted steps with clear timelines to deploy full-scale deinstitutionalisation and develop community-based services instead of institutions. At the end of 2019, the three types of social care facilities existing under the national law accommodated almost 70,000 individuals. This number is on the increase, even after 2016, when the Government adopted the National Strategy for the Development of Social Services 2016-2025, setting the transition from institutional care for persons with disabilities to their

support in the community as one of its specific objectives. Only the year 2020 constitutes an exception to this continuing trend. Nevertheless, the decline in the number of institutionalised persons in social care facilities in 2020 was related much more to the pandemic than the government's deliberate efforts. In 2024, the Parliament amended Social Services Act no. 108/2006 Coll., expressly prioritising community-based services over institutional services. The Constitutional Court dealt with the right to social services under Article 19 of the CRPD in its decision no. I. ÚS 2637/17.

Another systemic issue concerns guardianship and restriction of legal capacity. The Czech Civil Code of 2012 introduced a supported decision-making instrument, pursuant to Article 12 CRPD, but also recognised the possibility of restricting legal capacity. Courts can limit a person's legal capacity in various contexts, some of which raise serious concerns about compliance with human rights standards, especially CRPD. First, the courts are entitled to restrict legal capacity to freely exercise their right to access social security schemes. Courts have been restricting legal capacity to apply for social benefits and pensions and to act before public authorities. According to research carried out by the Ombudsperson[42], this capacity is the fourth most restricted capacity. The restriction of the legal capacity of persons in contact with public authorities and in the capacity to apply for social benefits and/or pension is often justified by the need to protect the person from the potential consequences of actions without appropriate information and to understand the relevant administrative proceedings (concerning procedural capacity, the Constitutional Court invoked Article 12 of the CRPD, in its decision Pl. ÚS 43/10, in particular). Further, people with mental disabilities are also regularly restricted in their capacity to conclude contracts on the provision of social services. According to the above-cited research, this is the fifth most restricted capacity.

The question of legal capacity also affects the right to vote. Czech electoral laws regulate so-called obstacles to the exercise of the right to vote, including individual restrictions on the exercise of the right to vote in the procedure on the right to vote. The Constitutional Court dealt with this issue in case no. IV. ÚS 3102/08 of 12 July 2010. This ruling stated that when deciding on the restriction of legal capacity, the general courts are obliged to assess separately 'whether a particular person is capable of understanding the meaning, purpose and consequences of the elections'. This decision, in conjunction with the existing legal provisions of the electoral laws, means that it is possible to restrict the exercise of the right to vote individually. The Supreme Court followed this decision with

42 Office of the Public Defender of Rights. Křižovatky autonomie. Praxe soudů při rozhodování o podpůrných opatřeních [Crossroads of autonomy. The practice of the courts in deciding on support measures]. The research report – in Czech – is available at: https://www.ochrance.cz/uploads-import/CRPD/Vyzkumy/2018_61_Vyzkum-svepravnost.pdf (Accessed: 23 July 2024).

opinion Cpjn 23/2016 of 15 February 2017, according to which the person under consideration can only be restricted in his or her capacity to exercise the right to vote by a court decision and only expressly. Both this case law, and the subsequent practice, are problematic due to the apparent contradiction with Article 12 of the CRPD in conjunction with Article 29 of the CRPD, which articulates the right of all persons with disabilities to participate in political and public life.

The CRPD Committee considers such restrictions to be undesirable discrimination based on disability and has called on states, including the Czech Republic, to remove all legal provisions that systematically exclude persons with disabilities from exercising their political rights.[43] Similarly, in its jurisprudence, the Committee determined the violation of Article 29 of the CPRD in the case of Hungary. In contrast, it was possible to restrict the right to vote individually in the Czech Republic. In the case of *Bujdosó and Others v. Hungary* (CRPD/C/10/D/2011, 16 October 2013, paras. 9.5-9.6), the Committee held that by restricting the right to vote based on a perceived or actual mental disability, the State Party violated its obligations under Article 29 of the CRPD, read in conjunction with Article 12 of the CRPD. The Czech Republic, so far, has not amended the law following the position of the Committee.

6. The overview of cases decided by the UN Treaty Bodies

Numerous opinions have been adopted vis-à-vis the Czech Republic in individual cases by the Human Rights Committee. The CRC Committee adopted one opinion, and the CEDAW Committee adopted one dismissed decision. In the overview below, we present the most relevant opinions by the Human Rights Committee, the CRC and the views of the CEDAW Committee.

In *Des Fours Walderode and Kammerlander against the Czech Republic*, the case concerned a Czechoslovak citizen whose property, due to his Austrian origin, was confiscated in 1945 based on the Beneš Decrees. After the communist government took power, he emigrated and did not return to Prague until 1991, when he began to seek the return of his estate. An agreement on the restitution of the property was approved in 1993, but political interference subsequently led to a review of his citizenship and the revocation of the restitution decision. Walderode claimed that the law had been amended to prevent him from recovering the property and that his case had been influenced by political pressure. The 1996 amendment to the law introduced the prerequisite of continuous citizenship, which Walderode did not meet, which led to the annulment of his restitution claim. However, the UN Human Rights Committee considered any kind of prerequisite regarding citizenship discriminatory and in violation of Article 26 of the ICCPR, which ensures

43 CRPD/C/GC/6, para. 70.

equality before the law and non-discrimination. Accordingly, the UN Human Rights Committee decided that the Czech Republic had violated Dr. Walderode's rights and must provide redress.

A similar case, *Fábryová against the Czech Republic*, concerns Mrs. Fábryová, a Czech citizen who was the victim of discrimination by the Czech Republic in connection with the restitution of her father's, Richard Fischmann's property. He had been Aryanised after the Nazi occupation and his property was confiscated under the Beneš Decrees after the Second World War, although he had declared himself Jewish in the 1930 census. After 1990, when the communist regime collapsed, Mrs Fábryová attempted to have her property restituted. However, her efforts were rejected, among other reasons, because her application was submitted late but owing to an administrative error on the part of the Czech Republic. In this case, the UN Human Rights Committee ruled that the Czech Republic had violated Article 26 of the International Covenant on Civil and Political Rights and called on the Czech Republic to provide an effective remedy. Due to the error by the administrative authorities, she was deprived of the opportunity to be treated like other persons similarly entitled to the restitution of property confiscated in the past.

In connection with restitution, the case of *Miroslav Blazek, George Hartman and George Krizek*, who were naturalised U.S. citizens born in Czechoslovakia and emigrated after 1948, is also important. They claimed that the Czech Republic violated their rights guaranteed by Article 26 of the International Covenant on Civil and Political Rights. Their property was confiscated after their emigration, and they were denied compensation in restitution proceedings because they did not hold Czech citizenship. Mr Hartman was unable to recover his property despite regaining his Czech citizenship due to the expiry of the deadline for applying for restitution. The Human Rights Committee found that they had been discriminated against based on their loss of Czech citizenship and recognised the violation of their rights. The Committee called on the Czech Republic to take remedial measures.

In *Malinovsky et al. against the Czech Republic*, the Human Rights Committee again dealt with a restitution claim by the survivors of the victim's father. Two brothers had inherited property from their father. Nevertheless, after the onset of the Communist regime, first, the elder brother was convicted of treason for emigrating and subsequently, the younger brother also emigrated. All their family property in the Czech Republic was confiscated for this reason. Both brothers acquired United States citizenship, which was incompatible with Czech citizenship. After the collapse of the Communist regime, only part of the confiscated property was returned to the older brother as part of the restitution process; the State declined to return the remaining part on the grounds that he did not hold a Czech citizenship. As in the cases referred to above, the UN Human Rights Committee ruled in favour of the petitioners stating that the non-return of property

on the grounds of nationality was discriminatory and, therefore, conflicting with Article 26 of the International Covenant on Civil and Political Rights. The Human Rights Committee once again called on the Czech Republic to seek redress.

Although the issue of restitution dominates the cases against the Czech Republic before the Human Rights Committee, it is not the only issue. In *L.P. against the Czech Republic*, Mr. L.P. alleged that the Czech Republic had violated his son's rights, guaranteed by Article 17 of the ICCPR, which ensures protection against arbitrary interference with private life and the family. Since 1991, when he separated from his wife, he had been denied access to his son, even though court decisions had granted him the right to contact him every other weekend. However, his ex-wife repeatedly ignored those court decisions. The petitioner filed several criminal complaints and constitutional complaints, which were unsuccessful or rejected. The Human Rights Committee then considered whether the Czech Republic had ensured effective protection of the petitioner's right to contact with his son following the decisions of its courts. The Committee ultimately found that the imposition of fines on the son's mother was insufficient and that the rights of Mr L.P. and his son had not been adequately protected, thereby violating their rights, and called on the Czech Republic to provide an effective remedy.

Furthermore, in the case of *E.M. against the Czech Republic*, the Human Rights Committee addressed a situation when the author's son, who was diagnosed with paranoid schizophrenia, experienced a fatal incident following a police intervention in 2011. D.H. had a history of violent outbursts, which were previously controlled with sedation in collaboration with police. After one of these outbursts, the family called the emergency services. The police, fearing potential violence, requested reinforcement and resorted to the use of a taser. D.H. was subdued and injected with sedatives, after which he suffered cardiac arrest. He was briefly resuscitated but later died in a coma. The author accused the police of using excessive force, particularly alleging that a taser had been used and that this, combined with sedation, led to her son's death. She filed a criminal complaint, arguing that the force was unnecessary as D.H. was unarmed and did not pose a threat. However, investigations by both the police and public prosecutor found no wrongdoing, concluding that D.H.'s death resulted from malignant brain oedema linked to cardiac arrest and his existing health conditions. The author's subsequent complaints were dismissed by higher authorities, who ruled that the police acted according to the law and that no excessive force or illegal actions were involved. The author contended that the investigations were inadequate, but the case was ultimately deemed inadmissible by the UN Human Rights Committee due to insufficient evidence to support claims of police misconduct.

Finally, in *Malinovsky et al. against the Czech Republic*, the UN Human Rights Committee again dealt with a restitution claim by the survivors of the victim's father. Two brothers had inherited property from their father. Nevertheless, after the onset of the Communist regime, first the elder brother was convicted

of treason for emigrating and subsequently, the younger brother also emigrated. All their family property in the Czech Republic was confiscated for this reason. Both brothers acquired United States citizenship, which was incompatible with Czech citizenship. After the collapse of the Communist regime, only part of the confiscated property was returned to the older brother as part of the restitution process; the State declined to return the remaining part on the grounds that he did not hold Czech citizenship. As in the cases referred to above, the UN Human Rights Committee ruled in favour of the petitioners stating that the non-return of property on the grounds of nationality was discriminatory and, therefore, conflicting with Article 26 of the International Covenant on Civil and Political Rights. The UN Human Rights Committee once again called on the Czech Republic to seek redress.

The UN Human Rights Committee is not the only one contemplating a communication against the Czech Republic. In 2023, the CRC Committee issued an opinion in the case of *B.J. and P.J. against the Czech Republic*. The case concerned a situation where, in the State's view, a single mother had failed to provide adequate care for her two minor children. The younger daughter was not attending school, and the older son was not studying or registered as unemployed with the Labour Office, which increased his social security debt. In addition, both children showed signs of social phobia and childhood depression. After several unsuccessful attempts to find a more restrained solution, the court decided on a preliminary injunction in the form of removing the children from their mother's care, restricting contact with their parents and placing them in a crisis centre for children and young people. They remained there for 2.5 years, during which time their situation improved and stabilised. After their release from care, the children sought justice, believing that their rights guaranteed by the Convention on the Rights of the Child had been violated. The CRC Committee concluded that the Czech Republic violated their rights by failing to act in their best interests and completely disregarding the adolescent children's opinions and autonomy. The Committee based its opinion on the fact that the need for education and the provision of psychological care are not sufficient grounds for coercive measures that should be reserved for extreme situations such as domestic violence. The Committee also found a violation of Article 12 of the Convention on the Rights of the Child because the children were not heard. Their views were not taken into account, and a violation of Article 37 CRC in that the children were not allowed to move freely outside the building in the crisis centre without being accompanied by a staff member.

In *J.D. et al. v. the Czech Republic*, the CEDAW Committee found a complaint inadmissible in the case of the authors, Czech nationals of Roma ethnicity born in 1966, 1969, 1960, 1960, 1964 and 1963, respectively, who submitted that they had been subjected to sterilisation without their informed consent. The five complainants claimed they were subjected to sterilisation without informed consent between the 1980s and 2001 and that the State did not provide adequate

remedies for their mistreatment. While the Civil Code allowed for actions to protect 'personal rights,' it imposed a three-year statute of limitations after 2008, with some exceptions where 'good morals' could extend the right to seek monetary compensation. The State argued that this provision ensured claims could still be pursued if the expiration of the time limit was not the complainant's fault. The Committee noted that both parties argued that the case did not pertain to the sterilisation itself, but to the authors' right to an effective remedy and the alleged absence of such a remedy. It further acknowledged the State Party's assertion that the general three-year statute of limitations for civil law remedies had not been enforced until 2008 and that any potentially disproportionate impact on victims after 2008 was mitigated by the Constitutional Court's application of the good morals doctrine. The Committee observed that the five authors had become aware of the consequences of their sterilisations several years prior to 2008, yet none of them attempted to pursue available domestic remedies either before or after that date. Although the authors argued that pursuing such remedies was unnecessary due to their perceived ineffectiveness, the Committee reiterated its established jurisprudence that mere doubts about the effectiveness of the remedies do not exempt an individual from the obligation to exhaust domestic remedies.

7. Conclusion

The Czech Republic has established a robust human rights framework since its transition to democracy in 1993, aligning itself with international and European standards. Through its membership in the United Nations, the Council of Europe, and the European Union, the country has made notable progress in incorporating international human rights principles into its domestic laws and policies. Key institutions, such as the Public Defender of Rights (Ombudsman) and various governmental bodies like the Government Council for Human Rights, play a vital role in monitoring and addressing human rights issues. However, despite these advancements, significant challenges remain that hinder the full realisation of human rights for all individuals in the country.

One of the most pressing challenges is the treatment of the Roma community. Discrimination against Roma remains pervasive, particularly in the areas of education. Segregation in schools and inadequate living conditions continue to marginalise Roma populations, despite international pressure and domestic efforts to address these issues. The implementation of policies aimed at Roma inclusion needs to be more effective and consistent in order to break the cycles of poverty and social exclusion that many Roma face.

Additionally, the rights of persons with disabilities present ongoing concerns. Although legislative reforms have promoted accessibility and inclusion, gaps remain in the practical implementation of these policies. Many individuals

with disabilities, particularly those in institutional care, do not have adequate access to independent living and supported decision- making. The lack of independent monitoring mechanisms and insufficient safeguards for vulnerable groups, such as people with disabilities, exacerbates the problem.

Immigration and asylum policies also pose significant human rights challenges for the Czech Republic. The detention of migrant children, including both unaccompanied minors and those with families, has drawn criticism from international human rights organisations. Alternatives to detention, while recognised in law, are rarely implemented due to a lack of accessible support services and accommodation options for migrant families. This gap highlights the need for more humane and effective migration policies that uphold the rights of asylum-seekers and refugees, particularly vulnerable groups such as children.

The continued shortcomings in addressing these human rights issues suggest that while the Czech Republic has made strides in creating a legal and institutional foundation for human rights protection, significant work remains. A stronger political will, increased resources, and better cooperation with civil society and international organisations are essential to ensuring that the Czech Republic fulfils its human rights obligations and addresses the needs of its most vulnerable populations. Moving forward and efforts to improve human rights protection must focus on bridging the gap between policy and practice, ensuring that all individuals can fully enjoy their rights and freedoms.

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The Universal Protection of Human Rights and Eastern Europe: Bosnia and Herzegovina

ABSTRACT: *The effective protection of human rights is extremely important in countries in transition faced with the challenge of overcoming an authoritarian past rife with severe violations of basic human rights and freedoms. In post-war societies, where large-scale violations of human rights have resulted from armed conflicts, the effective protection of human rights is even more crucial. Therefore, it is not surprising that one of the primary goals of the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Peace Agreement) was to establish an adequate legal and institutional framework for the enforcement and protection of human rights in Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina provides for a special status to the European Convention on Human Rights and its protocols, which, pursuant to Article II.1 of the Constitution, shall have priority over all other laws. The Constitution also stipulates that the enjoyment of rights and freedoms provided for in the 15 human rights instruments listed in Annex 1 to the Constitution shall be guaranteed to all persons in Bosnia and Herzegovina without discrimination on any grounds. While the Constitution envisages the existence of several institutions responsible for guaranteeing respect for human rights, the possibility of BiH citizens to directly address the European Court of Human Rights as well as other bodies responsible for monitoring the implementation of appropriate human rights instruments, whose practice will be discussed within this paper, is of great importance. Although this type of protection is highly important, it is necessary to strive for the improvement of the national (BiH and entity) human rights protection system, through the continuous improvement of the legal framework and the functioning of institutions entrusted with the protection and enforcement of human rights. The paper also analyses the effects of the ratification of international instruments on human rights protection.*

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■ **KEYWORDS:** *human rights, Bosnia and Herzegovina, Dayton Peace Agreement, Constitution of Bosnia and Herzegovina, international human rights instrument, direct application*

1. Introduction

Human rights, understood as 'the rights human beings have by virtue of being human'[1], are part of the most relevant social and legal values. They 'articulate what it is that humans are entitled to'[2] simply as members of the human family, which demands national and international recognition and effective legal protection. Human rights 'are universal, meaning that everyone holds them'[3] (they are held by all human beings 'as attributes of their human personality and not as rights granted by any human authority, be it state, monarch, or other authority, secular or religious')[4]. A failure to recognize the universality of human rights may cause far-reaching negative consequences, including intensified discrimination, rights violations, and social inequality. Such an approach is 'the very bread-and-butter of those who violate human rights, such as repressive governments'.[5] Among the essential characteristics of human rights, as pointed out in literature on human rights, are also their inherent nature, meaning that humans are born with them, and that they are inalienable, meaning that they cannot be given away or taken away, although they can be limited under certain circumstances.[6]

The effective protection of human rights is particularly important in countries in transition faced with the challenge of overcoming an authoritarian past rife with severe violations of basic human rights and freedoms. The protection of these rights is essential for the development and stability of democratic institutions. Human rights are fundamental to the core principles of democratic order. They provide the basis for the individual freedoms necessary for the development and functioning of democratic institutions. Without the effective mechanisms of human rights enforcement and protection, democracy cannot function, as this form of political regime relies on the premise that all citizens have the right to participate in political processes and express their opinions freely without discrimination or oppression.

1 Biletzki, 2020, p. 3. According to Donnely, human rights are 'the rights that one has because one is a human' (Donnely, 2013, p. 7).
2 Ibid., p. 4.
3 Conde, 2004, p. 111.
4 Ibid.
5 Orend, 2002, p. 16.
6 Conde, 2004, p. 111.

The mechanisms of human rights protection also act as a check on the power of the state and other actors. By guaranteeing freedoms such as freedom of speech, assembly, and the press, human rights protection facilitates the expression of diverse opinions and the citizens' ability to criticise and scrutinize power holders. This scrutiny is essential for preventing government abuses and ensuring that state power is exercised in the public interest. Protecting human rights warrants political participation and representation, checks power, and promotes social stability.

In post-war societies, where large-scale violations of human rights have resulted from armed conflicts, effective mechanisms of human rights protection are even more crucial. These societies often face significant challenges, such as rebuilding political institutions, fostering national reconciliation, and preventing the recurrence of violence.

These introductory remarks expound that establishing an effective system of human rights protection is of exceptional importance in Bosnia and Herzegovina (BiH). Apart from the challenge of transitioning from an authoritarian regime existing in the former Socialist Federative Republic of Yugoslavia (SFRJ) to a new democratic one, this country also had to overcome the consequences of the armed conflict that took place in BiH from 1992 to 1995. Therefore, it is not surprising that one of the central goals of the General Framework Agreement for Peace in BiH[7] was to establish an adequate legal and institutional framework for human rights protection.

2. Human rights protection in the constitutional system of Bosnia and Herzegovina

Human rights are accorded special attention in the constitutional system of BiH, as indicated by the position given to human rights in the BiH Constitution[8] (whose human rights provisions are described as establishing 'one of the most complex regimes for the protection of human rights by law ever devised')[9]. Moreover, the complexity of the BiH's human rights system is contributed by the fact that in BiH, as a complex state community composed of two entities: the Republic of Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH), human rights

7 General Framework Agreement for Peace in BiH, 1995 [Online]. Available at: https://www.osce.org/files/f/documents/e/0/126173.pdf (Accessed: 17 August 2024).

8 Constitution of BiH [Online]. Available at: https://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/BH/BH%20CONSTITUTION%20.pdf (Accessed: 14 July 2024).

9 O'Flaherty and Gisvold, 1998, p. ix.

protection is also governed by entity constitutions.[10] In addition to the provisions of the Constitution of BiH, the Constitution of the RS and that of the FBiH already included human rights provisions before the General Framework Agreement for Peace in BiH was signed (the RS Constitution was adopted in 1992, and the FBiH Constitution came into force in 1994). Human rights provisions are also included in the BD Statute[11], as the District's supreme law, as well as in the constitutions of the FBiH cantons (as the federal units of this BiH Entity).

The Constitution of BiH is part (Annex 4) of the General Framework Agreement for Peace in BiH (the Dayton Peace Agreement – DPA), an international agreement that ended the armed conflict in BiH. The DPA was reached at Wright-Peterson Air Force Base near Dayton, Ohio (the United States of America – USA), on the 21 November 1995, and formally signed in Paris (France), on the 14 December 1995. The signatories of the DPA were the Republic of BiH (RBiH), Croatia and the Federal Republic of Yugoslavia (FRY), by authorization of the Republic of Srpska. The DPA was also signed by representatives of the European Union (EU), France, Germany, Russia, the United Kingdom (UK), and the USA, as witnesses. The DPA is based on the previously agreed Geneva Principles issued on 8 September 1995 and the New York Principles issued on 26 September 1995. Pursuant to Article VII of the DPA, the Parties, recognising the importance of observing human rights and protecting refugees and displaced persons in achieving a lasting peace, agree to and shall fully comply with the provisions concerning human rights set forth in Chapter One of the Agreement at Annex 6, as well as the provisions concerning refugees and displaced persons set forth in Chapter One of the Agreement at Annex 7. Respect for human rights, as some authors point out, represents 'a fundamental

10 BiH is a complex state, described in the literature as a federation with distinct confederal elements (Stankovic, 2019, p. 4). It consists of two entities (federal units): the Republic of Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH). Some authors argue that BiH is an example of an asymmetric federation ('a mildly asymmetrical constitutional system'; Sahadžić, Woelk, 2023, p. 371). The RS is a unitary entity, while the FBiH is federally structured (it consists of 10 cantons). The third subnational unit in BiH is the Brčko District (BD) of BiH, a special administrative unit of the local self-government (pursuant to Article 1.1 of the BD Statute).

11 Statute of the Brčko District of BiH [Online]. Available at: https://skupstinabd.ba/images/dokumenti/hr/statut-brcko-distrikta.pdf (Accessed: 17 July 2024).

principle on which the whole body of the Dayton/Paris Accords is based'.[12] The DPA contains a preamble and 11 articles of the main text, as well as 12 annexes.[13]

Human rights, and the need of respecting them and ensuring their enforcement, are widely referred to in the BiH Constitution, beginning with its Preamble. The Preamble of the BiH Constitution explicitly expresses a commitment to upholding international humanitarian law and adhering to key international human rights instruments. It emphasises respect for human dignity, freedom, and equality as foundational principles in creating the constitutional provisions.

Pursuant to Article II(1) of the BiH Constitution, BiH and both Entities 'shall ensure the highest level of internationally recognized human rights and fundamental freedoms'. Paragraph 2 of the same Article stipulates that the rights and freedoms set forth in the European Convention of Human Rights (ECHR) and its Protocols shall apply directly in BiH and have priority over all other law.[14] It is controversial whether the ECHR is part of the BiH Constitution, with the same legal force as other constitutional provisions, or has supremacy over the Constitution. In its decisions in cases U 5/04[15] and U 13/05[16] (both adopted in 2006),

12 Aybey, 1997, p. 529. As Sloan noted, the human rights gurantees in the DPA are 'numerous and sweeping', 'it would be difficult to construct an international treaty in which more human rights are guaranteed in more ways' (Sloan, 1996, p. 207).

13 Vlaški, Woelk and Galić, 2023, p. 445. The largest part of the DPA consists of 12 annexes. The Annexes to the DPA are: 1. Annex 1-A: Agreement on Military Aspects of the Peace Settlement, 2. Annex 1-B: Agreement on Regional Stabilization, 3. Annex 2: Agreement on the Inter-Entity Boundary Line and Related Issues, 4. Annex 3: Agreement on Elections, 5. Annex 4: Constitution of BiH, 6. Annex 5: Agreement on Arbitration, 7. Annex 6: Agreement on Human Rights, 8. Annex 7: Agreement on Refugees and Displaced Persons, 9. Annex 8: Agreement on the Commission to Preserve National Monuments, 10. Annex 9: Agreement on BiH Public Corporations, 11. Annex 10: Agreement on Civilian Implementation, and 12. Annex 11: Agreement on International Police Task Force.

14 According to the BiH Constitutional Court, the direct application of the ECHR by regular courts in BiH is mandatory. In case number 269/10, the Constitutional Court found a violation of the right to a fair trial because the regular courts failed to apply the provisions of the ECHR directly. As the Court pointed out, under Article II/2 of the BiH Constitution, the rights and freedoms outlined in the ECHR and its protocols are directly applicable in BiH, and have priority over other laws. In the specific case, according to the Court's opinion, the regular courts failed to apply the constitutional provisions that indicate the priority of the application of the ECHR and its Protocols in relation to any other law. Regular courts, when deciding on lawsuits, have a constitutional obligation to apply international standards for the protection of human rights and freedoms, which, according to the Court's opinion, was lacking in this particular case (Živanović, 2014, p. 19).

15 Decision in case no. U 5/54, Constitutional Court of BiH [Online]. Available at: https://www.ustavnisud.ba/uploads/odluke/_en/U-5-04-71799.pdf (Accessed: 11 July 2024).

16 Ustavni sud Bosne i Hercegovine, no date [Online]. Available at: https://www.ustavnisud.ba/sr/tok-xxxii-plenarne-sjednice?force_locale=true (Accessed: 11 July 2024).

the BiH Constitutional Court held that the provisions of the ECHR cannot have superior status over the constitutional provisions.[17]

The Constitution of BiH also explicitly enumerates the rights that must be guaranteed to all individuals under its jurisdiction. Pursuant to Article II(3) of the Constitution, all persons within the BiH territory shall enjoy the human rights and individual freedoms referred to in paragraph 2 of the same Article, which include the following rights: the right to life; the right not to be subjected to torture or to inhuman or degrading treatment or punishment; the right not to be held in slavery/servitude or to perform forced or compulsory labor; the rights to liberty and security of person; the right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings; the right to private and family life, home, and correspondence; freedom of thought, conscience, and religion; freedom of expression; freedom of peaceful assembly and freedom of association; the right to marry and to found a family; the right to property; the right to education; the right to liberty of movement and residence.

Under Article II(4), all persons in BiH are entitled to enjoy all rights and freedoms set forth in Article II of the BiH Constitution or under the international agreements listed in Annex I to the Constitution. These rights and freedoms are guaranteed without discrimination based on sex, race, color, language, religion, political or other opinions, national or social origin, affiliation with a national minority, property, birth, or any other grounds (non-discrimination clause). The BiH Constitution also stipulates that BiH, and all courts, agencies, government bodies, and institutions operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in Article II(2) of the Constitution (Article II(6)).

Pursuant to Article II(7) of the Constitution, BiH will remain or become a contracting party to the international agreements listed in Annex I to the Constitution. Annex 1 to the BiH Constitution, entitled "Additional Human Rights Agreements to be Applied in Bosnia and Herzegovina", lists 15 international human rights instruments (conventions and agreements):

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide,
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto,
3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto,
4. 1957 Convention on the Nationality of Married Women,

17 As stated in the Court's decision in the case U5/04, 'the rights under the European Convention cannot have a superior status to the Constitution of BiH. The European Convention, as an international document, entered into force by virtue of the Constitution of BiH, and therefore the constitutional authority derives from the Constitution of BiH and not from the European Convention itself'.

5. 1961 Convention on the Reduction of Statelessness,
6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination,
7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto,
8. 1966 Covenant on Economic, Social and Cultural Rights,
9. 1979 Convention on the Elimination of All Forms of Discrimination against Women,
10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,
12. 1989 Convention on the Rights of the Child,
13. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
14. 1992 European Charter for Regional or Minority Languages,
15. 1994 Framework Convention for the Protection of National Minorities.

The position adopted by the BiH Constitutional Court is that the human rights contained in the international human rights instruments listed above have the character of constitutional rights and that applicants can refer to them, demanding their legal protection. In its decision in case U 9/09, the Court held that the International Covenant on Civil and Political Rights (ICCPR) is part of the BiH Constitution and that it is, therefore, competent to decide whether the rights provided for in this Covenant have been violated by some act adopted by the BiH authorities.[18]

Pursuant to Article X(2) of the BiH Constitution, no constitutional amendment may eliminate or diminish any of the rights and freedoms referred to in Article II of the Constitution, or alter the present paragraph.

Article 5 of Annex II to the BiH Constitution ('Transitional Arrangements') stipulates that any treaty ratified by the Republic of BiH between 1 January 1 1992, and the date of entry into force of the BiH Constitution must be disclosed to the Members of the BiH Presidency within 15 days of their assuming office. Any treaty that is not disclosed within this period shall be denounced. Furthermore, within six months of the first convening of the Parliamentary Assembly, upon the request of any member of the Presidency, the Parliamentary Assembly shall review whether any other such treaty should be denounced.

18 Marković, 2021, pp. 156–157.

3. Institutional framework of the human rights protection in BiH

The BiH Constitution, as well as Annex 6 to the DPA (entitled 'Agreement on Human Rights')[19], define the institutional framework for human rights protection in BiH, which has undergone several changes over time. Article II(1) of the Constitution foresees the existence of the BiH Human Rights Commission (the establishment of which is provided for in Annex 6 to the DPA, which regulates the organisation and competence of this institution).

Pursuant to Article 2.1 of Annex 6, the Human Rights Commission consisted of the Office of the Ombudsman and the Human Rights Chamber. The Commission was described as a quasi-international and sui generis body, integrated into the BiH legal system[20]. During the first five years of their operation, both of the Commission's bodies included a substantial international legal component.[21] As stipulated in Annex 6, the Ombudsman should have been appointed for a non-renewable five-year term by the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE) (Article IV.2). Pursuant to Article VII.2 of Annex 6, the Human Rights Chamber was composed of 14 member judges: four members were appointed by the FBiH, two were appointed by the RS, and the Committee of Ministers of the Council of Europe (CoE), pursuant to its resolution (93)6, and after consultation with the Parties, appointed eight member judges, who could not be citizens of BiH or any neighboring country (the Committee of Ministers of the CoE elected one such member to be the President of the Chamber). The main difference between these two institutions was the following: the Human Rights Chamber was established as a judicial body that makes final and binding decisions in cases of violations of the human rights of BiH citizens, whereas the Ombudsman is an institution whose decisions serves as authoritative but not legally binding recommendations for authorities in BiH.[22]

Annex 6 provided for a wide range of competencies of the Human Rights Commission (its bodies). The Commission's primary aim was to secure for all persons within the jurisdiction of the Parties (BiH, RS, and FBiH) the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided for in the ECHR and its Protocols, and the other international agreements listed in the Appendix to Annex 6. This list is similar

19 Annex 6 to the DPA: Agreement on Human Rights. [Online]. Available at: https://www.ohr.int/dayton-peace-agreement/annex-6/ (Accessed: 19 July 2024).
20 Kazazic, 2005, p. 45.
21 Ibid.
22 Živanović, 2014, p. 41.

to the one in Annex 1 to the BiH Constitution, except it includes the European Convention on Human Rights and its Protocols, which is not listed in Annex 1.[23]

The Human Rights Ombudsman was established as an independent institution responsible for the protection and promotion of human rights and freedoms and the functioning of preventive mechanisms for preventing torture and other cruel, inhuman, or degrading practices. The operation of the Ombudsman is based on the functional independence of this institution, which implies its complete independence from the government bodies, both in terms of the issues it investigates and in terms of their formulation. As of 3 January 2001, the Law on the Human Rights Ombudsman of BiH[24] replaced Annex 6 of the DPA and became the legal basis for the operation of this institution. The entity-level Ombudsmen were also established to handle human rights issues within the RS and the FBiH.

The current Law on the Human Rights Ombudsman of BiH was adopted in 2002 and amended several times afterward (in 2004, 2006, 2008, and 2023).[25] In 2006, the amendments to the Law were adopted, which provided for the establishment of the unified Human Rights Ombudsman at the state level, while the Ombudsman institutions at the entity level were abolished

According to the Law on the Human Rights Ombudsman of BiH, this institution is led by three Ombudspersons, appointed by the Parliamentary Assembly of Bosnia and Herzegovina. The three-member structure is designed to reflect the country's multi-ethnic composition, even though a person who does not belong to any of BiH constitutional peoples can be elected as an Ombudsperson.[26]

Pursuant to Article 1, para. 2, the Human Rights Ombudsman of BiH is established in order to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons, as enshrined in particular in the BiH Constitution and the international treaties appended to it, consequently monitoring to this end the activity of the institutions of BiH, the entities, and the BD.

The Ombudsman conducts an investigation on the basis of a submitted complaint or *ex officio*. As cited in Article 18(1), any natural or legal person claiming a legitimate interest may file a complaint to the Human Rights Ombudsman without any restriction. Nationality, citizenship, residence, gender, minority, ethnicity, religion, legal incapacity, imprisonment of any kind, and, in general terms, a special relationship with, or dependence on, a government body may

23 Pursuant to Article II.2 of Annex 6, the bodies of the Human Rights Commission bodies were responsible for examining alleged or apparent violations of human rights under the ECHR and its Protocols, as well as alleged or apparent discrimination on any grounds arising from the enjoyment of any of the rights and freedoms protected by international agreements listed in the Appendix.

24 Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH, No. 32/00.

25 Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH, No. 19/02, 35/04, 32/06, 38/06 – correction.

26 Marković, 2021, p. 167.

not restrict the right of a person to submit a complaint with the Institution. If an Ombudsman determines that a complaint or an issue considered *ex officio* offers sufficient grounds for an investigation, he or she will notify the government body concerned of the material elements of the case. The responsible person within that body must then submit a written response within a time-frame defined by the Ombudsman. An Ombudsman may also request at any time documents deemed necessary for the investigation (Article 23, paras. 1 and 2). If an investigation reveals that an abuse, arbitrary procedure, discrimination, error, negligence, or omission, as alleged in the complaint, was committed by an official of a government body, the Ombudsman may communicate this finding to the responsible official. Simultaneously, the Ombudsman shall forward the same document to the official's superior, accompanied by any recommendations deemed relevant (Article 29).

One of the essential aspects of the Human Rights Ombudsman's activities involves making recommendations and submitting reports. The recommendations that this institution sends to government bodies include measures that should be taken to improve the quality of the authorities' operation. As stated in Article 32(1), an Ombudsman is authorised to provide recommendations to government bodies for the implementation of new measures. Government bodies receiving such recommendations are required to respond in writing and inform the Ombudsman of the effect given to the recommendations within a timeframe indicated by the Ombudsman. Should a government body fail to implement the recommended measures within the timeframe specified by the Ombudsman or decline to provide justification for such inaction, the Ombudsman may bring the matter to the attention of the responsible Minister or the highest authority of the government body concerned, highlighting the details of the case and the recommendations provided (Article 32(2)).

The Human Rights Ombudsman shall each communicate the results of its activities in a report each year to the Presidency of BiH, the House of Representatives of BiH, the House of Peoples of BiH, the Parliament of the FBiH, and the National Assembly of the RS, which shall be published (Article 34, paras. 1 and 3).

The role of the BiH Human Rights Ombudsman in combating discrimination is further reinforced by the adoption of the BiH Law on the Prohibition of Discrimination[27], which enhances the Ombudsman's ability to address discriminatory practices (pursuant to Article 7(1) of this law, the central institution competent for the protection against discrimination is the BiH Ombudsman for Human Rights). The Law mandates the formation of a specialised Department for combating discrimination, which was established even before the Law came into force. However, despite the Department's operational status, the Ombudsman has indicated in its reports that the Institution's budget has not been increased.

27 Law on the Prohibition of Discrimination, Official Gazette of BiH, No. 59/09, 66/16.

Additionally, the Ombudsman highlights that the Institution's competencies related to promoting legal standards, monitoring court proceedings on discrimination, conducting research in the field of discrimination, and ensuring the harmonisation of laws are not unenforceable. The Law did not substantially broaden the scope of the Ombudsman institution's authority regarding the types of violations it addresses or alter the operational methods of the Ombudsman, as the competencies listed in Article 7 align with those outlined in the Law on the Human Rights Ombudsman of BiH. The only notable new obligation introduced is the requirement to submit a special annual report on instances of discrimination, alongside the capacity to refer individuals to mediation procedures.[28]

However, the Law on the Prohibition of Discrimination extends the jurisdiction of the Ombudsman concerning violations in the area of non-discrimination, broadening the scope from addressing complaints against governmental authorities in BiH to include complaints regarding discriminatory actions by all legal and natural persons.[29] This expansion modifies the traditional role of the Ombudsman as an intermediary between public authorities and individuals or groups, enabling the institution to consider complaints about discriminatory actions committed by private individuals.[30]

The Human Rights Chamber was defined by Annex 6 as an independent judicial body tasked with considering and deciding on cases related to alleged human rights violations throughout BiH and ensuring the enforcement of the ECHR provisions. The Chamber's mandate was outlined in Articles VII through XII of Annex 6. It was empowered to address alleged or apparent violations of human rights as stipulated in the ECHR and its Protocols, as well as alleged or apparent discrimination in the enjoyment of rights and freedoms provided for in the Convention and fifteen other international agreements listed in the Appendix to Annex 6.

Applications may be submitted by natural persons, legal entities, non-governmental organisations, or groups of individuals alleging a violation by a party to Annex 6. Submissions on behalf of alleged victims who were deceased or missing were also permitted. Applicants were not required to be nationals or permanent residents of BiH, as the rights provided under Annex 6 extended to any individual alleging violations by BiH or either of the Entities. The Chamber could only consider applications that related to matters within the jurisdiction of the signatories to Annex 6 (BiH, the FBiH, and the RS) and that occurred or continued

28 Živanović, 2014, p. 46.

29 As stipulated in Article 7(5) of the Law on the Prohibition of Discrmination, the BiH Ombudsman 'shall establish a special department that would exclusively consider cases of alleged discrimination related to actions of public bodies at the state level, entities, cantons and the Brcko District of BiH, municipal institutions and bodies, and legal persons with public authorities, as well as actions of all legal and natural persons, in all spheres of life'.

30 Živanović, 2014, p. 46.

after the DPA came into effect. Article VIII of Annex 6 prioritised cases involving allegations of particularly severe or systematic violations, as well as those based on alleged discrimination on prohibited grounds. Additionally, requests for provisional measures were also accorded priority.[31]

Annex 6 of the DPA did not provide a specific enforcement mechanism for the Chamber's decisions (practically, decisions on the merits were forwarded to other international organisations, particularly the OSCE and the Office of the High Representative (OHR), for monitoring compliance).[32]

As of 31 December 2002, the Chamber had resolved 1,878 individual applications, although a substantial backlog of unresolved applications remained. By the end of 2002, there were 12,659 registered applicants. The Chamber's cases encompassed a wide array of human rights issues, including property and housing disputes, employment discrimination, religious discrimination and freedom of religion, the duration of domestic court proceedings, non-enforcement of court decisions, fair trial, expropriation, cases involving missing persons, and allegations of ill-treatment in detention. The majority of the Chamber's applicants claimed individual instances of systematic human rights violations, such as the

31 Yeager, 2004, p. 44. Annex 6 required the Chamber to develop fair and effective procedures for adjudicating applications, ensuring that these procedures included appropriate written pleadings and, at the Chamber's discretion, hearings for oral arguments or the presentation of evidence. Unless the Chamber initially deemed an application inadmissible or chose to dismiss it, a written procedure was initiated, during which observations were requested from both the applicant and the respondent Party. Upon receiving the written observations, the Chamber typically deliberated and rendered a decision on the case. The Chamber was not restricted solely to the written evidence provided by the parties (it could, on its own initiative, request additional evidence from the parties or external sources). Annex 6 explicitly empowered the Chamber to appoint experts and compel the production of witnesses and evidence. Beyond the written procedure, the Chamber could decide to schedule a public hearing for oral arguments and the presentation of evidence by witnesses and experts. The Chamber normally sat in two panels of seven judges each, and applications were usually referred to a panel unless the case raised a significant question about the interpretation of Annex 6 or if the resolution by the panel might have been inconsistent with earlier Chamber jurisprudence (in such cases, the full Plenary Chamber deliberated the application). A decision from one of the Panels could be reviewed by the Plenary Chamber upon a timely request for review by either the applicant or the respondent Party. Ultimately, an application before the Chamber was resolved by a decision declaring the case inadmissible, a decision to strike the application from the case list, a friendly settlement, a decision on the merits, or a decision on review. The Chamber's decisions on the merits were delivered at public hearings and addressed the issue whether the established facts of the case indicated a breach of the respondent Party's obligations under Annex 6. If a violation was found, the decision specified the measures the Chamber ordered the respondent Party to take to remedy the breach. Annex 6 stipulated that the decisions of the Chamber were final and binding upon all governmental authorities of a respondent Party. If a decision established a violation, the respondent Party was required to acknowledge that its actions did not conform to its human rights obligations and to comply with the Chamber's orders. These orders could mandate the payment of monetary relief, including both pecuniary and non-pecuniary damages (Ibid., pp. 45–46).

32 Ibid., p. 46.

obstruction of refugee returns, the freezing of foreign currency savings accounts, employment discrimination, enforced disappearances, and the systematic failure of domestic courts to adjudicate cases brought by minority plaintiffs within a reasonable time frame. Such cases accounted for approximately two-thirds of the Chamber's registered application.[33] The Human Rights Chamber operated from 1995 to 2003. The Commission for Human Rights within the BiH Constitutional Court was given the task of resolving the remaining unresolved cases.

One of the characteristics of the human rights protection system in BiH is the fact that the BiH Constitutional Court does not only provide for abstract constitutional review, i.e. review of the compatibility of laws with the BiH Constitution, but also acts as the final national authority to remedy violations of human rights and freedoms guaranteed by the BiH Constitution and international human rights instruments.[34] According to Article VI.3.b of the BiH Constitution, the Constitutional Court holds appellate jurisdiction over issues under the Constitution of BiH arising from a judgment of any other court in BiH. This provision establishes the Constitutional Court as the highest legal instance in relation to the courts in BiH, underscoring its role as a key institutional guarantor of the protection of rights and freedoms established by the BiH Constitution.

Article 18 of the Rules of the BiH Constitutional Court provides for admissibility criteria of appeals under Article VI.3.b of the BiH Constitution. In particular, an appeal can be submitted against a judgement or other court decisions only after all effective legal remedies have been exhausted and within a period of 60 days from the date on which the appellant received the decision in question. Article18.2 of the Rules provides for an exception by permitting the Court to examine an appeal in the absence of a decision of an ordinary court, provided the appeal alleges grave violations of human rights and freedoms guaranteed by the BiH Constitution or international documents applicable in BiH. Such exception relates, for example, to allegations concerning the excessive length of court proceedings as an element of the right to a fair trial under Article II.3.e of the Constitution of BiH and Article 6 of the ECHR, as well as the right to an effective remedy under Article II.2 of the Constitution and Article 13 of the ECHR.[35]

Pursuant to Article VI.6 of the BiH Constitution, the decisions of the Constitutional Court are final and binding. However, the question arises regarding the impact of the Court's decisions on proceedings that have been concluded before the ordinary courts when a violation of the human rights and freedoms protected by Articles II.2 and II.3 of the BiH Constitution and the ECHR is found. As a rule, such decisions on an appeal in cassation result in the quashing of the judgement of the ordinary court and, pursuant to Article 62.1 of the Constitutional Court's

33 Ibid., p. 47.
34 Smailagic, Marko and Sahadzic, 2023, p. 331.
35 Ibid., p. 332.

Rules, refer the case back to that court for new proceedings. However, in contrast to the earlier 2005 Court's Rules, the current Rules allow for an exception to this rule when the consequences of a violation of constitutional rights and freedoms can be remedied through alternative means.[36]

4. The status of international human rights instruments in BiH and their impact on human rights protection

By incorporating the human rights and freedoms provided for by the ECHR and the international human rights instruments listed in Annex 1 to the BiH Constitution into the BiH's legal system, a significant step was taken toward improving human rights protection in this country. The ratification of these documents established conditions that enables BiH citizens to address international bodies established by these human rights instruments. The subsequent analysis will examine the status of the aforementioned documents in BiH, the effects that their ratification produced on the legal system of BiH and the entities, and the opportunities they provide for BiH citizens to safeguard their human rights within the supra-national human rights protection system.

On 12 July 2002, BiH formally ratified the ECHR (including Protocols 1, 4, 6, and 7). Since that date, the European Court of Human Rights (ECtHR) has been empowered to receive and adjudicate individual complaints alleging violations of the ECHR by the BiH authorities that occurred subsequent to the ratification. Pursuant to Article 25 of the ECHR, any person, non-governmental organization, or group of individuals claiming to be a victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention is entitled to bring a complaint before the ECtHR, provided that all domestic remedies have been exhausted (Article 26).

The first judgment under the supervision of its execution by the Council of Ministers involved the case of *Jeličić v. BiH*, which became final on 31 January 2007. In this case, the applicant argued that the non-enforcement of a binding and final decision by a BiH court concerning 'old' foreign-currency savings violated the principle of the rule of law. The ECtHR agreed and found a violation of Article 6 of the ECHR, which mandates that any claim relating to a civil right that can be brought before a court or tribunal must also include the execution of a judgment as an 'integral part of the trial for the purposes of Article 6'.[37] Several judgments of the ECtHR have declared the exclusion of citizens who are not members of one of the three constituent peoples, or who refuse to declare their ethnic affiliation,

36 Ibid., pp. 332–333.
37 Banović, 2023, p. 259.

from some political offices by the BiH Constitution as a violation of the ECHR (*Sejdić and Finci v. BiH*, *Zornić v. BiH, Šlaku v. BiH*).[38]

Individuals from BiH can also seek protection of their human rights and freedoms under various UN human rights instruments ratified by this country. These documents establish committees that monitor the implementation of treaty obligations by State Parties. One of these monitoring bodies is the UN Human Rights Committee (UN HRC), established under Article 28 of the ICCPR to monitor the enforcement of the Covenant's rights by the States Parties.[39]

This body represents a panel of 18 human rights experts, who are nominated by the State Parties of which they are nationals and are elected by a ballot of all States Parties to serve a four-year term.[40] The UN HRC performs four essential functions in monitoring the ICCPR implementation: 1. conducts dialogues and derives conclusions from States' reports, 2. issues General Comments which explain the meaning of the provisions of the ICCPR, 3. considers inter-State complaints under Article 41 of the ICCPR, and 4. renders decisions under the First Optional Protocol.[41] By joining the ICCPR, the States Parties agree that the UN HRC periodically studies their reports on the measures they have taken to exercise the rights provided for by the ICCPR and about the progress achieved in that area. States must separately agree to other competencies of the UN HRC. In order to better ensure the achievement of the goals of the ICCPR and the implementation of its provisions, the Optional Protocol was adopted to the ICCPR. It is a separate treaty which authorises the UN HRC 'to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant' (Article 1 of the Optional Protocol).[42] This article also specifies that the UN HRC will not receive any communications regarding ICCPR States Parties that do not adhere to the Optional Protocol.

The provisions of the Optional Protocol to the ICCPR prescribe the conditions that an individual must meet in order for the UN HRC to consider his or her application. In addition to the fact that the State against which an individual submits a complaint must be a member of the Optional Protocol, before submitting a complaint all available national legal remedies must be exhausted. The submitted complaint must be signed, and it is explicitly stated that the UN HRC

38 Woelk, Galić and Sekulić, 2023, pp. 459–460; Marković, 2023, p. 3.

39 United Nations**:** International Covenant on Civil and Political Rights. [Online]. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (Accessed: 2 August 2024).

40 Joseph and Castan, 2013, pp. 13–14.

41 Ibid., p. 15.

42 United Nations: Optional Protocol to the International Covenant on Civil and Political Rights. [Online]. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political (Accessed: 8 August 2024).

will not accept any communications which it considers to be an abuse of the right to submit such communications or to be incompatible with the provisions of the Covenant (Article 3 of the Protocol).

Pursuant to Article 5.2 0f the Protocol, the UN HRC will not consider any petition of an individual unless it has ascertained that 'the same matter is not being examined under another procedure of international investigation or settlement' and that 'the individual has exhausted all available domestic remedies' (whereby this condition does not apply where the application of the remedies is prolonged beyond a reasonable period of time).

There are no strict time limits for the submission of a complaint.[43] The UN HRC considers a complaint in closed sessions, and informs the interested States Parties and the individuals of every aspect it has established. The UN HRC decides on individual petitions exclusively on the basis of written documents submitted by the parties, without the right to appear before this body or to present evidence. Due to time constraints faced by the UN HRC, there is a significant reliance on the Secretariat, which has adopted a practice of providing summaries of communications to Committee members. Consequently, it is typical for only a limited number of the UN HRC members to have reviewed the full communications from the parties prior to rendering a decision.[44]

Since the establishment of the competence of the UN HRC to decide on the complaints of individuals, polemics have been going on about the effectiveness of its decisions. The question arises, does it end only with the findings that the provisions of the ICCPR have been violated and the moral pressure they imply, or does the Human Rights Committee have the right to, at the request of the applicant or on its own initiative, request notifications about possible corrections or compensation? The Committee's views are not legally binding, since the UN HRC is not a judicial body. However, the HRC serves as the principal interpreter of the ICCPR), which is itself legally binding. The HRC's decisions are therefore strong indicators of legal obligations, so rejection of those decisions is the evidence of a State's bad faith attitude towards the ICCPR obligations.[45] The UN HRC's decisions are issued 'in a judicial spirit'.[46] Decisions on the merits resemble definitive findings of breach, or non-breach, by the State Party concerned. The UN HRC also provides recommendations for appropriate remedies, which may include legislative amendments, compensation for damages, the making of representations to a State Party to which an author has been deported in violation of the Covenant, or the release of unfairly detained individuals. Additionally, the

43 Joseph and Castan, 2013, p. 21.
44 MacKey, 1999, p. 17.
45 Joseph and Castan, 2013, p. 21.;
Ibid., p. 22.
46 Selected Decisions of the Human Rights Committee under the Optional Protocol, CCPR/C/OP/2, 1988, cited in Joseph and Castan, 2013, p. 22.

HRC has instituted a 'follow-up' procedure that tracks and publicises the outcomes of its recommendations. Consequently, a State's non-compliance with the UN HRC's views is publicly recorded, potentially leading to international censure and criticism.[47]

The UNHRC has considered several communications submitted by individuals from BiH, addressing various human rights violations. These communications, submitted under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), reflect the challenges faced by individuals in BiH in accessing justice to and protection of their rights. A significant number of communications from BiH have concerned enforced disappearances during the 1992-1995 conflict.

The UN HRC decision concerning Communication no. 1997/2010 involves the case of F.R. and R.R., who submitted a communication on their own behalf and on behalf of their missing relative, M.R. The case addresses the enforced disappearance of M.R. in July 1992 during the armed conflict in BiH. M.R. was allegedly detained by members of the RS Army and paramilitary groups, held under inhumane conditions, and subjected to ill-treatment. Despite the efforts of his family to find out his fate and whereabouts, no effective investigation was conducted by the BiH authorities. In their communication, the authors claimed a violation of Articles 6, 7, 9, 10 and 16, in conjunction with Article 2, paragraph 3 of the ICCRP in respect to M.R. They further alleged that they are themselves victims of a violation by BiH of Article 7, read alone and in conjunction with Article 2, paragraph 3, and of Article 2, paragraph 1, and Article 26 of the Covenant.

The Committee concluded that, under the circumstances, the facts before it reveal a violation of Article 2, paragraph 3, of the Covenant, read in conjunction with Articles 6, 7, and 9, with regard to the authors and their disappeared relative. The Committee also determined that the State's requirement for the family to declare M.R. dead to receive compensation constituted inhuman and degrading treatment in violation of Article 7, read alone and in conjunction with Article 2, paragraph 3, of the Covenant with respect to the authors.

The UN HRC ordered BiH to continue its efforts to establish the fate or whereabouts of M.R., bring those responsible to justice, provide adequate compensation to the family, and prevent similar violations in the future. The State was also requested to ensure that investigations into enforced disappearances are accessible to the families of missing persons, and that the current legal framework is amended so as not to require the relatives of victims to obtain a death certificate as a condition of receiving social benefits.

The UN HRC's decision concerning Communication no. 2206/2012 involves the cases of V.L. and M.B., who filed a complaint on behalf of themselves and their mothers, A.L. and S,P,, BiH nationals, who were reportedly last seen on 2 August

47 Joseph and Castan, 2013, pp. 22–23.

1992, during the armed conflict in BiH. They were allegedly killed by the members of Bosnian Army, and their bodies have never been found. The complainants, their children, reported the disappearances to various authorities in BiH but received no substantive response or confirmation of investigations into the whereabouts of their mothers. In their communication, the authors claimed a violation by BiH of Article 6, read in conjunction with Article 2 (3), of the ICCPR in respect of A.L. and S.P. They also claimed that they are themselves victims of a violation of their rights under articles 7, 17 and 23 (1), read in conjunction with Article 2(3), of the Covenant.

The UN HRC found the communication admissible. The Committee concluded that the facts of the case reveal a violation of Article 6 read in conjunction with Article 2 (3), of the Covenant with regard to A.L. and S.P. due to the lack of a prompt and impartial investigation into their disappearances and alleged deaths. The failure of the authorities to provide any information regarding the fate of the missing persons or to conduct an effective investigation also amounted to the inhuman and degrading treatment of the complainants, violating Article 7 of the Covenant.

Some of the cases the UN HRC made decisions on were not related to the tragic armed conflict in BiH. The UN HRC decision concerning Communication no. 1219/2003 addresses the case of V.R., a former RS Supreme Court judge, who submitted a complaint alleging violations of his rights under the ICCPR after his judicial appointment was not renewed following two controversial judgements he had participated in.

V.R. served as a judge on the RS Supreme Court from 1993. to 2003. In 2002, a new selection process for judicial positions was initiated by the High Judicial and Prosecutorial Council of the RS. All existing judicial posts were declared vacant, requiring judges to reapply. The complainant's application for reappointment was denied based on his involvement in two controversial judicial decisions that raised questions about his suitability as a judge.

V.R. claimed that the non-renewal of his appointment violated his right to equal access to public service (Article 25(c) of the ICCPR), his right to an effective remedy (Article 2), and the right to privacy and protection of honour and reputation (Article 17). The Committee found the author's claims inadmissible. It concluded that V.R. failed to substantiate his allegations that his non-reappointment was based exclusively on his legal decisions or that his rights under articles 17 and 25 of the Covenant were violated. The Committee also noted that the claim of a violation of Article 2, which guarantees an effective remedy, could not be substantiated as there was no proven violation of a substantive right.

BiH is a State Party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which outline the rights of refugees and the legal obligations of States to protect them (as previously noted, these instruments are included in Annex 1 to the Constitution of BiH). Pursuant to Article III.1f of the BiH

Constitution, the responsibility for issues related to migration, visas, and asylum is assigned to the BiH institutions. Initially, these matters fell under the jurisdiction of the Ministry for Human Rights and Refugees of BiH. However, following the establishment of the Ministry of Security of BiH, the latter assumed authority and responsibility for managing the aforementioned issues.[48] The first law in this area adopted at the state level in BiH was the Law on Immigration and Asylum, in 1999. This was followed by several changes in legislation, culminating in the adoption of the Law on Asylum[49] in 2016. This law, among others, prescribes the rights and obligations of asylum seekers and individuals granted some form of international protection (refugee status, subsidiary protection, or temporary protection). BiH acceded to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 13 December 1996, and it officially entered into force in BiH on 1 July 2003.[50] Alongside a relatively adequate legal framework for the protection of refugees, asylum seekers, displaced persons, and migrants, which adheres to international principles and standards, the country has also made noticeable progress in institutional development. This progress is reflected in the establishment of various institutions with specific competences dedicated to managing these processes.[51]

BiH is also a State Party to the 1979 Convention on the Elimination of All Forms of Discrimination against Women[52] (the Convention is listed in Annex 1 to the BiH Constitution). BiH ratified the Optional Protocol to the Convention in 2002. Pursuant to Article 18 of the Convention, States Parties are obligated to submit a report to the Secretary-General of the UN, which will be reviewed by the Committee on the Elimination of Discrimination against Women. The report must detail the legislative, judicial, administrative, or other measures undertaken to implement the provisions of the Convention, as well as the progress achieved in this regard.

48 Council of Ministers of BiH: Initial Report on Implementation of Provisions of the International Convention on the Protection of All Migrant Workers and Members of Their Families in BiH. Sarajevo. [Online]. Available at: https://www.mhrr.gov.ba/PDF/LjudskaPrava/3.INITIAL%20Report%20...pdf (Accessed: 18 July 2024).

49 Law on Asylum, Official Gazette of BiH, No. 11/16 and 16/16.

50 Initial Report on Implementation of Provisions of the International Convention on the Protection of All Migrant Workers and Members of Their Families in BiH.

51 Omerovic, 2022, p. 46.

52 United Nations: Convention on the Elimination of All Forms of Discrimination against Women. [Online]. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women (Accessed: 14 September 2024).

In its Concluding Observations on the Sixth Periodic Report of BiH (2017)[53], the Committee on the Elimination of Discrimination against Women evaluated BiH's efforts to fulfill its obligations under the Convention, highlighting both advancements and areas requiring improvement. The Committee commended BiH for legislative reforms, including amendments to the Law on Prohibition of Discrimination, the adoption of the Law on Free Legal Aid, and amendments to the Criminal Code addressing sexual violence and human trafficking. Policy frameworks such as the Gender Action Plan (2018-2022) and national strategies to combat violence against women and human trafficking were recognised as significant strides. Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence further reinforces BiH's commitment to addressing gender-based violence.

Despite these achievements, the Committee identified several challenges. It highlighted inconsistencies in the implementation of anti-discrimination laws across BiH's decentralized administrative structures. Women in rural areas, marginalized groups, and victims of wartime sexual violence face systemic barriers to accessing justice, healthcare, and economic opportunities. The Committee noted the high prevalence of domestic violence, the underreporting of cases, and insufficient training for professionals addressing such violence. It also criticised the limited representation of women in political and decision-making roles, inadequate support for survivors of war crimes, and the absence of comprehensive measures to address economic and social disparities among women, particularly Roma women, rural women, and women with disabilities.

Key recommendations include ensuring uniform implementation of gender equality laws across all administrative levels and enhancing access to justice through expanded legal aid and training for judicial personnel. The Committee urged BiH to intensify efforts to combat gender-based violence by providing adequate support systems for survivors, improving prosecution rates, and raising public awareness. It also called for measures to promote women's political representation, address gender pay gaps, and reduce economic inequality. Recognising the disproportionate burdens on rural women, the Committee recommended targeted strategies to empower them economically and socially.

The Committee also stressed the importance of addressing intersectional discrimination, particularly against Roma women, migrant women, and lesbian, bisexual and transgender women. It called for comprehensive strategies to eliminate discriminatory stereotypes and improve women's access to education, healthcare, and economic resources. Additionally, it highlighted the need for

53 Committee on the Elimination of Discrimination against Women: Concluding Observations on the Sixth Periodic Report of BiH. [Online]. Available at: https://arsbih.gov.ba/wp-content/uploads/2020/06/CEDAW-C-BIH-Concluding-Observations-6_AsAdopted.pdf (Accessed: 17 September 2024).

robust data collection systems to monitor progress and evaluate the impact of gender equality initiatives.

BiH is the State Party to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention is one of the international instruments explicitly referred to in Annex 1 to the BiH Constitution). BiH, like all State Parties to the Convention, is obligated to submit regular reports to the Committee against Torture. These reports must provide a comprehensive overview of measures implemented to comply with UNCAT provisions and address adherence to the Committee's recommendations.

In its Concluding Observations on the Sixth Periodic Report of BiH[54], the Committee against Torture noted several positive developments, but also highlighted some issues of concern. The Committee acknowledged as a positive development the ratification of or accession to the following the following international human rights instruments by BiH: 1) The International Convention for the Protection of All Persons from Enforced Disappearance, in 2012, and 2) The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in 2013. The Committee also welcomed the legislative measures such as the adoption of: Law on Witness Protection Programme in BiH (2014), Law on amendments to the Criminal Code of BiH (2015), Law on Aliens (2015), Law on Asylum (2016), and Law on Free Legal Aid Provision in BiH (2016). The adoption of strategies on the rights of the child, domestic violence, migration, and anti-trafficking was also commended.

Despite these advancements, the Committee raised significant concerns. It highlighted inconsistencies and inadequacies in the provisions addressing the offense of torture across the criminal legislation of the entities and the Brčko District, the inadequate implementation of legal safeguards, and issues such as detainees' lack of access to independent medical examinations. Reports of routine ill-treatment and torture during police interrogations prompted recommendations for independent investigations, strengthened oversight, and training in non-coercive interrogation methods. Furthermore, the lack of independent mechanisms to handle complaints against police and limited accountability for torture perpetrators were criticised. The Committee also highlighted delays in prosecuting war crimes, including sexual violence, and recommended measures to expedite cases, standardise legislation, protect victims and witnesses, and establish a comprehensive national reparation framework. The report highlighted delays in the prosecution of war crimes, including cases of sexual violence, and recommended measures to expedite proceedings, harmonise legislation, and ensure the protection of victims and witnesses. It also expressed concerns over the

54 Committee Against Torture: Concluding Observations on the Sixth Periodic Report of BiH. [Online]. Available at: https://www.ohchr.org/en/documents/concluding-observations/catcbihco6-committee-against-torture-concluding-observations (Accessed: 19 September 2024).

limited access to reparations for war crime victims, calling for the establishment of a comprehensive national reparation framework.

The Committee recommended addressing substandard detention conditions by improving infrastructure, access to healthcare, and detainee activities while reducing overcrowding. It also urged the increased use of non-custodial measures for juveniles, their separation from adults in detention, and stronger protections against domestic violence, human trafficking, and discrimination, with enhanced data collection and enforcement of anti-discrimination laws. The Committee emphasised the need for mandatory training for officials on torture prevention, dissemination of the report's findings, and timely follow-up on key recommendations.

The rights and freedoms enshrined in the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[55] were also integrated into the human rights protection framework in BiH (the Convention is listed in Annex 1 to the BiH Constitution). The ICERD is the only international instrument applicable in BiH that provides an actual definition of the term 'racial discrimination'.[56] This definition explicitly includes discrimination based on 'ethnic origin', a particularly relevant aspect in the context of BiH, where 'the majority of discriminatory acts as well as atrocities were carried out by representatives of ethnic or national groups and directed towards members of other ethnic or national groups'.[57] Pursuant to Article 9 of the ICERD, States Parties are obligated to submit a report to the Secretary-General of the United Nations for review by the Committee on the Elimination of Racial Discrimination (COERD). This report must detail the legislative, judicial, administrative, or other measures adopted to implement the provisions of the Convention effectively.

The COERD, in its Concluding Observations on the Combined 12th and 13th Reports of BiH[58], acknowledged several positive developments in the ICERD implementation, including the adoption of the Law on Asylum (2016), amendments to the Anti-Discrimination Law (2016), and revisions to the Law on Citizenship (2016). The Committee also welcomed the adoption of the Revised Action Plan for Roma (2016-2020) addressing employment, housing, and healthcare for the Roma community. On the other hand, the Committee expressed concern over persistent ethnic and ethno-religious divisions, perpetuated by discriminatory constitutional provisions. It urged BiH to implement policies promoting integration and reconciliation and to amend discriminatory categorisations such as 'constituent peoples' and

55 International Convention on the Elimination of All Forms of Racial Discrimination, United Nations, 1965.

56 Nystuen, 2005, p. 114.

57 Ibid., p. 118.

58 Committee on the Elimination of Racial Discrimination: Concluding Observations on the Combined 12th and 13th Periodic Reports of BiH (CERD/C/BIH/CO/12-13). [Online]. Available at: https://documents.un.org/doc/undoc/gen/g18/272/18/pdf/g1827218.pdf (Accessed: 17 September 2024).

'others'. The Committee also criticized the systemic discrimination against Roma and other minority groups. Specific challenges included low school enrollment rates, inadequate housing, high unemployment, and limited access to social and healthcare services. The Committee recommended developing a comprehensive strategy for Roma inclusion, emphasising education, employment, housing, and access to documentation. The Committee observed the intensification of hate speech, particularly from public figures, within the media, and in sports contexts. In response, it advocated for a more stringent regulation of hate speech, ensuring accountability for those responsible, and enhanced oversight of media content to address these issues effectively. The Committee also raised concern about the inadequate capacity to house asylum seekers, barriers in accessing basic services, and insufficient procedural guarantees in the course of asylum applications. It recommended increasing reception capacity, improving access to services, and ensuring procedural safeguards for asylum seekers.

In its response to the Committee's Observations, BiH reported several advancements in the ICERD implementation. This included adoption of the Law on the Prohibition of Discrimination and its 2016 amendments, which brought the legislation into alignment with European standards. Authorities also emphasised the implementation of action plans targeting Roma communities, focusing on housing, healthcare, education, and employment. Specific efforts included improving access to personal documentation and raising awareness about the right to health. These developments also included conducting regular training sessions for judges, prosecutors, and civil servants on human rights and anti-discrimination laws, the simplification of processes for acquiring citizenship, the implementation of the 2016 Law on Asylum, and ensuring procedural safeguards for individuals under international protection. Efforts to address LGBTQI rights included initiatives to reduce inequality, promote acceptance, and foster dialogue among stakeholders. Institutional strengthening was also emphasised, particularly through enhancements to the institution of the Human Rights Ombudsman of BiH to ensure compliance with the Paris Principles. This included the establishment of national preventive mechanisms and securing adequate financial resources for operational improvements. The document also highlights several systemic challenges that persist despite the progress made. Notable difficulties include the implementation of Committee recommendations in relation to constitutional reforms and amendments to Electoral Law.[59]

59 Ministry of Human Rights and Refugees of BiH: Information Regarding the Concluding Observations for the Combined 12th and 13th Periodic Report of Bosnia and Herzegovina on the Implementation of the International Convention on the Elimination of Racial and All Forms of Discrimination Before the UN Human Rights Council with a Proposal for Conclusions. [Online]. Available at: https://mhrr.gov.ba/PDF/LjudskaPrava/12.Informacija%20%20na%20objedinjeni%2012%20i%2013%20cerd.pdf (Accessed: 11 September 2024).

The Convention on the Rights of the Child (1989), which contains universal standards that must be guaranteed by each State Party to the Convention to every child born, is also one of the human rights instruments listed in Annex 1 to the BiH Constitution. During 1998, the first entity reports on the implementation of the Convention on the Rights of the Child for the period 1992–1998 were prepared. These reports formed the basis of the First Report of the BiH Committee for the Rights of the Child, which was submitted to the Council of Ministers of BiH in June 2001. It was renamed Initial Report during the adoption procedure and was submitted to the Committee on the Rights of the Child in 2004. The Committee reviewed the Initial Report of BiH concerning the implementation of the Convention on the Rights of the Child (CRC/C/11/Add.28) during its 1030th and 1031st sessions on 19 May 2005 (CRC/C/SR.1030 and CRC/C/SR.1031). Subsequently, the Committee adopted its Concluding Observations at the 1052nd session on 3 June 2005 (CRC/C/15/Add.260). In these Concluding Observations, the Committee issued several recommendations to the relevant authorities in BiH. Among these recommendations was the withdrawal of the reservation to Article 9, paragraph 1 of the Convention on the Rights of the Child. The Committee noted that there was no necessity for this reservation, as social work centres could be considered 'competent authorities' as specified in Article 9 of the Convention. Following this, the BiH Presidency decided to withdraw the reservation to Article 9, paragraph 1, and the Ministry of Foreign Affairs notified the UN Secretary-General of this withdrawal in 2008.[60]

BiH ratified the UN Convention on the Rights of Persons with Disabilities (2006) on 12 March 2010 (the Convention entered into force 30 days after the instrument of ratification was deposited). By ratifying the Convention, BiH committed itself to the implementation of the principles and obligations set out in the Convention, ensuring that persons with disabilities enjoy the same rights and freedoms as other citizens. The Convention ensures a range of rights for persons with disabilities, including respect for their inherent dignity, the principle of non-discrimination, full social inclusion, respect for diversity, equal opportunities, accessibility, gender equality, and respect for the development of children with disabilities, as well as the right of these children to maintain their own identity. The Convention places particular emphasis on raising awareness about the rights of persons with disabilities throughout society, promoting accessibility, and supporting independent living and community inclusion.

To facilitate activities related to advocacy, promotion, and enhancement of the implementation of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, the Ministry of Human Rights and Refugees of BiH prepared the Decision on the establishment of the Council for Persons with Disabilities of BiH, which was adopted at the 135th session of the Council of Ministers

60 Ćeranić, 2011, pp. 275–276.

of BiH on 19 October 2010. The decision provides for the establishment of the BiH Council for Persons with Disabilities to ensure collaboration with the relevant entity authorities and associations of persons with disabilities.[61] Additionally, in line with the Rulebook on Internal Organization and Systematization, the Human Rights Ombudsman established the Department for the Protection of the Rights of Persons with Disabilities as a distinct organisational unit aimed at promoting and safeguarding more effectively the rights of this demographic group.[62]

However, the ratification of the Convention did not bring much for this vulnerable population. The scientific papers dedicated to the status of persons with disabilities call attention to the constant violations of the human rights belonging to this category of the population, while improvements required for an adequate realisation of these rights have been described as unsatisfactory.[63] As a result, persons with disabilities often have difficulty exercising their rights, including the rights outlined in Article 5 of the Convention, which address equality and non-discrimination, as well as the right to equal access to the built environment, transportation, information and communication, as well as the right to independent living (Article 9), and the right to work (Article 27).

Concerning the right to participate in political and public life, the 'Report on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities in BiH' (2012) indicates that the Election Law of BiH (Official Gazette of BiH, no. 20/02) does not deny the right of persons with disabilities to vote or be elected. The Report further notes that the FBiH and RS Strategies for the Improvement of the Social Position of Persons with Disabilities have recognised the necessity of promoting the active participation of representatives of persons with disabilities in political parties, political life, and decision-making processes at all levels. Specifically, organisations representing persons with disabilities are encouraged to engage in public debates concerning documents of significance to the citizens.[64]

BiH submitted its initial report to the UN Committee on the Rights of Persons with Disabilities in 2015, detailing the measures taken to implement the Convention as well as the challenges encountered. In its Concluding Observations, the UN Committee identified several areas requiring improvement in BiH, including the enhancement of accessibility to public spaces, including enhancing the accessibility of public spaces, ensuring non-discrimination in education and

61 Parliamentary Assembly of BiH: United Nations Convention on the Rights of Persons with Disabilities and Regulations of Bosnia and Herzegovina, p. 6. [Online]. Available at: http://untz.ba/wp-content/uploads/2021/02/Konvencija-ujedinjenih-nacija-o-pravima-osoba-s-invaliditetom-i-propisi-Bosne-i-Hercegovine.pdf (Accessed: 8 August 2024).

62 Institution of the Human Rights Ombudsman of BiH: Special Report on the Rights of Persons with Disabilities, p. 5. [Online]. Available at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2013020406303506bos.pdf (Accessed: 20 August 2024).

63 Gadzo-Sasic, 2023, p. 45.

64 Ibid., p. 44.

employment, and increasing the availability of community-based services. The country is expected to continue reporting on its progress and to address the Committee's recommendations.

It is unsurprising that the Committee on the Rights of Persons with Disabilities expressed 'concerns about the lack of transparent procedures and laws to regulate consultations with organisations of persons with disabilities. Another concern relates to the lack of structured financial support and capacity building for these organisations, particularly at the local level' (CRPD/C/BIH/CO/1).[65]

5. Conclusion

The establishment of an effective human rights protection system is of particular importance in countries in transition. The protection and enforcement of human rights are integral elements of democratic development and the strengthening of the rule of law. In BiH, as a country that, in addition to overcoming the authoritarian legacy of the former SFRY, also had to deal with the consequences of a tragic armed conflict, the establishment of such a system assumes even greater importance.

The constitutional and legal system of the protection of human rights and freedoms in BiH is fully based on international human rights instruments. The most prominent are the ECHR and its Protocols, as well as the fifteen international documents on human rights and freedoms included in Annex 1 to the BiH Constitution. The BiH Constitution mandates the direct application of these instruments within the domestic legal system. Although the Constitution envisages the existence of several institutions responsible for ensuring respect for human rights, the possibility of BiH citizens to directly address the ECTRH and other bodies monitoring the implementation of appropriate human rights instruments is of particular importance. As a result, additional guarantees are provided that their rights will be adequately protected, although the goal of the BiH/entity authorities should be to establish the most appropriate and effective national human rights protection system.

65 Ibid., p. 45.

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GELLÉRT NAGY*

The Universal Protection of Human Rights and Central Europe: Romania

ABSTRACT: *The protection of fundamental human rights and freedoms is one of the areas where the interaction between national and international standards is most evident. Therefore, international human rights treaties, conventions and covenants have a special place in the Romanian constitutional system. As such, the UN human rights treaties (conventions and covenants) have become part of the Romanian 'constitutional bloc'. In terms of ratification, these conventions and covenants can essentially be divided into two main groups: those ratified during the years of the Soviet-type dictatorship, and those ratified after the regime change. During the post-regime change period, Romania has taken significant steps to comply with international human rights standards. The vast majority of fundamental human rights protected at international level, including those contained in the UN human rights conventions and covenants under review, are constitutionally protected. Moreover, these fundamental rights permeate the entire legal system, thus they are also protected by a number of other pieces of legislation. In addition to legislation, significant institutional guarantees have been put in place. Despite these efforts, the implementation of human rights protection still raises questions in some areas, such as the inclusion of the Roma minority, or the equality of treatment of women and men. Romania is trying to introduce reforms and make some progress in these areas. The purpose of this contribution is to present some aspects of human rights protection in Romania in the light of the above-mentioned perspectives, and to assess the relationship between Romania and the UN from a human rights perspective.*

KEYWORDS: *human rights protection in Romania, precedence of international human rights provisions, principle of loyal cooperation, ratification of UN treaties, constitutional protection of human rights*

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1. The historical development of human rights protection in Romania

The historical development of the protection of fundamental human rights in Romania has largely been shaped by changing political ideologies. These political views were primarily reflected in the constitutions.[1] Title II of the Romanian Constitution of 1866 (hereinafter referred to as the '1866 Constitution') has already provided for a number of fundamental human rights, such as freedom of the press and freedom of association. Moreover, the Constitution outlawed the death penalty, with some exceptions for the military (Article 18).

However, in addition to guaranteeing fundamental human rights – which were relatively broad by the standards of the time – the Constitution also contained a significant discriminatory restriction: only Christians could become Romanian citizens (Article 7). This restriction was essentially aimed at excluding Jewish and Turkish minorities from citizenship and the fundamental rights that it entails.[2] This provision proved problematic when the independence of Romania was internationally recognised in 1878, and the Constitution had to be amended. Although the process of constitutional amendment was relatively slow (mainly due to concerns about granting political rights to Moldavian Jews in addition to their pivotal economic role[3]), the discriminatory provision of the 1866 Constitution was finally abolished by Decree No. 2186 of 12 October 1879, and all persons, irrespective of their denomination, were granted civil and political rights.[4]

After the union of Transylvania[5] (1 December 1918), Bessarabia (27 March 1918) and Bukovina (27 October 1918) with the Romanian Old Kingdom, a large number of minorities (Hungarians, Germans, Ruthenians, Serbs) and churches of major denominations (Greek Catholics, Protestants) appeared in the country.[6] These social changes made it necessary to adopt a new constitution, which came to pass in 1923 (hereinafter referred to as the '1923 Constitution'). In this way, the most salient human rights issues in the 1923 Constitution relate to the rights of minorities. An appraisal of the provisions of the Constitution reveals that although it protected general civil rights, it did not recognise collective rights for national

1 At the same time, from a historical point of view, it is salient to mention the so-called *Hrisovul lui Leon Tomșa*, issued in 1631, which established an agreement between the Ruler of Wallachia (Leon Tomșa) and the boyars on certain privileges. For details see Ionescu, 2019, p. 889.

2 Focșeneanu, 1998, pp. 30–31.

3 For details, see Focșeneanu, 1998, pp. 35–39.

4 Focșeneanu, 1998, pp. 34–40.

5 In this contribution, the author refers to Transylvania in a broader sense, with the result that in addition to the historical Transylvania, it also includes the Banat, the Crișana and Maramureș as well.

6 Focșeneanu, 1998, p. 57.

minorities, nor did it recognise the concept of minority rights.[7] Furthermore, the 1924 Citizenship Law made Romanian citizenship conditional on residence, ignoring the principles of the Paris Minority Treaties. Therefore, once again, many persons belonging to minorities were left out of the citizenship register.[8]

The next turning point in the constitutional history of Romania took place in 1938, when King Carol II promulgated a new Constitution of Romania by royal decree (hereinafter referred to as the '1938 Constitution'). Although the 1938 Constitution adopted many of the provisions of the previous Constitution concerning the guarantee of fundamental human rights, it also introduced a significant number of restrictions.[9] In this climate, there were few opportunities to ensure the adequate protection of fundamental human rights. The situation further deteriorated during the years of the military dictatorship of General Ion Antonescu, especially during the first period when he led the country together with the Iron Guard (*Garda de Fier*) (also known as the Legionary Movement). It is also crucial to point out that the dictatorship had already revoked the citizenship of the Jewish minority as early as August 1940, before Romania entered the World War Two. In the same month, strict anti-Jewish laws were passed.[10] These laws, among other restrictions, forbade Jews from 'holding public office, holding leading positions in the economy, participating in sports clubs, owning agricultural land, using radios'.[11] Confiscation of property and deportation of the Jewish population was also present in Romania during this period.[12]

The constitutions of the years of the Soviet-type dictatorship (the 1948 Constitution of Romania, the 1952 Constitution of Romania, and the 1965 Constitution of Romania) also contained rules on the protection of fundamental human rights. However, these provisions were not respected in practice, as 'violations committed in the interests of or on the behalf of the regime were not sanctioned'.[13] Legal literature cites as an example the fact that the 1965 Constitution, whilst providing for freedom of speech and of the press, also prescribed that these freedoms 'shall not be exercised in a manner contrary to the political establishment and the interests of the workers'.[14] During these years economic and social rights were given priority, yet society did not enjoy the guarantee of these rights because they were not adequately protected.[15]

7 Fegyveresi, 2020, p. 475.
8 Fegyveresi, 2020, p. 476.
9 Focşeneanu, 1998, p. 76.
10 Arendt, 1964, p. 90.
11 Fábián, 2018, p. 183.
12 For details, see Comisia Internațională pentru Studierea Holocaustului în România, 2004, pp. 107–206.
13 Veress, 2020a, p. 505.
14 Ibid.
15 Ionescu, 2019, p. 891.

All these particularities of constitutional history have influenced the system of fundamental rights established by the 1991 Constitution. It can be observed, for example, that the specificity of the years of Soviet-type dictatorship – the fact that although the Constitution contained provisions for the protection of human rights, in practice these were emptied out and remained at a purely declaratory level – prompted the *pouvoir constituant* to create an institutional framework for the protection of human rights alongside the legislative framework.

Moreover, in the period after the change of political system, (and even more so after the adoption of the 1991 Constitution) Romania's attention turned towards its integration into the international community. As a consequence, it also sought to bring the protection of fundamental human rights into line with international standards. At the same time – in addition to the legislative provisions – special institutions for the protection of fundamental human rights were created, such as the Advocate of the People or the National Council for Combating Discrimination. Moreover, international human rights conventions have played a specific role in Romanian's constitutional system. The following subchapter will highlight the central role of international provisions.

2. The relationship between Romania and the UN from a human rights perspective

Before examining the relationship between Romania and the United Nations (hereinafter: UN) from a human rights perspective, I consider it important to look at the constitutional provisions concerning international human rights documents. This analysis becomes more important when considering that the relationship between Romania and the UN from a human rights perspective is basically analysed and interpreted in the legal literature through the relationship between domestic law and UN conventions and covenants.

■ *2.1. The constitutional relationship between domestic law provisions and UN human rights conventions and covenants*

Among the East-Central European states under scrutiny, the Constitution of Romania – in addition to the general provisions concerning international law – contains an *expressis verbis* stipulation on the precedence of international human rights conventions and covenants.[16]

Title II of the Constitution in force provides for fundamental rights, freedoms, and duties. Among its general principles, this Title involves the provisions of Article 20 on international treaties on human rights. From these provisions it

16 For details on the relationship between international and national law in East-Central European states see: Lukács, 2022, pp. 266–268.

is clear that the Constitution of Romania basically uses two constitutional techniques to determine the relationship between these treaties and domestic law: an '*interpretation clause*' is established in paragraph (1), whilst a '*precedence clause*' is included in paragraph (2).[17]

Thus, pursuant to paragraph (1), the provisions of the Constitution on fundamental human rights must be interpreted in accordance with international human rights treaties (conventions and covenants[18]). It is interesting to note that, although the Universal Declaration on Human Rights is not an international treaty (as was accepted by the United Nations General Assembly by Resolution No. 217), it is binding in the Romanian *pouvoir constituant* understanding, 'having the same binding force as, and even symbolic primacy over, international treaties'.[19]

Paragraph (2) of Article 20 refers to the impact of the international human rights convention on domestic legal norms. Prior to the constitutional amendment of 2003, the precedence of international human rights treaties was unconditional, i.e. they always took precedence over conflicting domestic law provisions, and there was no need to compare the level of protection of domestic and international standards. In view of the dynamic development of the protection of human rights, the derived constituent power amended the regulation to give precedence to international standards unless domestic law contains more favourable provisions.[20] This exception to the precedence of international human rights conventions, according to some scholars, essentially stems from the interrelationship between the principle of precedence of international law and the principle of subsidiarity in relation to domestic norms.[21]

Furthermore, it follows from the provision of paragraph (2) that 'international human rights treaties to which Romania is a party have constitutional interpretative value and prevail over domestic rules, unless the Constitution or national laws contain more favourable provisions'.[22] With this provision, the *pouvoir constituant* essentially incorporated the principle of *pacta sunt servanda* into the Constitution.[23] Thus, by virtue of this provision,

17 Gâlea, 2019, p. 178.

18 According to some scholars '[t]he use of the term covenants was probably due to the intention to refer to the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights.' Corlățean, 2014, p. 101.

19 Balan, 2015, p. 362. For a similar opinion see Andreescu and Puran, 2020, p. 274.

20 Muraru and Tănăsescu, 2008, p. 173; Andreescu and Puran, 2020, p. 27.

21 Corlățean, 2012, p. 237.

22 Stanciu and Safta, 2021, p. 2.

23 This conclusion has been reached by the Constitutional Court in several decisions. In the view of the Constitutional Court, the principle of *pacta sunt servanda* is one of the fundamental principles of mutual trust between States in their international relations. See, for example Decision No. 195 of 2015 of the Constitutional Court. Published in Official Gazette No. 396 of 5 June 2015.

> the Constituent Assembly implicitly imposed a level of constitutional protection regarding fundamental rights and freedoms at least at the level provided for in international acts; as a result, the guarantees of a certain complex constitutional right included in ratified international acts can be constitutionalised through the Constitutional Court's case law.[24]

The basis of the constitutional declaration of this principle is that international treaties are binding because the Member States voluntarily agree to be bound by the provisions of such treaties.[25] Nevertheless, the provisions of this Article apply only if the relevant international treaty (a) relates to fundamental human rights and freedoms, and (b) has been ratified by Romania.[26] The Constitutional Court also pointed out in its case law that the provisions of Article 20 of the Constitution (in addition to the Universal Declaration on Human Rights, which has been incorporated into the very text of the Constitution) apply only to international instruments that have the status of human rights conventions or covenants.[27] On the basis of these findings, it can be concluded that – through the provisions of Article 20 – the UN human rights treaties (conventions and covenants) have become an integral part of what is known as the '*constitutional bloc*'[28], and thus serve as a point of reference in constitutional justice.[29]

The case law of the Constitutional Court of Romania reveals that petitioners often base their arguments on possible violations of international human rights

24 Benke, 2022, p. 323.

25 Florea, 2023, p. 177.

26 The need for the simultaneous fulfillment of these two conditions is also evident from the case law of the Constitutional Court of Romania. For example, in Decision No. 499 of 2019 (published in Official Gazette No. 931 of 19 November 2019), the Constitutional Court held that Article 20 of the Constitution was not violated in the case at hand, since the Convention on the Organisation for Economic Co-operation and Development is not a human rights convention and, moreover, it has not been ratified by Parliament. For details, see Safta, 2019.

27 See for example Decision No. 139 of 1994 of the Constitutional Court of Romania. Published in Official Gazette No. 353 of 21 December 1994. Furthermore, a question has arisen before the Constitutional Court as to whether the provisions of Article 20 of the Constitution also apply to the interpretation of legislation issued before the adoption of the 1991 Constitution. In relation to this problem, the Constitutional Court pointed out in its Decision No. 78 of 1996 that the interpretation of laws in accordance with Article 20 is applicable only as regards the review of the constitutionality of laws subject to the current constitutional regime. Moreover, in the context of the given case, the Constitutional Court highlighted that 'the Universal Declaration of Human Rights was incorporated into domestic law only by virtue of Article 20 of the Constitution of 1991.' Decision No. 78 of 1996 of the Constitutional Court of Romania. Published in Official Gazette No. 172 of 1 August 1996. For an analysis of the Decision, see: Muraru and Vlădoiu, 2019, p. 353.

28 The term '*constitutional bloc*' refers to all the legal acts that can be invoked before the Constitutional Court in the course of a review of constitutionality.

29 Toader and Safta, 2020, pp. 438, 442.

conventions. Although these references are most often made in regards to regional human rights conventions (in particular petitioners refer to the European Convention on Human Rights),[30] it is not uncommon for the petitioners to invoke violations of UN instruments as well. Moreover, it is also observed that the Constitutional Court refers to these UN human rights conventions in justifying its decisions.[31]

In light of the above, it can be concluded that the provision of Article 20 – on the basis of the principle of *pacta sunt servanda* – contributes to the international convergence of the protection of fundamental human rights and freedoms. By expressly providing that international human rights standards prevail over contrary domestic provisions, the Constitution in essence contributes to the international standardisation of the protection of human rights.

■ *2.2. The relationship between Romania and the UN in practice*

Concerning the relationship between Romania and the UN, it is pivotal to underline that Romania declared its wish to become a member of the UN as early as 1946, but its accession was blocked in the early years.[32] Finally, the accession of Romania, together with fifteen other countries, was admitted by the General Assembly on 14 October 1955.[33] Since joining the UN, Romania has been a non-permanent member of the Security Council on several occasions (in 1962, 1976-1977, 1990-1991, and 2004-2005), moreover, it even held the presidency of the General Assembly on one occasion (during the 22th session in 1967).

From a human rights perspective, the relationship between Romania and the UN is fundamentally defined by the reporting cycles of various human rights conventions and covenants, as these represent the main instrument through which the State and the UN enter a direct communication. The main reporting cycles concerning Romania are summarised in the table below.

30 Toader and Safta, 2020, p. 438.

31 For example Decision No. 114 of 1994 of the Constitutional Court of Romania (containing references to the International Covenant on Economic, Social and Cultural Rights), published in Official Gazette No. 354 of 21 December 1994; Decision No. 139 of 1994 of the Constitutional Court of Romania (containing references to the Universal Declaration of Human Rights), published in Official Gazette No. 353 of 21 December 1994; Decision No. 820 of 2010 of the Constitutional Court of Romania (containing references to the International Covenant on Civil and Political Rights), published in Official Gazette No. 420 of 23 June 2010; Decision No. 368 of 2022 of the Constitutional Court of Romania (containing references to the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights) published in Official Gazette No. 1146 of 29 November 2022.

32 See for example Resolution S/RES/29(1947).

33 Resolution A/RES/995 (X).

Table 1: Reporting cycles concerning Romania

Convention/Covenant	Reporting Cycles
International Covenant on Civil and Political Rights	5 (last report in 2017)
International Covenant on Economic, Social and Cultural Rights	6 (last report in 2024)
Convention on the Elimination of All Forms of Discrimination against Women	9 (last report in 2023)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	3 (last report in 2023)
Convention on the Rights of the Child	7 (last report in 2023)
Convention on the Rights of Persons with Disabilities	No reporting cycle yet

During all these reporting cycles, a number of shortcomings have been brought to the attention of the State by the different UN human rights monitoring bodies. A recurring finding in these reports is that discrimination against the Roma minority persists, for example in education, health care and employment.[34] Moreover, the negative image of the Roma minority in Romanian society is widespread and characterised by mistrust and rejection.[35] According to the Committee on Economic, Social and Cultural Rights 'Roma continue to experience social exclusion, poverty and widespread discrimination'.[36] In addition, high maternal and infant mortality rates continue to be recorded among this ethnic minority.[37] Roma children represent a particularly vulnerable category, often facing discrimination in access to education, health care, or decent living conditions[38] (a considerable part of the Roma minority lives in informal housing without public utilities amenable to them[39]). Furthermore, the Committee against Torture highlighted in its latest report that police violence and attacks on Roma continue to be prevalent. These cases of police violence are not properly investigated by the authorities.[40]

The lack of equal opportunities between women and men may also be of concern. The under-representation of women in decision-making and in political life, the persistence of the gender pay gap, and the 'concentration of women in low-paid employment' remains.[41] The Committee on Economic, Social and Cultural Rights observed that this pays gap stems from stereotypes about the

34 United Nations Human Rights Committee, 2017, point 11.
35 Albu, 2021, pp. 74–75.
36 United Nations Committee on Economic, Social and Cultural Rights, 2024, point 18.
37 United Nations Human Rights Committee, 2017, point 26.
38 United Nations Committee on the Rights of the Child, 2017, point 16.
39 Albu, 2021, pp. 75–79.
40 United Nations Committee against Torture, 2023, point 15.
41 United Nations Human Rights Committee, 2017, point 21–22; United Nations Committee on the Elimination of Discrimination Against Women, 2017, points 27–28; United Nations Committee on Economic, Social and Cultural Rights, 2024, point 22.

roles of women and men.[42] In all these respects, women in rural areas are even more disadvantaged.[43] Meanwhile, the phenomenon of domestic violence against women and children continues to be of great concern to UN bodies,[44] as well as the trafficking and sexual exploitation of women.[45] Besides, 'girls continue to be subject to multiple gender-based discrimination'.[46]

UN bodies have also pointed out the occurrence of incidents of hate speech against national and religious minorities, as well as 'allegations of unequal treatment of national minorities and obstacles to exercise their religious freedom'[47] in their reports. The Committee on Economic, Social and Cultural Rights underlined that students belonging to national minorities have 'limited availability of education in the languages of national minorities in practice, due to the inadequate budget allocation'.[48] Moreover, UN bodies have highlighted the problems identified in the social welfare system,[49] the treatment of people with disabilities, or the shortcomings of detention centres, among other things, in their reports. UN bodies were also concerned about the high number of occupational injuries and the use of physical punishment against children.[50]

Throughout these above presented reporting cycles, the State and the different UN human rights monitoring bodies are engaged in active dialogue. As a general commitment, Romania has declared that it will support the report procedures and will 'intensify its efforts to submit its periodic reports'.[51] In order to achieve this, the State has been actively involved in reporting cycles. For example, during the last reporting cycle of the International Covenant on Economic, Social and Cultural Rights, in 2024, the State provided a sizeable amount of relevant data and information. For instance, Annexe 12 includes all the relevant programmes and projects that were implemented by the Ministry of Labour and Social Security (e.g., home-based community services for dependent elderly people, and the implementation of a system for developing social inclusion public policies).[52]

42 United Nations Committee on Economic, Social and Cultural Rights, 2024, point 22.
43 United Nations Committee on the Elimination of Discrimination Against Women, 2017, point 34.
44 United Nations Committee on the Elimination of Discrimination Against Women, 2017, point 18, United Nations Human Rights Committee, 2017, point 24.
45 United Nations Committee on the Elimination of Discrimination Against Women, 2017, point 20.
46 United Nations Committee on the Rights of the Child, 2017, point 16.
47 Human Rights Committee, 2017, point 43.
48 United Nations Committee on Economic, Social and Cultural Rights, 2024, point 48.
49 The shortcomings and abuses of the social welfare system were brought to public attention in the summer of 2023 when information came to light about the poor conditions, starvation and abuse of elderly people and patients in several nursing homes and health centres. The investigations resulted in shutting down several institutions and a number of prosecutions have been instigated.
50 United Nations Committee on Economic, Social and Cultural Rights, 2024, points 28, 32.
51 United Nations General Assembly, 2011, point 18.
52 United Nations Committee on Economic, Social and Cultural Rights, 2024, Annexe 12.

In addition, the State is trying to provide a substantive response to the concerns raised, and to list the steps it has taken to address each of the questioned areas. For example, in order to tackle all the concerns relating to the Roma minority, the State indicated that it has adopted several strategies. In 2022, the Government passed the Strategy for the Inclusion of Romanian Citizens Belonging to the Roma Minority for the Period 2022–2027. This Strategy sets out policies in the fields of health, education, housing, and employment, among others.[53] All these recent strategies are reported to have produced a number of notable results, such as the '*the enrolment of 88,595 self-identified Roma students*'.[54] Additionally, in 2021 Parliament adopted a Law on Certain Measures for Preventing and Combating Anti-Gypsyism, which – in addition to defining the term '*anti-gypsyism*' – criminalises the dissemination of anti-gypsy doctrines; the spreading of anti-gypsy news or information; the production, distribution or possession of anti-gypsy symbols; or the formation, and membership or support of an anti-gypsy criminal organisations.[55]

The State also highlighted that during these report cycles it adopted several strategies to promote equality between women and men, such as the National Strategy on Promoting Equal Opportunities and Treatment Between Women and Men and Preventing and Combating Domestic Violence for the Period 2022–2027, which sets as a priority the elimination of all forms of violence against women.[56] Furthermore, there have been significant recent legislative amendments on these issues, such as the 2018 amendment to Law No 202 of 2002 on Equal Opportunities and Equal Treatment between Women and Men.

Besides this dialogue between the State and UN human rights monitoring bodies during reporting cycles, it is not uncommon for the actors of the civil society (for non-governmental organisations or NGOs) to prepare and submit so-called '*shadow reports*' alongside state reports. For example, for the above mentioned 2024 reporting cycle of the International Covenant on Economic, Social and Cultural Rights, six such submissions were made, most of which were put forward jointly by several NGOs. Examples of such NGOs are the Common Front for Housing Rights, Quantic Association, Social Housing NOW!, RomaJust The Association of Roma Lawyers, or the Border Violence Monitoring Networks. As one can notice, these NGOs represent different areas of social life, so we can conclude that, in general a reporting cycle also activates Romanian NGOs working in the field of human rights protection in general. These shadow reports point out that, for example, Romania

53 Decision No. 560 of 2022 of the Government on the Strategy for the Inclusions of Romanian Citizens Belonging to the Roma Minority for the Period 2022-2027.

54 United Nations Human Rights Council, 2023, point 79.

55 Law No. 2 of 2021 on Certain Measures for Preventing and Combating Anti-Gypsyism. Published in Official Gazette No. 8 of 5 January 2021.

56 Decision No. 1547 of 2022 of the Government on the National Strategy on Promoting Equal Opportunities and Treatment Between Women and Men and Preventing and Combating Domestic Violence for the Period 2022–2027.

violates certain provisions of the International Covenant on Economic, Social and Cultural Rights with regard to migrants and refugees,[57] that housing rights are not adequately protected in case of disadvantaged and vulnerable minorities,[58] or that there exists social discrimination on the basis of HIV/AIDS.[59]

Precisely for these reasons (i.e., the openness of the State and the active participation of NGOs), it is surprising that – although a number of laws were adopted that address the comments made in the reporting cycles – UN conventions and covenants are rarely referred to in the explanatory memoranda or preambles of statutory laws.

It is salient to underline that, in addition to periodical reporting cycles, special *rapporteurs* have also issued some statements concerning Romania. These special procedures also influence the relationship between Romania and the UN. For example, in 2015 Philip Alston – as a special rapporteur on extreme poverty and human rights – stated that 'Romanian society today is strongly divided, not only in terms of the urban/rural divide to which many have referred, but even more importantly, the divide between the more than 40% of people who continue to be at risk of poverty'.[60] The detailed statement also shows that the special rapporteur met with the representatives of several ministries, public institutions and NGOs, and had the opportunity to visit the living conditions of people affected by extreme poverty.[61] Similarly, several other special rapporteurs of the Human Rights Council visited Romania and issued statements, the most important of which are listed in the table below.

57 Joint Submission of Border Violence Monitoring Network, Are You Syrious, Josoor, Rigardu, No Name Kitchen, Centre For Peace Studies, Mobile Info Team, Fresh Response, [RE:]ports Sarajevo, Info Kolpa, Collective Ais, Mare Liberum, plus unnamed anonymous partners [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FICO%2FROU%2F46493&Lang=en (Accessed: 10 October 2024).

58 Joint Submission of Blocul pentru Locuire (BPL), Common Front for Housing Rights, Quantic Association, Desire Foundation, Căși sociale ACUM!/Social Housing NOW!, RomaJust The Association of Roma Lawyers, E-Romanja Association, Right to the City of Timisoara [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FICO%2FROU%2F46493&Lang=en (Accessed: 10 October 2024).

59 Joint Submission of ECPI-Euroregional Center for Public Initiatives [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FICO%2FROU%2F46582&Lang=en (Accessed: 10 October 2024).

60 Alston, 2015.

61 Ibid.

Table 2: Special procedures of the Human Rights Council concerning Romania

Special rapporteur	Year
Special rapporteur on the independence of judges and lawyers	2011
Special rapporteur on slavery	2010
Special rapporteur on migrants	2009
Special rapporteur on health	2004
Special rapporteur on sale of children	2004
Special rapporteur on freedom of religion	2003
Special rapporteur on housing	2002
Special rapporteur on racism	1999
Special rapporteur on torture	1999

In the relationship under scrutiny, one can also point out that several programmes were implemented jointly by the UN and Romania. For example, in cooperation with the Office of the United Nations High Commissioner for Refugees and the International Organisation for Migration, Romania developed a special programme on refugee protection.[62] Based on this an Emergency Transit Centre was established in Timișoara in 2008. Another example is the implementation of the National Action Plan of the so-called European Child Guarantee, which was carried out by the State with the help of the UNICEF and based on which 52 measures were developed to help children at risk of poverty or social exclusion in Romania.[63]

In the Romanian legal literature, an essential argument in favor of the UN human rights protection mechanisms is that they are under the auspice of a single organisation, thus take into account the standards of only one organisation (e.g., during reporting cycles or special procedures), which is a significant advantage compared to the regional level of protection, where several different mechanisms may exist (e.g., in Europe the protecting mechanism of the European Union and that of the Council of Europe).[64] The universality of the UN human rights protection system, the diversity of its legal, monitoring and control mechanisms are, according to some Romanian scholars, its prominent values.[65]

On the basis of all these observations, one can conclude that the State is open to engaging with the UN in the field of human rights protection and intends

62 United Nations General Assembly, 2011, point 3.
63 UNICEF, 2024.
64 Voiculescu and Berna, 2023, p. 183.
65 Ibid.

to act on the basis of the principle of loyal cooperation in each reporting cycle or special procedure. Moreover, the principle of *pacta sunt servanda* permeates the relationship between Romania and the UN, as can be seen from the above. However, the implementation of the UN recommendations needs further legislative efforts, because – as the reports of the UN human rights monitoring bodies reflect – in some areas the level of protection is not yet adequate.

3. The ratification of UN human rights conventions and covenants by Romania

■ *3.1. UN human rights conventions and covenants ratified by Romania*

With regards to the UN human rights conventions and covenants, in the almost seventy years since its accession, Romania has signed and ratified almost all of them. However, the ratification process as a whole reveals a number of interesting aspects. The signature and ratification of the nine UN human rights conventions and covenants under scrutiny in this contribution are summarised in the following table.

Table 3: Romanian ratification of the UN human rights conventions and covenants

Convention/Covenant	Year of Signature/ Accession	Ratification
The 1951 Convention relating to the Status of Refugees	1991	Law No. 46 of 1991
The 1966 International Covenant on Civil and Political Rights	1968	Decree No. 212 of 1974
The 1966 International Covenant on Economic, Social and Cultural Rights	1968	Decree No. 212 of 1974
The 1965 International Convention on the Elimination of All Forms of Racial Discrimination	1970	Decree No. 345 of 1970
The 1979 Convention on the Elimination of All Forms of Discrimination against Women	1980	Decree No. 342 of 1981
The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1990	Law No. 19 of 1990
The 1989 Convention on the Rights of the Child	1990	Law No. 18 of 1990
The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	No signing	No ratification
The 2006 Convention on the Rights of Persons with Disabilities	2007	Law No. 221 of 2010

As one can observe, Romania has ratified eight out of the nine UN human rights conventions studied. The only exception is the 1990 International Convention on

the Protection of the Rights of All Migrant Workers and Members of Their Families. Another special case concerns the ratification of the 1951 Convention relating to the Status of Refugees, which only took place in 1991, exactly forty years after its adoption. The ratification of the other seven human rights conventions took an average of four years and ten months.

In addition, it should be emphasised that Romania accepted only three individual complaints procedures: the Optional Protocol to the International Covenant on Civil and Political Rights on 20 July 1993, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 25 August 2003, and the individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination on 21 March 2003.

■ *3.2. The ratification of UN human rights conventions and covenants under scrutiny*

If one looks at the ratification of each convention or covenant separately, the following observations can be made. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were ratified jointly by Decree No. 212 of 1974. The ratification of the two covenants reflects that in the 1970s – after Nicolae Ceaușescu's opposition to the suppression of the Czechoslovak revolution – Romania became very active on the international scene.[66] This is also highlighted by the preamble of the Decree, which states that

> [t]he human rights covenants contain important principles and provisions for the progressive development of contemporary international law, such as the right of peoples to decide their own destiny, by virtue of which they freely determine their political status and ensure their economic, social and political development, the right to dispose of their natural resources, and the prohibition of war propaganda. They also reaffirm democratic principles for the protection and promotion of human rights.[67]

One can also underline that during the Soviet-type dictatorship, the ratification was carried out by decrees. The main reason for ratification by decree was the gradual marginalisation of the role of Parliament during these years, thus legislation was mainly passed through decrees adopted by the Presidium of the Great National Assembly and later by the State Council. These decrees had binding legal force and

66 Fábián, 2018, p. 190.
67 Preamble to Decree No. 212 of 1974.

were implemented by decisions of the Council of Ministers.[68] According to some scholars, this legislative mechanism enabled party decisions to be 'transposed into the legal system quickly and without difficulty'.[69] Thus, the ratification of the two Covenant took place rapidly with the adoption of Decree No. 212 of 1974, without any further steps.

In the context of the ratification of the International Covenant on Economic, Social and Cultural Rights it has to be noted that upon ratification, Romania made a number of reservations. For example, the State Council considered that Article 26 (1) of the Convention was inconsistent with the principle based on which accession to international treaties must be open to universal participation.

The International Convention on the Elimination of All Forms of Racial Discrimination was ratified by Decree No. 345 of 1970 which was adopted also by the State Council. The Decree contained a number of reservations, concerning Articles 17, 18, and 22 of the Convention. Furthermore, it is interesting to note that the Decree explicitly listed all states operating under Soviet-type dictatorship regime that had already ratified the Convention by the time the decree was issued. The preamble of the Decree contains another rather curious paragraph, which states that

> [b]earing in mind that Romanian legislation prohibits all forms of discrimination, including discrimination on the grounds of race or nationality, and that, in accordance with the principles of the foreign policy of the Socialist Republic of Romania, in order to promote peace, cooperation and progress in the world, has firmly stood and stands for the elimination of all forms of racial discrimination at the international level, the decree appended hereto has been issued on the accession of the Socialist Republic of Romania to the International Convention on the Elimination of All Forms of Racial Discrimination.[70]

The last Convention ratified during the Soviet-type dictatorship was the Convention on the Elimination of All Forms of Discrimination against Women. The ratification of this Convention was made by issuing Decree No. 342 of 1981, which entered into force on 3rd September 1981. The Decree essentially completed ratification by a verbatim translation of the Convention.

After the regime change the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were ratified by two successive laws (Law No. 18 of 1990 and Law

68 Veress, 2020a, pp. 504–505.
69 Veress, 2020a, p. 505.
70 Preamble to Decree No. 345 of 1970.

No. 19 of 1990). Both laws were adopted by the lower chamber of Parliament on 25th September 1990. Interestingly, the Senate adopted Law No. 18 of 1990 on 26th September 1990, whilst Law No. 19 of 1990 was adopted by it on 11th September 1990. Both laws contain only one article declaring Romania's accession to the respective convention.

The Convention relating to the Status of Refugees was ratified by Law 46 of 1991, which was adopted by the lower chamber of the Parliament on 27th May 1991 and by the Senate on 2nd July 1991. One can notice that in the first years after the regime change, Romania ratified several conventions in an attempt to comply with international human rights standards. This period can be considered the second major wave of ratification (the first taking place in the 1970s).[71]

As the last of the conventions and covenants examined, Romania ratified the Convention on the Rights of Persons with Disabilities by Law No. 221 of 2010 on 11th November 2010. The law on ratification essentially contains two articles, the first stating the action of ratification, while the second confers on the National Authority for Persons with Disabilities the power to implement the convention.

It should be also noted that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is not ratified by Romania.

The scrutinised ratification processes can be broadly divided into two main categories: ratification during the years of the Soviet-type dictatorship, and ratification following the regime change. A key difference between the two periods is related to the form of ratification. During the Soviet-type dictatorship, the ratification process was carried out by decrees, whilst after the regime change ratification was done by law. The constitutional basis for ratification was also different under the Soviet-type dictatorship than it is today.

One can observe that during the years of the Soviet-type dictatorship, preambles and the justification for ratification played a pivotal role. Nonetheless, these preambles were somewhat imbued with the political ideology of the time. They also often contained the reservations of Romania to the ratified convention. After the regime change, the legislator no longer attached such symbolic importance to preambles.

The methods of ratification, the preambles and the reasonings all reflect the fact that ratifications before 1989 were heavily influenced by the political ideology of the era. Accession to international human rights conventions was merely a means to an end, with the actual protection of human rights and freedoms taking a back seat. The post-regime change period has brought a change in this respect. For

71 Some scholars have also noted that, after the regime change, Romania acceded to all relevant international conventions and covenants to which it was not yet a party and withdrew its reservations to those that has already been ratified. Ionescu, 2019, p. 891.

this reason, it is worth considering how human rights protection is implemented in practice in Romania today.

4. How are human rights protection obligations deriving from the abovementioned UN conventions and covenants reflected in the Constitution and other major acts in Romania?

As mentioned above, the provisions on the protection of fundamental human rights and freedoms are firstly set out in Title II of the Constitution of Romania. The first Chapter of this Title lays down general provisions and principles on the protection of human rights (e.g. universality, equality of rights), whilst Chapter II contains provisions related to specific fundamental rights. According to some scholars, fundamental human rights regulated by the Constitution include rights derived by the legislator from international treaties and conventions.[72] One can observe that the human rights protected by the Constitution of Romania are to a large extent identical to those enshrined in what is termed as the International Bill of Human Rights.[73] In addition to the provisions of the Constitution, a number of other pieces of legislation provide for the protection of fundamental human rights.

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

Under Article 18 (2) of the Constitution of Romania '[t]he right to asylum shall be granted and withdrawn under the provisions of the law, in compliance with the international treaties and conventions Romania is a party to'.[74] As a result, the right to asylum in Romania must be regulated in accordance with the Convention relating to the Status of Refugees. These detailed regulations are contained in Law No. 15 of 1996 on the Status and Regime of Refugees in Romania.

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

The fundamental human rights enshrined in the International Covenant on Civil and Political Rights are mainly contained in the Constitution of Romania. Accordingly, Article 16 provides for the equality of rights, including the guarantee of equal opportunities for men and women, Article 22 provides for the right to life, to physical and mental integrity, Article 23 provides for individual freedoms including detailed norms on detention, arrest and preventive custody, Article

72 Varga, 2019, p. 197.

73 The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

74 Article 18 (2) of the Constitution of Romania. Available in English at: https://www.presidency.ro/en/the-constitution-of-romania (Accessed: 26 August 2024).

25 provides for the freedom of movement within the territory of Romania and abroad, Article 26 provides for personal and family privacy, Article 30 provides for the freedom of expression of thoughts, opinions, or beliefs, and for the freedom of any creation, Article 39 provides for the freedom of public meetings, processions, demonstrations or assemblies, whilst the right to vote and to be elected are enshrined in Articles 36 and 37. Moreover, in addition to the Constitution, a number of other laws also concern fundamental rights enshrined in the Convention, such as Law No. 304 of 2022 on the Organisation of Justice. Article 8 of this Law states that free access to justice cannot be restricted. In addition, Chapter II of Title II of the Civil Code provides for several personality rights such as the right to life, health and physical integrity (Article 61), freedom of expression (Article 70), the right to privacy (Article 71) or the right to human dignity (Article 72).[75] One can remark that while the right to human dignity is not explicitly mentioned in the text of the Constitution (which does not mean, of course, that human dignity permeate the catalogue of fundamental rights of the Constitution, as – under Article 1 (3) – it is one of the supreme values of the Romanian state), it is expressly provided for in the Civil Code.

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

The fundamental rights provided for by the Covenant on Economic, Social and Cultural Rights are also enshrined in the text of the Constitution and are thus constitutionally protected. The Fundamental Law provides details on labour and the social protection of labour (Aricle 41), the right to education (Article 32), access to culture (Article 33), the right to protection of health (Article 34), economic freedom (Article 45) or economic standards (Article 47). This latter provision includes the explicit obligation of the State 'to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens'.[76] At the same time, some statutory laws also contain detailed provisions concerning these fundamental human rights, such as the right to work and social protection in the Labour Code (Law No. 53 of 2003) or the right to education in Law No. 1 of 2011 on National Education. It is also salient to underline that, according to Article 73 of the Constitution, the general organisation of education and the general rules governing labour relations and social protection shall be regulated by organic law. Thus, it is clear that the Romanian *pouvoir constituant* considered these areas to be of the utmost importance, mainly because of their close connection with fundamental human rights.

75 Sztranyicki and Kokoly, 2021, pp. 39–60.
76 Article 47 (1) of the Constitution of Romania.

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

According to Article 4 (2) of the Constitution 'Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin'.[77] On this basis, the prohibition of racial discrimination is a fundamental priority in Romanian. Moreover, under Article 30 of the Constitution, freedom of expression may be restricted, among other reasons precisely to avoid and prevent racial discrimination. In this context one should mention Ordinance No. 137 of 2000 as well, which provides for the prevention and sanctioning of all forms of discrimination. Furthermore, Article 369 of the Criminal Code criminalises incitement to public hatred or discrimination against a particular community (thus also criminalising racial incitement), whilst Article 77, point h) considers it an aggravating circumstance if an offence is committed on racial grounds.

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

On the one hand, Article 16 of the Constitution in its paragraph (3) declares that the State shall guarantee equal opportunities for men and women to occupy public, civil, or military positions or dignities. On the other hand, according to Article 41 (4) '[o]n equal work with men, women shall get equal wages'.[78] Based on these provisions, one can note that the Constitution protects equality between men and women essentially in relation to the right to work. However, equality between men and women in other areas is provided for in Law No. 202 of 2002 on Equal Opportunities and Equal Treatment of Women and Men. In this context one should also mention a relevant decision of the Constitutional Court, according to which, in the given social context, the legislature considered that the imposition of a uniform legal treatment in connection to the retirement age between women and men was not yet adapted to social realities, but that the current regulations should not exclude the possibility of a woman requesting the continuation of the performance of the individual employment contract, under identical conditions as a man, namely until she would reach the age of 65.[79]

77 Article 4 (2) of the Constitution of Romania.
78 Article 41 (4) of the Constitution of Romania.
79 Decision No. 387 of 2018 of the Constitutional Court. Published in Official Gazette No. 642 of 24 July 2018.

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

Article 22 (2) of the Constitution expressly prescribes that '[n]o one may be subject to torture or to any kind of inhuman or degrading punishment or treatment'.[80] Moreover, Article 281 of the Criminal Code criminalises submission to ill-treatment, while Article 282 the use of torture. It is interesting to note that Law No. 20 of 1990 on Supplementing and Amending the Criminal Code[81] – by which the Romanian legislature first criminalised the use of torture – was adopted as a result of Romania's accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[82]

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

The Constitution contains several provisions on the rights of the child. The most important is Article 49 on the protection of children and young people, which provides, among other things, special protection and assistance to children, the obligation of the State to grant allowances for children, and the prohibition of the exploitation of minors. Moreover, according to Article 48 (1) parents have the right and the duty 'to ensure the upbringing, education and instruction of their children'.[83] The Constitution also stipulates equality between children born in or out of wedlock (Article 48 (3)). Further detailed regulation is contained in the Civil Code (Articles 487–512 on parental rights and duties) and Law No. 272 of 2004 on the Protection and Promotion of the Rights of the Child. Moreover, the Civil Code states in Article 263 (1) that any measures concerning the child must be taken by respecting the best interests of the child.

■ *4.8. The Convention on the Rights of Persons with Disabilities*

According to Article 50 of the Constitution

> [d]isabled persons shall enjoy special protection. The State shall provide the accomplishment of a national policy of equal opportunities, disability prevention and treatment, so that disabled persons can effectively participate in community life, while observing the rights and duties of their parents or legal guardians.[84]

These detailed regulations are prescribed by Law No. 448 of 2006 on the Protection and Promotion of the Rights of Persons with Disabilities.

80 Article 22 (4) of the Constitution of Romania.
81 Published in Official Gazette No. 112 of 10 October 1990.
82 Corsei and Ștefănoaia, 2022, p. 77.
83 Article 48 (1) of the Constitution of Romania.
84 Article 50 of the Constitution of Romania.

■ ***4.9. Institutional guarantees of fundamental human rights protection***

In addition to this legislative framework, one can notice that institutional guarantees are also regulated. The Constitutional Court itself is one of the most salient institutions in human rights protection, as it can review the constitutionality of certain provisions to determine whether they comply with constitutional provisions on fundamental human rights. Another key institutional guarantee is the Advocate of the People, whose main task is to investigate complaints made by citizens against public authorities (nonetheless, it is important to stress that the Advocate of the People does not issue binding decisions, but only recommendations and suggestions). The National Council for Combating Discrimination also plays a crucial role in the protection of fundamental human rights and has the competence to prevent or, where appropriate, investigate and sanction discrimination.[85] The Romanian Institute for Human Rights – which is responsible for promoting the protection of fundamental human rights – was established by Law No. 9 of 1991. The Institute participates in national and international programmes, conducts training courses, prepares studies and reports, organises the Annual Human Rights Conference and hosts competitions. In addition, Romania has specialised institutions in certain fields, such as the National Agency for Roma, the National Agency for Equal Opportunities between Women and Men, or the Department for Interethnic Relations.

5. Legislative processes in Romania initiated by the UN conventions

As already mentioned above, relatively few national laws are justified on the grounds of the need to comply with UN human rights conventions and covenants. One reason for this is that in the case of the conventions or covenants ratified during the years of the Soviet-type dictatorship, the authorities of the time considered – as one can observe in the preambles presented above – that Romania was already fully in line with the relevant international standards, and thus no further legislative amendments were needed. On the other hand, even after the regime change, the incorporation of certain conventions and covenants into Romanian law was done in such a way that, upon ratification, the full text of the convention or covenant became an integral part of domestic law (essentially as an annex to the law on ratification).

Therefore, the number of laws or even provisions that can be explicitly known to have been adopted by Romania along the lines of the UN human rights documents is limited. Nevertheless, a few examples – where these conventions and covenants influenced the legislator – can be presented.

85 Nagy, 2022, p. 170.

In connection with the Convention relating to the Status of Refugees it has to be noted that Law No. 15 of 1996 on the Status and Regime of Refugees in Romania makes direct reference to the Convention as a regulation affecting asylum applications by foreign nationals in Romania.[86] Thus, the provisions of the Convention were taken into consideration by the legislator when it drafted national law on the status and regime of refugees.

As mentioned above, fundamental human rights regulated by the Constitution include rights derived by the legislator from international treaties and conventions.[87] Of the conventions and covenants examined in this study the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights stand out in terms of their impact on constitutional provisions. These covenants therefore shaped domestic law primarily in the context of the drafting of the 1991 Constitution.

The legislator expressly provided, in Ordinance No. 137 of 2000, that the National Council for Combating Discrimination is responsible for the implementation of the prohibition of discrimination in accordance with domestic legislation and international treaties.[88] Thus, the concrete implementation of the International Convention on the Elimination of All Forms of Racial Discrimination is an obligation of the Council. Moreover, it is clear from this provision that the establishment of the institution was, in a way, influenced by the implementation of international provisions.

The provisions of the Convention on the Rights of the Child influenced even certain stipulations of the Civil Code. Whilst the explanatory memorandum of the Civil Code lists all the UN conventions and covenants that were taken into account in drafting the code,[89] the actual reasoning refers only to Convention on the Rights of the Child on the basis of which the best interest of the child was regulated in Article 263.[90] The Convention influenced also the provisions of Law No. 272 of 2004 on the Protection and Promotion of the Rights of the Child, which stipulates that 'public authorities, private service providers, natural and legal persons responsible for child protection are obliged to respect, promote and guarantee the rights of the child [...] in accordance with the UN Convention on the Rights of the Child'.[91]

86 Article 1 (2) of Law No. 15 of 1996 on the Status and Regime of Refugees in Romania.
87 Varga, 2019, p. 197.
88 Article 16 of Ordinance No. 137 of 2000 on Preventing and Sanctioning All Forms of Discrimination.
89 Namely: Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.
90 Explanatory memorandum – Law on the Civil Code. [Online]. Available at: https://www.cdep.ro/proiecte/2009/300/00/5/em305.pdf (Accessed: 10 October 2024).
91 Article 1 (2) of Law No. 272 of 2004 on the Protection and Promotion of the Rights of the Child.

Regarding the legislative processes connected to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, one has to take into account that, as already mentioned, the criminalisation of the use of torture – by Law No 20 of 1990 on Supplementing and Amending the Criminal Code – was carried out precisely in order to comply with the Convention. At the same time, the explanatory memorandum of the current Criminal Code does not mention any UN human rights convention or covenant that has had an impact on the legislation. In contrast, a high number of European Union regulations and directives have shaped the provisions of the Code according to this memorandum.[92]

As a direct consequence of the Convention on the Elimination of All Forms of Discrimination against Women, during the 2015 amendment of Law No 202 of 2002 on Equal Opportunities and Equal Treatment of Women and Men, the idea that equal opportunity should be defined in accordance with international standards was incorporated into the text of the Law. The initiators of the amendment (members of the Parliament) in their explanatory memorandum reflected directly on the Convention and highlighted its influence on the amendment. However, the amendment was also influenced by relevant regional regulations.[93]

The Convention on the Rights of Persons with Disabilities appears in the relevant Romanian domestic law in such a way that Law No. 448 of 2006 on the Protection and Promotion of the Rights of Persons with Disabilities explicitly provides that the rights of persons with disabilities must also be guaranteed in accordance with international conventions.[94] At the same time, the fact the Law directly mentions the European Social Charter highlights that the implementation of regional treaties or charters has a much more important impact on legislation than UN conventions or covenants (it is true that Romania had not yet ratified the Convention at the time of the adoption of the law, but even after ratification this provision was not amended).

Nonetheless, one has to mention that the Constitutional Court in 2020 found that the provisions of the Civil Code on the adjudication of incapacity are unconstitutional as they do not take into account that there might be varying degrees of mental disability.[95] In the given Decision the Constitutional Court

92 Explanatory memorandum – Law on the implementation of the Criminal Code and amending and supplementing certain normative acts containing criminal provisions [Online]. Available at: https://www.cdep.ro/proiecte/2011/100/00/0/em100.pdf (Accessed: 10 October 2024).

93 Explanatory memorandum – Law on amending and supplementing Law No. 202 of 2002 on Equal Opportunities and Equal Treatment of Women and Men [Online]. Available at: https://www.cdep.ro/proiecte/2013/400/00/5/em705.pdf (Accessed: 13 October 2024).

94 Article 4 of Law No. 448 of 2006 on the Protection and Promotion of the Rights of Persons with Disabilities.

95 Decision No 601 of 2020 of the Constitutional Court of Romania. Published in Official Gazette No 88 of 27 January 2021.

referred explicitly to the Convention on the Rights of Persons with Disabilities. Moreover, whilst correspondingly amending the Civil Code, the legislator also took into account Article 12 of the Convention.[96] Thus, through the decision of the Constitutional Court, the Convention influenced the provisions of the Civil Code, but this only took place more than ten years after the ratification.

From this brief presentation one can conclude that in Romania – except for a few general cases – there are no major legislative initiatives or processes that rely to a significant extent on UN human rights conventions or covenants. One reason for this lies in the practical shortcomings of the enforceability of UN human rights conventions and covenants. Although specific UN bodies were established to monitor the implementation of certain convention, their soft-law acts are not enforceable, and thus, as practice shows, they are rarely invoked by the Romanian legislator. Perhaps that is why, when a comprehensive volume on the impact of the UN human rights treaties on domestic level was compiled a few years ago, although Romania was originally included among the East-central European states to be reported on, it was ultimately replaced by Poland.[97] In general, it can also be stated that in contrast to these UN human rights conventions and covenants, the Romanian legislator prefers to refer to and mirror the human rights instruments of the Council of Europe (e.g., the European Convention on Human Rights) or to those regulations and directives issued by the European Union, that also relate to fundamental human rights.

6. Romanian cases before the monitoring bodies of the UN conventions and covenants

Due to the fact that so far only one monitoring body of the UN has dealt with cases concerning Romania (three in number), in the following only these cases discussed by the UN Human Rights Committee (hereinafter: HRC) will be discussed.

The main task of the HRC is to monitor the implementation of the provisions of the International Covenant on Civil and Political Rights by the States Parties. The HRC can adopt State-specific and general comments, the latter referring to certain provisions of the Covenant. Additionally, there is also an optional inter-State complaints procedure, under which the HRC is trying to find amicable solutions. The First Optional Protocol to the International Covenant on Civil and Political Rights has created the possibility of individual complaints.[98] Romania acceded to this First Optional Protocol in 1993. Subsequently, the State appeared

96 See the preamble of Law No 140 of 2022 on Some Measures for the Protection of Persons with Intellectual and Psychosocial Disabilities and Amending and Supplementing Certain Normative Acts.

97 Viljoen and Murray, 2021, p. 6.

98 Selejan-Guțan, 2011, pp. 10–11.

as a party before the HRC on three occasions. One can find a summary of these cases as follows.

■ *6.1. Blaga and Blaga v. Romania*[99]

Aurel and Lucia Blaga, two Romanian citizens, bought an apartment in Bucharest in 1979. Nine years later, in 1988, they left the country and, as they did not return after their visas expired, the municipality expropriated their property under Decree No. 223 of 1974. In 1992, the authors (Aurel and Lucia Blaga) applied to the district court of Bucharest to set aside the expropriation decision and return their property by restitution. Although their application was dismissed at first instance and also on appeal, the Bucharest Court of Appeal ruled in the third instance that the expropriation of the apartment was contrary to Article 13 of the Universal Declaration of Human Rights (on freedom of movement) and that the municipality should return the property to them. Moreover, in May 1995, the authors sold the apartment to a third party.[100]

In 1995, the Supreme Court (the current High Court of Cassation and Justice) issued a decision ruling that domestic courts did not have the jurisdiction to hear actions for the restitution of expropriated properties. On the basis of this decision, the General Prosecutor appealed in the interest of the law in several cases, including the case of the authors. In May 1996, the Supreme Court ruled that the Court of Appeal of Bucharest had exceeded its jurisdiction and violated the principle of separation of powers when it returned the apartment to the authors.[101]

Against this factual background, the authors considered that the decision of the Supreme Court violated Article 12 (freedom of movement) and Article 26 (equality before the law) of the International Covenant on Civil and Political Rights, as the expropriation of their property was carried out in order to punish them for leaving the country. The authors also invoked a violation of Article 14 (right to justice), pointing out that prior to 2003, the General Prosecutor had the possibility to lodge an exceptional appeal against an irrevocable decision. According to the authors, this power of the General Prosecutor violated legal certainty and the equality of arms between the parties in the proceedings. The authors also pointed out that when their case came before the courts in 1992, the domestic courts had jurisdiction to rule in such cases, so the decision of the Supreme Court also infringed their right to free access to justice.[102]

The State argued – both on admissibility and factual grounds – that the provisions of the International Covenant on Civil and Political Rights had not been violated. Among other things, the State raised as an argument that the authors

99 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003.
100 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003, points 2.1, 2.2.
101 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003, point 2.3.
102 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003, point 3.1–3.4.

alleged the violation of Articles 12 and 26 on the basis of events that occurred prior to 1989, that is, before the entry into force of the Optional Protocol (*ratio temporis* objection). As a factual argument, the State highlighted that the authors had real remedies available to them and that their free access to justice was respected.[103]

In relation to the *ratio temporis* objection, the HRC observed that the contested decision of the Supreme Court was handed down in 1996 and had the effect of upholding the expropriation of the authors' apartment. Therefore, the present case fell within the competence of the HRC.[104]

On the other hand, concerning the consideration of the merits, the HRC declared as a matter of principle that:

> [t]he Committee considers that the principle of equality before the law entails that judgments, once they have become final, can no longer be appealed or reviewed, except in special circumstances when the interests of justice so require, and on a non-discriminatory basis.[105]

In the opinion of the HRC in the present case, no legitimate argument had been put forward to justify the annulment of the decision. Moreover, in 2003, the State itself abolished the right of the General Prosecutor to use extraordinary appeals, thus essentially acknowledging that this practice violated the principle of legal certainty. On this basis, the HRC found that the State had violated Article 26 of the International Covenant on Civil and Political Rights.[106]

In light of the above, the HRC concluded that 'the State party is under an obligation to provide the authors with an effective remedy, including prompt restitution of their property or compensation therefor'.[107]

These findings have been somewhat anticipated by the Romanian legislator, which has already taken some steps to remedy the shortcomings identified (e.g. abolished the right of the General Prosecutor to use extraordinary appeals). However, the general situation regarding restitution of real estate still needs to be improved.[108]

■ *6.2. Mohammad Munaf v. Romania*[109]

Mr. Mohammad Munaf, the author of the communication, is an Iraqi–American dual national who lived in Romania with his Romanian wife and children.

103 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003, point 8.1–8.3.
104 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003, point 6.4.
105 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003, point 10.2.
106 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003.
107 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003, point 12.
108 See for example Veress, 2020b, pp. 373–375.
109 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006.

In March 2005, the author accompanied three Romanian journalists to Iraq to assist them in their work as a translator and guide. The visitors, however, were kidnapped and held hostage for 55 days. After their release, they were taken to the Romanian Embassy in Iraq. There, according to the author, he was handed over to the US military.[110] The author was later transferred to the detention centre known as 'Camp Cropper', where, according to his claims, he was tortured and threatened by Romanian and American officials.[111]

In October 2006, the author – along with five co-defendants – was brought before the Central Criminal Court of Iraq for his involvement in the kidnapping. He claims that during the trial, the presumption of innocence was violated in his regard, he was not given adequate time to prepare his defence, and was not allowed to contact his counsel from the US or call witnesses.[112] Moreover, since he was accused of kidnapping Romanian citizens, the Iraqi court could only prosecute him on the basis of a complaint submitted by the Romanian government. During the trial, a US Lieutenant filed a complaint against the author, stating that Romania had authorised him to file such a complaint and to seek the death penalty against the author. On this basis, he was sentenced to death.[113] The author highlighted that, although Romania admitted that it had not authorised any US official to represent it during the proceedings, the State took no official steps to clarify the situation of the author. On 2 November 2006, the Ministry of Justice of Romania issued a press release in this sense, but no further steps were taken.[114]

Based on the above, the author considered that Romania violated the provision of Article 6 (on the right to life), Article 7 (on the prohibition of torture and inhuman or degrading treatment), Article 9 (on the right to liberty), Article 10 (on the treatment of persons deprived of their liberty) and Article 14 (on equality before the courts and tribunals) of the International Covenant on Civil and Political Rights.[115]

In its response, the State contested the admissibility and the substance of the application. First, Romania underlined that after the kidnapping, the victims were released under the command of the MNF-I (Multinational Force) troops. Subsequently, the three journalists were handed over by the MNF-I to the Romanian Embassy, while the author remained under the MNF-I's authority. He was later transferred to 'Camp Propper' detention centre. The State stressed that there were no Romanian officials at 'Camp Propper'.[116] The Romanian prosecutor's office also opened criminal proceedings against the author on charges of terrorism, linked to

110 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 2.1.
111 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 2.2.
112 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 2.3.
113 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 2.4.
114 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 2.6.
115 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 3.1.–3.3.
116 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 4.2.

the kidnapping. Romanian public prosecutors were present in Baghdad at several stages of the investigation, and the author was interrogated by them multiple times. During these interrogations, the author was in a good condition and never complained of torture or degrading treatment.[117]

In addition, the State pointed out that the Romanian public prosecutors were mandated solely to interrogate the author and that they were not authorised to seize the Iraqi authorities. Romania also underlined that it had not authorised any US official to represent the State's interests during the proceedings in Iraq. Moreover, the Romanian Embassy did not know about the proceedings, nor the alleged authorisation.[118] The State also emphasised that the author had not been under Romanian authority since he arrived in Iraq. The victims of the kidnapping were released by the MNF-I, so the fact that the author was at the Romanian Embassy was not relevant, as he was still in the custody of the MNF-I.[119] Furthermore, Romania considered that the author could not prove that he had been a victim of torture, nor that his right to a fair trial had been violated.[120]

It is salient to note that during the pending case before the HRC, the Iraqi Supreme Court set aside the judgement of the Central Criminal Court of Iraq concerning the author and remanded the case before a specialised court in order to conduct further investigations.[121]

On 2 April 2008, the HRC ruled on the admissibility of the author's communication and invited Romania to provide further details on the author's alleged criminal conduct.[122] In its response, the State reiterated its objections to the admissibility of the communication and mentioned that in the meantime the Court of Appeal of Bucharest had sentenced the author to ten years of imprisonment for acts related to terrorism.[123] In addition, Romania pointed out that the author himself had requested to go from the Romanian Embassy to the US Embassy, and at that moment neither the author nor the Romanian Embassy knew that he would later be interned by the MFI-I Tribunal and prosecuted by the Iraqi authorities.[124] The State reiterated that the Romanian public prosecutors found the author in good condition, and also his wife confirmed that the author was '*doing pretty well*'.[125] Referring to the rules of criminal proceedings in Iraq, Romania also considered that the author's claim concerning the violation of his right to a fair trial was not well-founded.[126]

117 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 4.3.–4.4.
118 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 4.5.–4.6.
119 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 4.10. – 4.11.
120 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 4.15.
121 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 6.2.
122 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 8.
123 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 9.1.–9.8.
124 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 9.9.
125 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 9.10.
126 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 9.13.

In considering the merits of the case, the HRC first highlighted that 'a State party may be responsible for extra-territorial violations of the Covenant, if it is a link in the casual chain that would make possible violations in another jurisdiction'.[127] However, in view of the factual circumstances of this case, the HRC did not consider, on the basis of the information available to it, that 'the State party would or should have known, at the time of the author's departure, that criminal proceedings would subsequently be initiated against him in Iraq'.[128] Besides,

> '[t]he Committee notes that at the time of his departure from the embassy, the State party was of the view that the author would merely take part in a de-briefing procedure and had no reason to deny his specific request to go to the US embassy, in particular given his status as a dual national'.[129]

On the basis of all these findings, the HRC concluded that Romania had not committed any act that would have exposed the author to a genuine risk of violation of his rights recognised by the International Covenant on Civil and Political Rights.[130]

■ ***6.3. G.A.P. v Romania***[131]

The author of the communication was a Romanian businessman, in his capacity as Vice-Chair of the Board of Directors of an international company. In August 2000 the company signed an agreement with the University of Agronomic Sciences and Veterinary Medicine for the use of more than 200 hectares of land. The company later changed its name and the University obtained 49.88% of its shares. In addition, the University transferred to the company the right to use 175 hectares of land at Baneasa Farm. In 2005, another well-known Romanian businessman filed a complaint against the author and the rector of the University, but the General Prosecutor refused to investigate the case. Nevertheless, in 2009 the National Anti-Corruption Directorate opened a criminal prosecution against the author for complicity in abuse of power.[132] The author was sentenced to nine years of imprisonment by the Court of Appeal of Bucharest for complicity in abuse of power and active bribery. The author filed an appeal against the decision, but this was dismissed by the High Court of Cassation and Justice.[133]

127 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 14.2.
128 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 14.4.
129 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 14.5.
130 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 14.6.
131 Case of G.A.P v Romania, Communication No. 3662/2019.
132 Case of G.A.P v Romania, Communication No. 3662/2019, point 2.1.–2.3.
133 Case of G.A.P v Romania, Communication No. 3662/2019, point 2.9.

The author highlighted that according to Decision No. 51 of 2016 of the Constitutional Court of Romania 'it was unconstitutional to rely on covert surveillance evidence secured with the assistance of the Romanian Intelligence Service'. He further claimed that he had been targeted by and fallen victim to a 'parallel State formed by intelligence services, public prosecutors and some politicians'.[134] In addition, the author highlighted that a secret protocol existed between the Intelligence Service, the General Prosecutor's Office, and the High Court of Cassation and Justice on cooperation between these bodies in the investigation of certain crimes.[135] On the basis of the above, the author considered that due to covert surveillance his right to privacy and the private nature of his correspondence, which are protected under Article 17 of the International Covenant on Civil and Political Rights, had been violated.[136] Moreover, the author stressed that the secret protocol did not meet the criteria of accessibility, clarity, precision and predictability and it did not provide any safeguards.[137]

To all these arguments, the State responded both on the admissibility of the communication and the merits. Romania pointed out that the author's objections concerning the use and effect of the secret protocol were too vague. Besides, interceptions authorised by courts are legally permissible and in the case of the author it was a proportionate, necessary and time-bound measure.[138] The State also pointed out that the author had not put forward any evidence to support that his surveillance was extensive or excessive.[139]

On the basis of the facts and arguments presented, the HRC concluded that the author's objections essentially concerned the illegality of the application of the secret protocol, the evaluation of the evidence and the enforcement of domestic law. However, the HRC underlined

> 'that it is not a final instance entity competent to re-evaluate findings of fact or the application of domestic legislation. [...] On the basis of the information before it, the Committee cannot conclude that the author sufficiently substantiated his assertion'.[140]

On these grounds, the HRC declared the author's claims inadmissable.[141]

Although the HRC had declared the author's claims inadmissible, one can notice that the case addressed an important issue, i.e. protocol existed between the Intelligence Service, the General Prosecutor's Office, and the High Court of

134 Case of G.A.P v Romania, Communication No. 3662/2019, point 2.8.
135 Case of G.A.P v Romania, Communication No. 3662/2019, point 2.14.
136 Case of G.A.P v Romania, Communication No. 3662/2019, point 3.1.
137 Case of G.A.P v Romania, Communication No. 3662/2019, point 3.2.
138 Case of G.A.P v Romania, Communication No. 3662/2019, point 6.6.–6.7.
139 Case of G.A.P v Romania, Communication No. 3662/2019, point 6.11.
140 Case of G.A.P v Romania, Communication No. 3662/2019, point 8.5.
141 Case of G.A.P v Romania, Communication No. 3662/2019, point 9.

Cassation and Justice on the cooperation between these bodies in the investigation of certain crimes. The Constitutional Court of Romania, in solving a legal dispute of a constitutional nature between the Public Ministry – Public Prosecutor's Office attached to the High Court of Cassation and Justice-, Parliament of Romania, the High Court of Cassation and Justice and other courts found that 'the collecting of evidence by bodies other than the judicial ones violates the material competence of the criminal prosecution bodies, which entails the application of the sanction provided for in Article 281 (1) b). of the Code of Criminal Procedure'.[142] On this basis, the Constitutional Court highlighted that evidence collected not in accordance with the law cannot be used in criminal proceedings.[143] Following this, and another Decision[144] of the Constitutional Court, the provisions of the Code of Criminal Procedure were amended in 2023, introducing new safeguards for the collection of evidence.[145]

7. Concluding thoughts

The protection of fundamental human rights has undergone significant changes during Romania's history. In the post-regime change period, compliance with international human rights standards has become a priority. The specific role of the UN human rights conventions and covenants is ensured by Article 20 of the Constitution, which incorporates international human rights documents ratified by Romania into what is known as the '*constitutional bloc*'. At the same time, the relationship between the UN and Romania, from a human rights perspective, is also defined by the reporting cycles, during which an active dialogue is conducted between the parties. Given all this, one can say that from a human rights perspective, the relationship between Romania and the UN is based on two principles: the principle of *pacta sunt servanda* and the principle of loyal cooperation.

Nonetheless, it is worth pointing out that there were only a few legislative processes initiated by compliance to UN conventions or covenants. Domestic norms that specifically address human rights are much more likely to refer to regional human rights standards than to UN conventions or covenants. Regardless of this, however, most of the human rights enshrined in UN documents examined

142 Decision No. 26 of 2019 of the Constitutional Court. Published in Official Gazette No. 193 of 12 March 2019, Reasoning 208.

143 Decision No. 26 of 2019 of the Constitutional Court. Published in Official Gazette No. 193 of 12 March 2019, Reasoning 206.

144 Decision No. 55 of 2020 of the Constitutional Court. Published in Official Gazette No. 517 of 15 June 2020.

145 Law No. 201 of 2023 on amending and supplementing Law No 135 of 2010 on the Code of Criminal Procedure and amending other normative acts. Published in Official Gazette No. 618 of 6 July 2023.

in this study are constitutionally protected in Romania and are also provided for in detail in other organic or ordinary laws.

Romania has also taken some practical steps to comply with international human rights standards. Despite these efforts made by the State, there still are some shortcomings. These have also been observed by some UN bodies. Certain social groups, such as the Roma minority or members of national minorities, often face discrimination. A major problem for the Roma minority in particular is free access to education, health care, or employment. Visible inequalities between women and men are also apparent, exacerbated by the high number of domestic violence cases against women. Moreover, it is also worth taking into account the proceedings concerning Romania before certain UN bodies, such as the HRC, as these cases may also reveal certain specificities. For example, the weaknesses in the protection of property rights and the judiciary that could be observed in the first years after the regime change are outlined in the case of Blaga and Blaga v. Romania.

All this shows that Romania is committed to complying with international human rights standards. It has made considerable efforts to do so, but further progress is needed to ensure more comprehensive protection. In all these processes, UN bodies have a key role to play by providing further guidance through their comments and recommendations.

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