International Standards of Human Rights in Polish Constitutional Regulations and Practice

The 1989 transformation of the Polish legal and social systems brought, among other changes, a new attitude in Poland toward international law and human rights. Poland's desire to keep up with world and European standards has led to new fields of legislation and new methods of legal practice.

International standards concerning human rights are the most important factors promoting change in Poland. This influence, juxtaposed against existing regulations and practices, is the main focus of this article. This article does not compare specific rights and privileges available in Poland with those recognized internationally. Rather, this article analyzes the effect of international norms on Polish constitutional regulations, judicial decisions, and doctrinal opinions and the resulting new perspective coming to the Polish legal order.

I. Constitutional Regulations

Constitutional law in Poland is complicated. Constitutional regulation of human rights originated in the 1952 Constitution and is still binding.¹ This regulation casts a broad shadow, delaying the changes of the last decade. The legislative decisions made at the end of the 1980s changed the application of the old rules. The years since these decisions have brought both amendments to the 1952 Constitution and work on a completely new constitution. Furthermore, the distinction

¹ POL. CONST. (1952) ch. VII.
between the law on the books and the law in action surprisingly fits the constitutional situation in present-day Poland. The discrepancy between constitutional provisions and legal practice is due to the completely different social, cultural, and political environment after the great social changes that occurred in Poland in the 1980s.

The Polish 1952 Constitution was established during the high point of the influence of the Stalinist regime in Eastern Bloc countries. However, this influence of ideology and legal doctrines emphasizing communist progress did not promote any deeper contact between the two sides divided by the Iron Curtain. Despite the differences between particular Eastern Bloc states, the general effects were about the same.\(^2\)

In the field of human rights regulation, the 1952 Constitution embraced a wide array of rights and freedoms that are still binding despite slight amendment in 1976 and 1989. These rights and freedoms ensure equal treatment irrespective of nationality, race, or religious denomination. They include the right to elect representatives to the Diet (Parliament) and peoples’ councils and to remove them; the right to associate; the right to participate in social control, consultations, and discussions on the problems of development of the country; and the right to complain to state organs. Further, the 1952 Constitution assures corporeal inviolability and inviolability of home and correspondence; foreigners of asylum; protection by the state while abroad; freedom of conscience, religion, speech, and publication; and freedom to participate in public meetings, processions, and manifestations. Additional rights and freedoms encompass social and economic rights to work and salary according to the quantity and quality of work performed; to rest; and to health protection and assistance in case of illness or incapacity. Also covered are rights of veterans to care by the state; of women to equal treatment; and of the young to solicitous care. Finally, the 1952 Constitution guarantees peoples’ freedom to benefit from cultural achievements and to participate creatively in the development of national culture.

Some general features that influence constitutional practice include: (1) grounding rights and freedoms in basic principles having any univocally ideological connotation; (2) concentration of the regulation not on the protection of rights of individuals, but on the fulfillment of the public interest represented by the state; (3) the paternalistic character of social and economic rights, which creates a passive attitude in individuals who expect to have their social situation managed by the state and symbolizes the perceived prerogative of authority to award citizens with rights; (4) listing the general tasks of the state and the means by which the state should fulfill citizens’ rights and freedoms in vague terms such as “state takes care,” “looks after,” “takes care and protects,” “supports and develops,” without detailing the responsibilities of the state apparatus; (5) the assumption

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that constitutional rules should be developed by the regular statutory procedures that originally created the current problems, even if the existing constitutional rule was clear enough;\(^3\) (6) the equivalence and counterdependence of rights and duties,\(^4\) including the duties of respecting the provisions of the Constitution, statutes, and rules of social coexistence; protecting the natural environment; guarding social property; defending the country; performing military service; being watchful against state enemies; guarding state secrets; and fulfilling duties for the state.

The gap between constitutional regulation and international law was clearly visible. International law was only recognized in the standards according to which the Council of State ratified and renounced international treaties.\(^5\) Lack of any reference to international law in the chapters on political, social, and economic structure,\(^6\) or in the chapter setting forth the fundamental rights and duties\(^7\) of citizens, caused wide discretion in implementation of covenants and agreements.

II. Doctrinal Opinions

Doctrinal opinions formed in the 1960s argued that the binding force of treaties in the state order should be recognized despite the gap and despite the absence of transformation or incorporation statutes. Polish legislative practice contained at least three ways of referring to these agreements: (1) by invoking a statutory clause stating that the statute does not infringe on treaties, (2) by subjecting the implementation of a statute to the existence of a treaty in a particular field, and (3) by the legislature’s giving clear priority to the treaties over the statute. The binding force of treaties was based on an *ex proprio vigore* rule, without any need for transformation or incorporation. The only condition was the official publication of the treaty in the Polish Journal of Laws if the treaty regulated matters reserved for statutory regulation.\(^8\)

III. Judicial Decisions

The doctrinal discussion did not solve any problems arising during the execution of international standards. The recognition of the binding force of treaties did not necessarily lead to strict implementation of their standards. For example, the Polish Supreme Court, in refusing the registration of the labor union, indicated

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4. Id. at 379.
6. Id. chs. I, II.
7. Id. ch. VII.

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that ratification of international norms only affected international relations and created international torts by obligating the state to introduce international standards into domestic law, but could not lead to direct application of international law by Polish judges.\textsuperscript{9} The judges were to be subordinated in the jurisdiction, according to the Constitution, exclusively to statutes.\textsuperscript{10}

This decision, giving such a strict negative answer to the question of domestic implementation of international norms, is unique in Polish jurisprudence. However, the decision clearly shows that lack of regulation can easily lead to confusion regarding jurisdiction and, what is even more dangerous, to susceptibility to ideological and political pressures.

IV. The 1989 Changes

The deep social change symbolized by the political decisions of 1989 and elections to the Sejm has not established a new Constitution.\textsuperscript{11} Even though Poland started the transformation to a democratic system in 1989 with the most organized opposition and finally accepted the most radical economic reforms in Eastern Europe, it became the only country among the East-Central European states that referred to 1952 when speaking of a binding Constitution.

Obviously, the necessary constitutional changes have been made, but many significant problems are still waiting for final and systematic solutions. The amendments of 1989 establishing the Senate and the office of president in April and introducing new principles in December resolved the most urgent problems.\textsuperscript{12} The so-called Small Constitution of 1992 temporarily resolved the problems of structure and competencies of state apparatus and territorial self-government.\textsuperscript{13} Although the statute on the Mode of Preparation and Passing the Constitution of the Republic of Poland should bring the realization of the idea closer, the process has not as yet reached the final stage.\textsuperscript{14}

This complicated situation makes practice under the Constitution of 1952 quite interesting. It remains important in the sphere of citizens’ rights, since the Basic Rights and Duties chapter was only slightly revised in 1976 and 1989, surviving fundamentally unchanged through rapidly changing times.

Despite the binding force of the 1952 regulations, no one could argue that the

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\item Judgment of Aug. 25, 1987, \textit{supra} note 5.
\item The Round Table Agreement of 1989 resulted in a compromise between the old regime and its opposition. Elections to the Sejm were held on June 4, 1989.
\item Law Establishing the Senate and the Presidential Office, DZIENNIK USTAW RZECZPOSPOLITEJ POLSKIEJ [JOURNAL OF LAWS OF THE REPUBLIC OF POLAND] [Dz. U.] No. 75 (1989) item 444.
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present practical law is based on the same pre-1989 assumptions. However, some crucial normative changes were introduced before 1989. The creation of a Constitutional Tribunal in 1986 and a civil rights commissioner in 1987—unique institutions in this part of Europe at the time—have radically changed the social climate of civil rights. Furthermore, the process of Europeanization of Polish law, the necessity of harmonizing Polish law with European standards, and the general change of political and social discourse towards democracy and pluralism have decisively influenced all legal practice, despite a lack of new provisions.

About 80 percent of the Constitutional Tribunal’s cases are connected with the protection of civil rights that are infringed by the provisions of various acts. The European Convention on Human Rights and Basic Freedoms is a frequent point of reference. Interpretation of the Convention by the European Tribunal of Human Rights is being reported too. Despite this focus, no strict rule exists concerning the application of these standards in the Polish state order. Evaluating the competence of the Tribunal by examining its alignment of national legislation with binding international treaties under the future constitution seems to be an important proposal. However, the civil rights commissioner, in upholding citizens’ rights and liberties as defined in the Constitution and other legal acts, has the most power to protect human rights in Poland. The introduction of this institution to the Polish legal order has changed the observance of these rights by the state.

One of the most obvious changes in the role of international standards in Poland comes from the Polish Supreme Court. The Court made a precedential decision in 1991, treating article 15 of the International Covenant on Civic and Political Rights as a self-executing standard in the Polish legal order. The case dealt with the accusation that Franciszek K., together with other persons, had led a strike in a mining factory from December 14 to December 17, 1981, to protest the imposition of martial law. Franciszek K. instituted the strike after the imposition of martial law by the December 12, 1981, Decree of Council of State, but before the decree’s official publication in Poland’s Journal of Laws. The strike proceeded despite suspension of the labor union by state decree. The Supreme Court decided the case in 1983. The president of the Supreme Court appealed the decision extraordinarily. The appeal raised many problems, including the problem of the Court’s lack of regard for article 15 and article 4 of the Covenant in relation to the behavior ascribed to Franciszek K. The 1991 decision exculpated the

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16. POL. CONST. (1952) ch. VII.


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defendant. Among the various arguments proposed was a significant one dealing with the importance of international standards for state law. The 1977 ratification of the Covenant made its article 15 binding universally in all circumstances and valid for any evaluation of the defendant's act, even in such a situation as the imposition of martial law. Article 61 of the Decree of Martial Law, stating that the decree is binding from the date of publication, but enforceable from the date of passage, has been recognized by the Court as contradictory to the treaty, which having been published in Poland's Journal of Laws is a self-executing international rule, binding in Poland without additional incorporative measures. One other important argument surfaced in this decision. The Supreme Court stated that the right to strike is a fundamental human right. Therefore, Franciszek K.'s participation in the strike not only should not be considered contrary to moral or social norms but should instead deserve approbation. Behavior consistent with each human being's rights could not be criminal or a basis for sentencing, according to the Supreme Court.

The decision has been recognized as precedential for taking into consideration the problem of the binding force of international treaties. Following former doctrinal opinions the holding clearly immobilized the prevailing rule that international treaties ratified and promulgated in Poland's Journal of Laws should be implemented directly without any intermediate measures such as incorporation or transformation into the state legal order. However, the Supreme Court refuses to further develop the priority of self-executing international norms over national legislation or form clear guidelines for the application of these rules by courts and administrative agencies. However, no doubt exists that this decision introduces new practical legal methods of applying international rules to Poland's internal legal order.

V. New Perspectives

A. PARTICIPATION IN EUROPEAN INTEGRATION

The significance of international standards for state law will increase due to the increasingly closer links between Poland and the European Union.

18. Earlier decisions in the case by the Voirodship Court in 1982 and the Supreme Court in 1983 had sentenced Franciszek K. to eighteen months' imprisonment and a fine.


20. The former doctrine dictated that treaties promulgated in Poland's Journal of Laws were to be implemented on their own force (in proprio vigore).

21. Id.; see also J. Skrzydło, 4 PAŃSTWOWE PRAWO 111 (1992) (adding gloss to the decision).

access to the Council of Europe on November 26, 1991, started the process of change for Polish law and legal practice to standards originated among others in the European Convention on Human Rights and Basic Freedoms. Article 1 of the Convention secures the rights and freedoms regulated by title I of the Convention and imposes an objective obligation on states. This obligation is effective not only horizontally from state to state, but also applies vertically between individuals and states. Accordingly, basic human rights and freedoms leave the exclusive jurisdiction of each state and move into the jurisdiction of the European Union. The will of the Member State has to be limited. States are not completely free to shape their own national regulations that affect their citizens' ability to rely on European standards when dealing with the state and, after completing internal measures, when dealing with European agencies such as the Commission and Tribunal of Human Rights.

The European Treaty established the association between Poland and European Community Member States and created the conditions enabling Poland to participate in European integration. In article 68, the parties agreed that the harmonization of existing and future Polish legislation with the legislation of the European Community is the essential and introductory condition of economic integration of Poland with the European Community. According to this provision, Poland will undertake all efforts to bring its future law nearer to the law of the European Community. Despite the omission of human rights from among the fields specified in article 69, the tendency for general adjustment of the whole Polish legal order has been clearly established.

B. Drafts of a New Polish Constitution

The complicated status of the current Polish constitutional system does not encourage development of the existing methods of coordinating internal and international rules, especially in the field of civil rights. Nevertheless, despite strong factors causing delays in designing a new constitution, the solutions must eventually come to a final stage. The proposed text of this regulation was recently returned to the Constitutional Commission of the General Assembly, which collects the final drafts presented by state agencies, political organizations, and social or “people’s” organizations.

Despite their many ideological differences, all participants in the constitutional debate agree that civil rights regulation and its relationship to international standards is significant, since all drafts embrace provisions dealing with human rights. This attitude encourages some degree of certainty that the future text of the constitution will be based on the most frequently repeated proposals. The constitu-

tional debate is also important because human rights have found such clear and responsible care for the first time in our constitutional history. The drafts show a change of attitude toward the significance of international standards. The Polish drafts deal with that coherence more carefully, more deeply, and more intricately than in the majority of constituent assemblies in other East-Central European countries.

Each draft deals differently with particular rights, freedoms, and duties as they relate to international regulations. In considering seven of the drafts by state institutions or political parties that were officially announced before the Constitutional Commission, all of them, save one, include clear and developed references to international standards both in general and in terms of civil rights. These drafts are in direct contrast with Poland's prior lack of human rights' regulation in binding constitutional provisions.

However, no such clear indication exists concerning the significance of the link between civil rights and international law in the introduction to the proposed texts of the constitution. Only one draft ties the valuable elements of Polish legal and political traditions with "good examples and institutions of European state and international law." The drafts usually designate the role of international standards and enumerate the basic principles of the regulations in the first chapter. Some drafts move these provisions to a separate chapter discussing sources of law, which does not change the essence of the reference. Only one draft is an exception to the general trend: the KPN draft does not deal with international standards in its first chapter or elsewhere save a reference to the procedural problem of ratification of treaties.

24. There are seven officially announced drafts: one by the president; one by the Senate; one by the Unia Wolności (Union of Liberty) [hereinafter UW]; one by the Sojusz Lewicy Demokratycznej (Alliance of the Democratic Left) [hereinafter SLD]; one by the Polskie Stronnictwo Ludowe (Polish Peasant's Party) [hereinafter PSL] together with the Unia Pracy (Union of Labor) [hereinafter UP]; one by the Konfederacja Polski Niepodległej (Confederation of Independent Poland) [hereinafter KPN]; and one by Solidarność, accepted as a popular initiative, having gathered more than 1 million signatures of ordinary citizens. Both the SLD and the UP have a leftist orientation. The SLD arose from the former Communist Party and the UP from the anti-communist opposition. The PSL has been the partner of the SLD in a ruling coalition since September 1993 and has a rural provenance. The UW represents the center but has some liberal positions. The KPN has a national orientation with some rightist elements in politics and leftist in economics. At least one significant group, the Non-Party Block of Support for Reforms has not proposed its own draft. Because they went into the 1993 elections very divided no rightist party is represented in the Sejm. Therefore, no draft representing the views of the right has advanced to the final stage of work on the new constitution. In the earlier stages of work on the constitution, between 1989 and 1991, at least nine other drafts were proposed, but were not taken into consideration.

25. POL. CONST. (Draft Proposed by the PSL and UP) [hereinafter PSL/UP Draft] (repeating declaration embraced in earlier draft proposed by the Sejm).

26. PSL/UP Drafts, POL. CONST. (Draft Proposed by the President) [hereinafter Presidential Draft]; POL. CONST. (Draft Proposed by the Senate) [hereinafter Senate Draft].

27. POL. CONST. (Draft Proposed by the KPN).
The majority of drafts include ratified international treaties in the state legal order and declare, without any additional conditions, the treaties' priority over ordinary statutes in case of conflict. The Senate draft limits that priority to the treaties ratified by both the lower and upper chambers of parliament. Almost all other drafts propose that even nonratified treaties take precedence over under-statutory norms. The hierarchy that has been rather commonly created is: Constitution, ratified treaties, statutes, other treaties, and under-statutory norms. No major deviations from this hierarchy has been proposed.

The authority to ratify treaties is usually guaranteed to the president of the state. However, in some drafts, the treaties dealing with the territorial integrity of the country, its membership in international organizations, peace treaties, and financial responsibilities must be confirmed by a representative group such as the Sejm or the Sejm together with the Senate. The drafts show another new trend concerning international standards. They consider more than just treaties, to encompass two additional sources of international law. The majority of drafts declare the significance of the principles of international law, mentioning "general principles," "generally recognized principles," or "generally binding principles." In these drafts the principles are usually clearly placed on the same level as the ratified treaties above statutes in the general hierarchy. Drafts demand that statutes comply with these standards. The Senate draft refers to the customary norms of international law instead of principles, placing them above statutes as well.

Two drafts deal directly with a very important item of implementation of ratified treaties in the state legal order. However, without such a strict statement, the interpretation of a majority of the drafts would lead to the same result on the basis of including international norms in the state legal order.

The most international and most interesting part of constitutional regulation, the part dealing with civil rights, does not include international standards so obviously. The authors of the drafts have treated the chapters concerning principles or sources of law as an efficient foundation for defining the impact of international law. The only exceptions are the presidential and SLD drafts. In the presidential draft, the international standards, including the Universal Declaration on Human Rights and ratified treaties, are treated as the necessary criteria for interpreting the provisions concerning human rights. The SLD draft ties the interpretation of constitutional rights and freedoms to the Universal Declaration, the International Covenant on Human Rights, and other Polish treaties.

28. Senate Draft art. 59.
29. But see POL. CONST. (Draft Proposed by the UW) [hereinafter UW Draft].
30. Senate Draft; PSL/UP Draft.
31. POL. CONST. (Draft Proposed by the SLD) [hereinafter SLD Draft].
32. UW Draft; ASL/UP Draft.
33. Presidential Draft.
34. Presidential Draft; Senate Draft.
35. Presidential Draft art. 40.
36. SLD Draft art. 27.
Among the proposed provisions concerning civil rights, the provisions dealing with the position of civil rights commissioner are important. Despite the presence of this institution in all drafts, the UW draft is unique in presenting the concept that the ombudsman guards the rights and freedoms also regulated by ratified international treaties.

The majority of drafts deal with the competencies of the Constitutional Tribunal, an entirely new and positive concept in the interaction between international and state orders. Two main provisions commonly appear in the drafts. The first gives the Tribunal the authority to decide whether a statute is consistent with the ratified treaty. None of the drafts refer to the general principles of customary international norms in this matter. The second gives the Tribunal the authority to decide whether an international treaty in the process of ratification is consistent with the Constitution. A treaty’s inconsistency with the Constitution would probably stop the treaty’s ratification process. A statute’s inconsistency with a ratified treaty would probably result in a change of the statute. Some drafts propose changing the Constitution before an inconsistent treaty is ratified. Nevertheless, the general trend in the wording of proposed regulations acknowledges the Constitution as the overriding source of law.

VI. A Comparison of Poland to East-Central European Countries

The references to the international standards of human rights that have been considered above clearly indicate the propriety of examining human-rights legislation. This examination means a change of attitude toward achieving coherence between state and international law in human rights. This feature can be observed in all new democracies of the region and will be important in further legal developments. Despite Poland’s lack of a new constitution, this tendency is strengthened by the activities of the Constitutional Tribunal and the civil rights commissioner, institutions unique to Poland among these countries.

This change of attitude has deep roots. The processes of European integration are inexorable, and this dependence seems to be deeply understood. The texts and drafts of the new constitution are placed in the context of the adjustment process that is embraced by a majority of the members of the European Union. This common attitude remains despite differences in the structure of power or scale of state intervention in citizen’s private lives.

The proposals arising in the Polish constitutional debate harmonize with the general tendencies of the newly established constitutions of Central and Eastern Europe. In comparison to the Constitutions of the Czech Republic, Slovakia, Hungary, Romania, Bulgaria, and Russia, the Polish drafts refer to international standards in a more complex way. However, the drafts do not include these standards in their preambles as the Bulgarian, Czech, and Russian Constitutions.

37. Senate Draft; Presidential Draft.
do. Most of the Polish drafts restrict references to these standards to their first chapter which usually deals with general principles of the constitution. The Constitutions of Bulgaria, the Czech Republic, and Romanian are comparable in this respect. The Russian and Romanian Constitutions are the most international constitutions of the region, referring to international standards in both the general principles and civil rights regulations. When discussing human rights, Polish constitutional drafts only discuss rules for interpreting provisions. None of the Polish drafts take the Slovakian approach, which gives priority to international treaties concerning human rights and basic freedoms over state laws if the treaties guarantee a broader scope of rights and freedoms and if they have been ratified and promulgated. Quite surprisingly, the most intricate link to international standards can be found in the Russian Constitution, which gives to its citizens the right to appeal to international institutions. Both the Russian and Hungarian Constitutions, as well as a majority of Polish drafts, leave the field of ratified treaties and refer to the recognized principles of international law. However, the Polish drafts delve much deeper into the regulation of the institutions protecting human rights. For example, the other constitutions tie the activities of a civil rights commissioner and a Constitutional Tribunal to human rights.

Detailed comparison of Eastern European constitutions would be voluminous. Perhaps finding differences would be less important than emphasizing that these countries are realizing the necessity of coherence between state and international law. A new Polish Constitution taking another approach would place the country in an unfavorable position as a participant in the process of European integration. Very few voices are raised in opposition to the main trend. Poland remains optimistic about future developments in human rights protection. However, establishing a new and full constitution seems to be an unavoidable but as yet unrealized prerequisite for the protection of human rights in Poland.

38. But see Presidential Draft; SLD Draft.
39. SLOVAKIAN CONST. (1992) art. 11.