
Effective International Protection of Social Rights of Polish Nationals. A Contribution to the Debate¹

1. Background

Social, economic and cultural rights, which for a long time remained on the periphery of human rights sciences, have gained increasing popularity². The main focus has been on the admissibility of complaints against violations of social rights, both in national and international courts³. One of the reasons is that effective enforcement of social rights, in particular the right to food, water, housing, health, is of fundamental importance to persons living in extreme poverty whose needs of protection are increasingly accentuated in the international human rights law⁴. This paper follows the trend and aims to open a debate on the need to change the established position of the Polish Government on the availability of individual complaints about violations of social rights in international courts.

2. The European Convention of Human Rights and the protection of social rights of Polish nationals

According to popular belief, corroborated by the selection of papers presented at this conference, the Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR” or “the Convention”) is the core instrument of international protection of human rights for Polish nationals. The main reason is that its review mechanism is unquestionably effective, mainly owing to the availability of individual complaints lodged by victims of human rights violations⁵. This is why many Polish nationals seek protection of their political and civil rights and freedoms, as well as social rights, violated by public authorities. In this connection, it should be noted that although the Convention was designed as an instrument for the protection of political and civil rights⁶, the European Court of Human Rights (“ECtHR”) relatively early admitted potential enforcement of the protection of social rights under the Convention⁷.

The protection of social rights under the ECHR goes back to 1979 and the unprecedented judgment in the case of *Airey v. Ireland*⁸. The case concerned denial of access to court due to excessive costs of separation proceedings. The Court found as follows: “Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no watertight division separating that sphere from the field covered by the Convention”⁹.

The judgment opened a new trend in the ECtHR case law which established a link between the rights expressly guaranteed by the Convention¹⁰ and social rights. Such case law has become so extensive that practically every right and freedom guaranteed by the Convention has its “social reflection”¹¹. Based on such case law, many Polish nationals have frequently claimed protection of their social rights¹².

The progressive case-law of the European Court of Human Rights on social rights has been acknowledged by the bodies of the Council of Europe. For instance, the Steering Committee for Human Rights set up a Working Group on Social Rights. Active from 2003 to 2005, the Group was asked to examine potential adoption of an additional protocol providing protection for social rights

within the ECHR system in the light of European and international instruments of international public human rights law and the ECtHR case-law¹³.

The Group decided that such an instrument of human rights protection should be drawn up. To facilitate the first phase of its drafting, the Group presented a list of 19 possible rights to be considered for the protocol¹⁴. However, eventually, in the absence of political will, the discussion on an additional protocol did not continue in view of the fact that the system of protection of social rights was developing in the European Social Charter system¹⁵.

3. (In)effectiveness of the European Social Charter as an instrument for the protection of social rights of Polish nationals

In fact, the protection of human rights in the Council of Europe system is assumed to rely on the “Social Rights Charter of the Council of Europe”¹⁶. This aggregate term refers in the Polish legal doctrine to five instruments of international human rights law: the European Social Charter of 18 October 1961, the Additional Protocol to the European Social Charter of 5 May 1988, the Protocol amending the European Social Charter of 21 October 1991, the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints of 9 November 1995, and the Revised European Social Charter (“RESC”). Poland has only ratified the ESC¹⁷ and its amending Protocol. Although it has signed and thus expressed its intention to be bound by the Revised European Social Charter, Poland has not yet ratified the RESC¹⁸ on the grounds (similar to its refusal to ratify the Protocol Providing for a System of Collective Complaints) of objections about the legal nature of second-generation rights¹⁹.

The degree of protection of social rights guaranteed by the ESC is considerably different from the degree of protection of political and civil rights and freedoms under the ECHR. This is evident in at least two ways. First, States that ratify the ESC may select those provisions of the Charter by which they consider themselves to be bound²⁰. Second, the ESC is not equipped with an effective review mechanism, such as that available under the ECHR. The States are only required to provide mandatory regular reports concerning the application of the Charter²¹. However, the complaint mechanism is optional²². Furthermore, the right to file complaints is available not to individuals but to organisations which represent individuals²³ while the guardian of the application of the ESC is the European Committee on Social Rights, which is a quasi-judicial body.

In the absence of the ratification by Poland of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints of 9 November 1995, Polish nationals are ineligible to file complaints against violations of the rights guaranteed by the ESC.

4. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights as a potential new alley in the protection of social rights of Polish nationals

Poland is a State Party to the International Covenant on Economic, Social and Cultural Rights²⁴ (“ICESCR” or “the Covenant”), which is the main instrument for the protection of social rights in the universal human rights protection system. For a long time, the review mechanism of this international instrument was limited to the obligation of the States to submit regular reports on the application of the Covenant. This changed on 10 December 2008, when the UN General Assembly adopted the ICESCR Optional Protocol²⁵, which took effect on 5 May 2013. According to the Optional Protocol, the UN Committee on Economic, Social and Cultural Rights²⁶ (“CESCR”) may receive individual communications (Article 1) and inter-State communications (Article 10).

Poland has neither signed nor ratified the Optional Protocol on the same grounds as in the case of the Revised European Social Charter, i.e., due to objections about the nature of social rights. Those objections were raised on the international forum when Poland presented its report on the application

of the International Covenant on Economic, Social and Cultural Rights in 2009. The Polish Government reiterated its arguments in the most recent report on the application of the Covenant by Poland. Consequently, it seems relevant to summarise those arguments and address them from a critical perspective.

The position of the Polish Government rests on three key arguments²⁷. First, in the opinion of the Polish Government, “[n]o obligation as to ensuring general direct applicability [in the national legal system] of the provisions derives from the Covenant on Economic, Social and Cultural Rights.” The normative structure of the obligation to respect human rights under Article 2 ICESCR is worded differently than in Article 2 of the International Covenant on Political and Civil Rights. “The Government of Poland wishes to state that independent courts decide whether provisions of the Covenant are self-enforceable and whether their implementation can be pursued before the court. The possibility to derive individual claim from the provisions of the Covenant is evaluated on the basis of a detailed analysis of articles invoked as the grounds for the claim. If the court decides that the application of a given provision of the Covenant does not depend on the promulgation of an act, the provision may be directly invoked by individual before national court.”

Second, the Polish Government’s “analysis of the Covenant on Economic, Social and Cultural Rights allowed to conclude that the majority of its provisions had been formulated so that the States are obliged to undertake measures to progressively guarantee the rights. Therefore, there is no possibility to derive subjective rights from those provisions.” In the opinion of the Polish Government, “[only] few social rights contained in the Covenant [which are considered first-generation rights] (the right to form unions and the right to education) are subjective rights.”

Third, the Polish Government noted that neither the Covenant nor the resolutions which provide the legal basis for the Committee “include any provision conferring the right to its interpretation” to the Committee. Consequently, “the general comments are a source of knowledge on the Committee’s views on the content of the Covenant’s provisions; however, they are not a source of its binding interpretation”.

This position merits a certain critique. As concerns the first two arguments, the Polish Government rightly argues that Article 2 ICESCR provides for progressive realisation of economic, social and cultural rights, in contrast to Article 2 ICPCR, whereby political and civil rights are realizable immediately. The different normative structure of those two provisions arouses doubts as to the normative nature of the rights guaranteed by the ICESCR and precipitates questions about the admissibility of complaints about the realisation of social rights in court²⁸. Those questions have been addressed both by researchers²⁹ and by the CESCR in its General Comments. The CESCR has spoken on the nature of the obligations under the Covenant (General Comment No. 3 to the ICESCR³⁰) and on the applicability of the Covenant in national law (General Comment No. 9 to the ICESCR³¹).

Concerning the key obligation to progressively realise the rights, General Comment No. 3 of the UN Committee on Economic, Social and Cultural Rights provides as follows: “while the full realisation of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant”³². According to General Comment No. 3, while most of the obligations under the Covenant constitute an agenda to be achieved progressively, the Covenant also provides for obligations which must be guaranteed immediately, such as non-discrimination. Furthermore, every right, including the rights on the future agenda, has a minimum core which should be guaranteed by the State. “Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant”³³.

The minimum core concept was elaborated in General Comment No. 14 The Right to the Highest Attainable Standard of Health and General Comment No. 19 The right to social security. Both General Comments provide a detailed definition of the essence of the right to health care and the right to social security and reiterate the minimum core obligations of the State, including the

minimum core obligation to guarantee food and shelter³⁴.

Apart from the concept of the essence of rights, the degree to which States realise social rights may be assessed in a reasonableness review, a concept well-established in the case law of the Constitutional Court of South Africa³⁵. Reference to such review is made in the Optional Protocol to the ICESCR³⁶ adopted by the UN Assembly in 2008, which introduces a system of communications concerning social rights. The concept is fleshed out in Article 8(4) of the Optional Protocol, which provides: “When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant”³⁷.

The adoption of the Optional Protocol to the ICESCR definitively dispelled doubts as to the availability of individual complaints about violations of social rights guaranteed by the ICESCR in international courts.

The competence of the ICESCR to issue General Comments, which was challenged by the Polish Government, has not aroused much doubt in the legal doctrine³⁸. Its legal basis rests, on the one hand, on a systemic interpretation of the ICESCR, in particular Article 21 ICESCR interpreted in connection with the resolution establishing the CESCR³⁹ and, on the other hand, on the CESCR Provisional Rules of Procedure⁴⁰, which govern the work of the Committee. Rule 65 thereof provides expressly that “[t]he Committee may prepare general comments based on the various articles and provisions of the Covenant with a view to assisting States parties in fulfilling their reporting obligations”⁴¹. This competence is functionally linked with the competence to assess reports, enshrined in the Covenant, and the Committee’s comments are issued among others on the basis of its knowledge derived from submitted reports and the legal doctrine. Therefore, although they are not binding, as rightly noted by the Polish Government, the comments are relevant to the understanding of the ICESCR and constitute, in fact, its authentic interpretation. To consider them merely “a source of knowledge on the Committee’s views on the content of the Covenant’s provisions” and, consequently, to ignore them in the application of the law by the Polish public authorities (including courts), would expose Poland to international criticism on grounds of non-compliance with its obligations under the ICESCR.

In support of its position, the Polish Government consistently refers to the judgment of the Polish Supreme Court of 2000, given by a bench of three judges, which found that the ICESCR is not a treaty whose provisions would have direct applicability. According to the Supreme Court, the Covenant sets forth a set of norms concerning individual rights and freedoms which the States Parties undertake to apply in national law⁴².

As concerns the judgment in question, it is important to note that the case was one of a foreigner who claimed the right to social security solely under international treaties, including the Covenant. In its judgment, however, the Supreme Court did not rule out the ICESCR as grounds of interpretation of the provisions of the Covenant, as the position of the Polish Government would seem to suggest. Consequently, there is no reason for Polish courts not to apply the Covenant when they interpret the provisions of national law to which the CESCR standards may apply under the ICESCR, as Polish courts do when they apply the ECHR, which in principle does not provide sole grounds for court judgments, either. This position seems to be in line with ICESCR General Comment No. 9, which provides that “there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions”⁴³.

The CESCR replied to the position of the Polish Government in 2009 and stated: “The Committee remains concerned that the State party has not yet taken the necessary measures to ensure that the Covenant is given full effect in its domestic legal order, especially in the light of the decision of the Supreme Court in 2000 to the effect that the Covenant provisions could not be invoked by individuals before national courts”⁴⁴. The Committee reiterated those arguments in 2017, made reference to General Comment No. 3 on the nature of States Parties’ obligations, and recommended that Poland “[ensure] that all provisions of the Covenant are given full effect in its domestic legal order and can be invoked before courts”⁴⁵.

To summarise, in the absence of the ratification by Poland of the Optional Protocol to the ICESCR

which allows individuals to lodge complaints against violations of social rights guaranteed by the ICESCR, Polish nationals are not eligible to challenge violations of social rights guaranteed by the this covenant in international courts.

5. Summary

The European Convention on Human Rights is the only effective mechanism of the international protection of social rights available to Polish nationals because Poland has not ratified any of the instruments of international human rights protection which allow individuals or organisations representing individuals to challenge violations of social rights in international courts by lodging individual or collective complaints⁴⁶. The arguments put forth by the Polish Government on the international forum against its being bound by such international instruments seem unconvincing, not least because they fail to take account of recent achievements in the international protection of social rights.

In view of the foregoing, it seems that the international review of the realisation of social rights by Poland is based, on the one hand, on the ECHR and, on the other hand, on government reports on the application of international treaties filed under the International Covenant of Economic, Social and Cultural Rights and the European Social Charter. This poses a risk to those individuals who are most in need of such protection, in particular individuals suffering poverty and social exclusion. From the individual perspective, the reporting mechanism is inefficient, and the review procedure is lengthy^{47/47}. In connection with the availability of applications lodged with the ECtHR in order to challenge violations of social rights, and in view of the excessive workload of the ECtHR and the ability of the Court to protect only certain aspect of social rights, it seems evident that the ECHR review mechanism cannot be considered sufficiently effective to ensure the appropriate degree of protection of social rights.

Consequently, it seems advisable to consider a change of the position of the Polish Government on the international protection of social rights in order to allow individuals to lodge individual (or collective) complaints.

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² See: M. Langford, (ed.), *Social Rights Jurisprudence Emerging Trends in International and Comparative Law*, Cambridge 2008; K. Wojtyczek (ed.) *Social Rights as Fundamental Rights XIXth International Congress of Comparative Law*, Eleven international publishing, Hague, 2016; E. Riedel, G. Giacca, C. Golay (eds.) *Economic, Social, and Cultural Rights in International Law Contemporary Issues and Challenges*, Oxford 2012. S. Liebenberg, *Socio-Economic Rights: Adjudication Under a Transformative Constitution*, Juta 2010; D., Bilchitz, *Poverty and Fundamental Rights. The Justification and Enforcement of Socio- Economic Rights*, Oxford 2012, K.G. Young, "The Minimum Core of Economic and Social Rights: A Concept in Search of Content," *Yale Journal of International Law* 2008, vol. 33, no 1, pp. 113-175.

³ The concept of social rights is understood, as proposed by B. Zawadzka, as a collective definition of economic, social and cultural rights. See a discussion on this notion in: B. Zawadzka, *Prawa ekonomiczne, socjalne i kulturalne* [Economic, social and cultural rights], Warsaw 1996, and Z. Kędzia, *Burżuazyjna koncepcja praw człowieka* [The bourgeois concept of human rights], Wrocław 1980, pp. 211–228 and pp. 315–321.

⁴ See: UN guiding principles on extreme poverty and human rights approved in a unanimous resolution by the UN Human Rights Council on 27 September 2012 (A/HRC/21/39). Those rights are defined in the guiding principles as "specific rights whose enjoyment by persons living in poverty is particularly limited and obstructed, and in relation to which State policies are often inadequate or counterproductive" (point 62).

⁵ See: A Bodnar, "Skuteczność Europejskiej Konwencji Praw Człowieka w Polsce" [Effectiveness of the European Convention on Human Rights in Poland], [in:] T. Giaro (ed.) *Skuteczność prawa* [Effectiveness of the law], Warsaw 2010, pp. 189-213.

⁶ In this connection, it should be noted that while the provisions of the ECHR do not guarantee social rights, Protocol No. 1 to the ECHR guarantees the right to education and the right to protection of property, which are traditionally considered social rights; see Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms made in Paris on 20 March 1952 (Dz. U. [Polish Journal of Laws] of 1995, No. 36, item 175/1).

⁷ See: K. Łasak, *Prawa społeczne w orzecznictwie Europejskiego Trybunału Praw Człowieka* [Social rights in the case law of the European Court of Human Rights], Warsaw 2013; I. Koch, *Human Rights as Indivisible Rights – The Protection of Socio-Economic Demands under the European Convention on Human Rights*, Nijhoff 2009; E. Palmer, “Protecting Socio-Economic Rights Through the European Convention on Human Rights: Trends and Developments in the European Court of Human Rights,” *Erasmus Law Review* 2009, Vol. 2, No. 3, pp. 397–425.

⁸ ECtHR judgment of 9 October 1979 in the case of *Airey v. Ireland*, application no. 6289/73, HUDOC-ECHR

⁹ *Ibidem*, point 26.

¹⁰ Such development of the case law has been possible because the interpretation of the rights and freedoms guaranteed by the ECHR relies on the theory of positive obligations of the State. See: C. Mik, “Teoria obowiązków pozytywnych państw-stron traktatów w dziedzinie praw człowieka (na przykładzie Europejskiej Konwencji Praw Człowieka)” [A theory of positive obligations of States Parties to human rights conventions (example of the European Convention on Human Rights)] [in:] J. Białocerkiewicz, M. Balcerzak, A. Czeżko-Durlak (eds.) *Księga jubileuszowa prof. Tadeusza Jasudowicza* [Festschrift for Professor Tadeusz Jasudowicz], Torun 2004, pp. 257–265.

¹¹ L. Garlicki, “Prawa socjalne w orzecznictwie Europejskiego Trybunału Praw Człowieka” [Social rights in the case law of the European Court of Human Rights] [in:] R. Balicki, M. Master-nak-Kubiak (eds.), *W służbie dobru wspólnemu. Księga jubileuszowa dedykowana Profesorowi Januszowi Trzcińskiemu* [In the service of general interest. Festschrift for Professor Janusz Trzciński], Warsaw 2012, p. 190; see also: B. Gronowska, “Europejska Konwencja Praw Człowieka a prawa drugiej generacji – kilka refleksji o zacieraniu granic” [European Convention on Human Rights and second-generation rights. Reflections on blurring borders], *Europejski Przegląd Sądowy* 2013/9, pp. 4–10; E. Palmer, “Protecting Socio-Economic Rights Through the European Convention on Human Rights: Trends and Developments in the European Court of Human Rights,” *Erasmus Law Review* 2009, Vol. 2, No. 3, pp. 397–425 [figuruje już w przypisie 9].

¹² See for instance: ECtHR judgment of 20 January 2009 in the case of *Sławomir Musiał v. Poland*, application no. 28300/06; ECtHR judgment of 15 September 2009 in the case of *Moskal v. Poland*, application no. 10373/05; ECtHR decision of 14 May 2013 in the case of *Cichopek and Others v. Poland*, application no. 15189/10 (and 1625 other applications); ECtHR decision of 21 March 2002 in the case of *Nitecki v. Poland*, application no. 65653/01.

¹³ On the discussion about the protocol, see: J. Maciejewska, *Kontrola wdrażania umów międzynarodowych dotyczących społecznych praw człowieka (nowe procedury)* [Review of the application of international treaties of social human rights (new procedures)], *Państwo i Prawo* 2008/5, pp. 63–75.

¹⁴ See: Report from a meeting of the Working Group on Social Rights (GT-DH-SOC) of the Steering Committee for Human Rights, 2–5 November 2004, p. 13; http://www.coe.int/t/dghl/standardsetting/cddh/GT_DH_SOC/2004_003_en.pdf (access on 18 February 2018).

¹⁵ See: Communication from The Committee of Ministers, Doc. 11635, 17 June 2008, monitoring of commitments concerning social rights. Reply to Recommendation 1795 (2007) of the Parliamentary Assembly, point 5.

¹⁶ The term is used among others by A.M. Świątkowski, the autor of many studies on the protection of social rights by the Council of Europe. See in particular his *Karta Praw Społecznych Rady Europy* [Social Rights Charter of the Council of Europe], Warsaw 2006.

¹⁷ Poland signed the ESC on 26 November 1991 and ratified it on 25 June 1997. Poland signed the Amending Protocol on 18 April 1997 and ratified it on 25 June 1997: *Dz. U. of 1999, No. 8, item 67*

¹⁸ On 25 October 2005.

¹⁹ See: K. Sękowska-Kozłowska, R. Wieruszewski, “Zaległości ratyfikacyjne Polski w dziedzinie praw człowieka” [Poland’s backlog in the ratification of human rights], *Europejski Przegląd Sądowy* 2013/3, pp. 4–13; A. Bodnar, A. Płoszka, “Polska a mechanizmy międzynarodowej kontroli przestrzegania praw gospodarczych, społecznych i kulturalnych, praw dziecka oraz praw osób z niepełnosprawnościami” [Poland and mechanisms of international review of the application of economic, social and cultural rights, the rights of the child, and the rights of persons with disabilities], *Kwartalnik o Prawach Człowieka* 2014/4, pp. 18–23; J. Maciejewska, “Międzynarodowy ‘rozwoj’ społecznych praw człowieka stanowisko polskie [International ‘development’ of social human rights. The position of Poland] [in:] A. Bieńczyk-Missalla, R. Kuźniar (eds.), *Prawa człowieka w polskiej polityce zagranicznej* [Human rights in Polish foreign policy], Warsaw 2007, pp. 124–139.

²⁰ According to Article 20 ESC, each of the Contracting Parties undertakes: (1) to accept Part I ESC (declaration of the aims); (2) to consider itself bound by at least five of the following articles of Part II of the Charter: Articles 1, 5, 6, 12, 13, 16 and 19; (3) in addition, to consider itself bound by such a number of articles or numbered paragraphs of Part II of the Charter as it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than 10 articles or 45 numbered paragraphs. Poland is bound by 58 of 72 paragraphs.

²¹ The procedure of examination of reports is governed by Part IV ESC, Articles 21 to 29; the procedure was incorporated into the RESC. Interestingly, the States are also required to present reports relating to those provisions of the Charter which they did not accept (Article 22 ESC).

- ²² The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints has been ratified by only 15 States. That number has not changed for many years. On the mechanism, see: R. Churchill, U. Khaliq, "The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?" *European Journal of International Law* 2004, Vol. 15, No. 3, pp. 417–456;
- ²³ These include: (1) international organisations of employers and trade unions; (2) other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee; (3) representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.
- ²⁴ Dz.U. 1977 No. 38 item. 169.]
- ²⁵ Resolution No. A/RES/63/117.
- ²⁶ See: Z. Kędzia, "Komitet Praw Gospodarczych, Socjalnych i Kulturalnych" [The Committee on Economic, Social and Cultural Rights] [in:] R. Wieruszewski (ed.) *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa* [The UN human rights protection mechanisms. A systemic analysis], Warsaw 2017, pp. 89-128.
- ²⁷ CESCR, Comments by the Government of Poland on the concluding observations, 29 March 2010, E/C.12/POL/CO/5/Add.1, points 1-6. The arguments, raised on other occasions as well, are compiled in: J. Maciejewska, "Międzynarodowy 'rozwoj' społecznych praw człowieka – stanowisko polskie" [International 'development' of social human rights. The position of Poland] [in:] A. Bieńczyk-Missalla, R. Kuźniar (eds.), *Prawa człowieka w polskiej polityce zagranicznej* [Human rights in Polish foreign policy], Warsaw 2007, pp. 124–139. [figuruje już w przypisie 21] [already mentioned in note 21]
- ²⁸ On controversies around the legal status of social rights, see: W. Osiatyński, *Prawa człowieka i ich granice* [Human rights and their limits], Krakow 2011, pp. 184–228; V. Viljanen, "Abstention or involvement? The nature of state obligation under different categories of rights" [in:] K. Drzewicki [et al.] (eds.), *Social Rights as Human Rights. A European Challenge*, Turku 1994, pp. 43–66; T. van Boven, "Distinguishing in Criteria of Human Rights" [in:] K. Vasak (ed.), *The International dimension of human rights*, Paris 1982, pp. 48–52.
- ²⁹ See: P. Alston, G. Quinn, "The nature and scope of States Parties' obligations under the International Covenant on Economic, Social and Cultural Rights," *Human Rights Quarterly* 1987, Vol. 9, No. 2, pp. 156–229.
- ³⁰ CESCR, General comment No 3: The nature of States parties' obligations (Art. 2(1)), 1 January 1991, U.N. Doc. E/1991/23.
- ³¹ CESCR, General comment No 9: The domestic application of the Covenant, 3 December 1998, U.N. Doc. E/C.12/1998/24.
- ³² CESCR, General comment No 3, point 2.
- ³³ *Ibidem*, point 10.
- ³⁴ See CESCR, General Comment No 14: The right to the highest attainable standard of health, 11 August 2000, U.N. Doc. E/C.12/2000/4, points 43–45; CESCR, General Comment No 19: The right to social security (art. 9), 23 November 2007, U.N. Doc E/C.12/GC/19, point 59.
- ³⁵ In this connection, one of the best-known judgments is the judgment of the High Court of South Africa in the case of *Government of the Republic of South Africa v Grootboom*, 2001 (1) SA 46 (CC). See: S. Liebenberg, "Judicially Enforceable Socio-Economic Rights in South Africa: Between Light and Shadow," *Dublin University Law Journal* 2014, Vol. 37, pp. 148–153.
- ³⁶ Resolution No. A/RES/63/117 of the UN General Assembly, C.N.869. 2009.TREATIES-34. The protocol took effect on 5 May 2013:
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/477/81/PDF/N0847781.pdf?OpenElement> (access on 18 February 2018)
- ³⁷ On this concept, see: B. Porter, "The Reasonableness of Article 8(4) – Adjudicating Claims from the Margins," *Nordic Journal of Human Rights* 2009, Vol. 27, No. 1, pp. 39–53.
- ³⁸ After: Z. Kędzia, "Komitet Praw Gospodarczych, Socjalnych i Kulturalnych" [The Committee on Economic, Social and Cultural Rights] [in:] R. Wieruszewski (ed.) *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa* [The UN human rights protection mechanisms. A systemic analysis], Warsaw 2017.
- ³⁹ UN ECOSOC Resolution No. 1985/17 of 28 May 1985, E/RES/1985/17.
- ⁴⁰ Provisional rules of procedure adopted by the Committee at its third session (1989), UN Doc. E/C.12/1990/4/Rev.1, as amended by the Committee at its fourth session (1990) and at its eighth session (1993).
- ⁴¹ Z. Kędzia, *Komitet Praw Gospodarczych, Socjalnych...*
- ⁴² Judgment of the Supreme Court of 8 February 2000, II UKN 374/99.
- ⁴³ CESCR, General Comment No 9: The domestic application of the Covenant, 3 December 1998, U.N. Doc. E/C.12/1998/24, point 10.
- ⁴⁴ CESCR, Concluding observations on the fifth periodic report of Poland, 2 December 2009, E/C.12/POL/CO/5, point 8.

⁴⁵ CESCR, Concluding observations on the sixth periodic report of Poland, 7 October 2016, E/C.12/POL/CO/6, point 6(a).

⁴⁶ Apart from the aforementioned Optional Protocol to the International Covenant on Economic, Social and Cultural Rights of 10 December 2008 and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints of 9 November 2007, Poland has not ratified two other instruments which allow individuals to challenge violations of human rights in international courts: the Optional Protocol to the Convention on the Rights of the Child of 19 December 2011 and the Optional Protocol to the Convention of the Rights of Persons with Disabilities of 13 December 2006.

⁴⁷ On the reporting mechanism, see: R. Wieruszewski, "ONZ-owski system ochrony praw człowieka – bilans dokonań" [The UN human rights protection system: Track record], [in:] J. Symonides, Organizacja Narodów Zjednoczonych – bilans i perspektywy [United Nations. Track record and prospects], Warsaw 2006, pp. 292-348; and R. Wieruszewski, Reforma traktatowego systemu ochrony praw człowieka [Reform of the human rights protection system under the Convention], Sprawy Międzynarodowe, No. 3/2003, pp. 36-61