

Abstract

The impact of Strasbourg standards on the lawmaking process and application of law in Poland.

The subject of the thesis concerns the impact of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter the Convention) standards and the jurisdiction of the European Court of Human Rights (hereafter the ECtHR) on the lawmaking process and application of law in Poland. Poland is party to numerous international conventions and treaties concerning the rights of the individual, however, it is the Convention which plays a key role in the normative protection of these rights in Europe. Since Poland's accession to the Council of Europe, the standards of this institution have significantly influenced and continue to affect Polish legislation, as well as the activities of the national public authorities. Although there has been considerable public research concerning relations between the Council of Europe and its Member States, in the last few years this subject underwent a dynamic development. The Convention is described as the *living instrument*, meaning that the rights enshrined in the document must be interpreted in the light of present day conditions so as to be both practical and effective. The multidimensional and high complexity of the issues concerning full implementation of Council of Europe standards at the national level, despite numerous publications has never been discussed in a comprehensive manner.

A comprehensive analysis of the research material enabled the author to demonstrate the main thesis of this dissertation: "The European Convention on Human Rights is a unique international system of human rights, which has a significant impact on the legal system in Poland", as well as several other sub-theses presented in the individual chapters of the paper.

The structure of the paper results from the subject and the intended purpose of the research. Beyond the typical elements of an introduction, a list of abbreviations and a compilation of appropriate index, the dissertation consists of four chapters, which are divided into sections depending on the subject matter described. Each chapter has a uniform structure, consisting of an introduction and general comments about the topic, an analysis and discussion of the substantive issues raised as well as a brief summary and corresponding conclusions.

The first chapter presents the phenomenon of "constitutionalisation" of the Council of Europe, the role of the ECtHR as an *quasi*-constitutional court for its Member States and the recognition of this theory in the perspective of Polish doctrine of constitutional law. In this part of the dissertation, special attention is allotted to defining the international standard of protection of human rights. This term currently operates in many contexts and does not have a singular clear definition. Therefore, the principal aim of the analysis is to demonstrate the impact of Council of Europe bodies on the creation and development of the human right standards. The analysis focuses on standards developed by the Convention and the ECtHR, as well as by the guidelines and recommendations of the Committee of Ministers and their impact on fulfilling human rights by its Member States. This part of the paper also highlights the problem of effectiveness of the Strasbourg system. The ECtHR is now confronted with an increasing number of matters affecting it that threaten the long-term efficiency of the system instituted by the Convention. In this regard, the author presents procedural changes that have taken place in recent years and the problems and challenges which the Court is currently facing. High-Level Conferences of the Council of Europe relating to the long-term process of reform of this mechanism played a crucial role in the author's analyses. The author also undertakes in-depth research and considers Protocol No. 15 to the Convention introducing several important procedural changes to the Convention system.

Research carried out in the second chapter is devoted to the discussion on the place of international law in the Polish legal system. The overarching aim of this investigation is to verify the another sub-thesis stipulating that human rights standards, democracy and the rule of law asserted in the Convention had a significant influence on the work of the Constitutional Commission of the National Assembly and served an important axiological and normative patterns for the provisions of the binding Constitution. The research starts from the historical outline of the Polish accession to the Council of Europe. On the basis of the Convention the author examines the position of international law in the course of the work on the Constitution of 1997. For this purpose, the author had analyzed prints and stenographic reports of the meetings of the Constitutional Commission of the National Assembly and meetings of its permanent sub-committee. The research allows to indicate whether the standards of democracy and the principle of the rule of law enshrined in the Convention had an impact and influence on the work of the Constitutional Committee. This examination was an crucial point for further research regarding the impact of Strasbourg human rights standards on the lawmaking process and application of law in Poland.

The research also delves in to the impact of international human rights law on the process of constitutional control conducted by the Polish Constitutional Court. Analysis of the doctrine and jurisprudence of the Constitutional Tribunal has demonstrated a significant role of this judicial authority, both during the formation of the democratic standards and the rule of law initiated in the period of systemic transition in 1989 and currently in the process of adapting Polish law to the ECtHR human rights standards.

The third chapter of the dissertation is devoted to the impact of the Council of Europe standards on the legislative process in Poland. Discussion begins with the analysis of obligations imposed on Member States, including Poland, arising from ECtHR jurisdiction and the duty to execute its final judgments and decisions. Subsequently the author presents the initiatives and actions taken by the Polish Government in order to comply with the obligations imposed on it by ECtHR judgments. The author further analyses the role of the Plenipotentiary of the Minister of Foreign Affairs for cases and proceedings before the European Court of Human Rights and cooperation of that body with other national authorities and non-governmental organizations. Later attention is drawn to the essential role of Parliament and its two human rights committees in the process of the execution of ECtHR final decisions. In turn, the author examines the legislative changes resulting from the general measures imposed by final judgments of ECtHR. The analysis focuses mainly on the problem of the excessive length of judicial proceedings and excessively long period of detention. The chapter also analyses an amendment of Polish criminal procedure introduced to eliminate the structural problem of excessive length of detention on remand criticised in many judgments of the European Court of Human Rights. The studies underline that adopted legal solutions fully correspond to both, constitutional and convention standards relating to the principles of a criminal fair trial and in particular to the basics of the use of preventive measures provided in domestic legislation.

The fourth chapter is devoted to the dialogue between the ECtHR and Polish courts. While analysing the impact of international law on the national legal system, it can be observed that the national courts and international tribunals often engage in an international judicial dialogue and an exchange of views by judgments issued by those judiciary bodies. This tendency is particularly evident in the relationship between national courts and ECtHR. Both, from the point of view of national jurisprudence as well as Council of Europe, this dialogue

has a significant contribution to a better implementation of ECtHR standards and reduction of human rights violations at the national level. Carefully conducted analysis of Constitutional Tribunal case law confirms that it takes into account the ECtHR judgments concerning Poland while reviewing the constitutionality of Polish legislation. At the same time, Strasbourg case-study has shown that the ECtHR often refers to the judgments of the highest national judicial authorities of its Member States. Common standards of international law as well as national law of the Member States create a new reality which must be taken into account while interpreting the provisions of the Convention. In the context of ongoing dialogue, the author examines the issue of the reopening of national judicial proceedings following a judgment of the European Court of Human Rights. Multifaceted analysis of national legal instruments for re-opening a criminal procedure following the ECtHR decision has shown that in some circumstances this mechanism can be an effective way to comply with the ECtHR decision finding that the national judgment was based on a violation of the Convention. Research indicates that the introduction of a new provisions in Polish civil procedure allowing retrial under circumstances similar to those provided for in the criminal and administrative-judicial procedure could be the correct way to provide *restitutio in integrum* and the execution of a ECtHR judgment. The last part of the chapter presents the study of new Protocol No. 16 to the Convention which introduces a procedure allowing the highest national courts to request advisory opinions from the Court concerning the interpretation and application of the Convention. The research shows that this mechanism could involve the upper-mentioned judicial dialogue and in the long term could not only enhance the legitimacy of the Court but also strengthen the principle of subsidiarity and the implementation of the Council of Europe human rights standards at the national level.

From the date of implementation of the Convention into national law Poland has taken appropriate measures in order to adjust the Polish legal system and the practice of national authorities to the standards set by the ECtHR. Nevertheless, it should be noted that ensuring the long-term effectiveness of the Strasbourg system at the national level requires a continuous analysis of changes and reforms taking place in the Strasbourg human rights protection system. The evolving jurisprudence of the ECtHR forces national authorities to make further actions to improve national mechanisms for human rights protection in order to ensure full respect of the rights provided by the Convention and the Polish Constitution as well as by the legislation of national law and their application in practice by the national public authorities.