

Poland

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1. Noteworthy Human Rights Publications

1.1. Michał Balcerzak, *Odpowiedzialność państwa-strony Europejskiej konwencji o ochronie praw człowieka i podstawowych wolności. Studium prawnomiędzynarodowe* (2013)¹

State responsibility is one of the fundamental principles of international law. Although individuals are granted rights and obligations under general international law, only through the state can the individual enjoy the full range of benefits. Political events – and particularly the situation in Eastern Ukraine since 2014 – emphasize the practical importance of a publication such as that of Michał Balcerzak.

The main aim of this book is to examine the relation between the rules set forth in the Articles on Responsibility of States for Internationally Wrongful Acts, elaborated by the International Law Commission and adopted by the UN General Assembly in Resolution no. 56/83 of 12 December 2001, and the rules on state responsibility resulting from the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), and the case law of the European Court of Human Rights (ECtHR). Taking into account introductory remarks in Chapter I, in the second chapter the author presents preliminary issues concerning international state responsibility, such as doctrinal and jurisprudential developments in the law of state responsibility. M. Balcerzak points out that the Convention provides obligations of a procedural nature and analyses those enshrined in Chapter II of the Convention. The obligations include the following:

- not to hinder in any way the effective exercise of the right to file an individual complaint;
- to furnish all necessary facilities for the effective conduct of an investigation undertaken by the Court;
- to abide by the final judgment of the Court in any case to which a State is a party;
- to furnish an explanation of the manner in which the internal law of a High Contracting Party ensures the effective implementation of any of the provisions of the Convention;

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1 ISBN 978-83-72857-16-3 (The responsibility of State Parties to the European Convention on the Protection of Human Rights and Fundamental Freedoms. An International Law Perspective).

or the obligation of the High Contracting Parties

- not to avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of the ECHR to a means of settlement other than those provided for in the Convention.

Particularly interesting is the fourth chapter, in which the author presents the notion of ‘attribution’ of an internationally wrongful act as a prerequisite for engaging state responsibility. From a practical point of view, it was very important to discuss the issue of ‘attribution’ with respect to organs of a state, persons or entities exercising elements of governmental authority, persons or entities acting under the instructions, directions or control of a state, and the attribution of conduct to the armed forces of a state party to the ECHR.

Janusz Symonides rightfully notes that this sophisticated and wide study is essential reading not only for those interested in international law and the protection of human rights, but also for representatives of diplomatic and judicial practice and for those who are responsible for the execution of the ECtHR judgments.²

1.2. Maciej Lubiszewski, Jakub Czepek, *Procedura wyroku pilotażowego w praktyce Europejskiego Trybunału Praw Człowieka (2016)*³

Over the years, the pilot judgment procedure (or PJP) had become a well-recognizable element of the Strasbourg judgments. Since 2004, when the first pilot judgment was issued in the *Broniowski* case,⁴ this mechanism had been used by the European Court of Human Rights on many occasions.

Even though the procedure is well-established and the ECtHR had been resorting to this method of solving wide-scale dysfunctions for almost 14 years, there aren't many scientific monographs analysing this mechanism in a complex manner. The research studies either are not up to date or focus only on particular elements of the PJP.

In the international sphere of human rights, for many years there had been very few books focused on the PJP, even in English.⁵ There were many important scientific articles, but the need for such complex research was substantial. In Polish science, there had been only one monograph focused solely on the PJP. It had been rather a transcript of a conference,⁶ than regular research.

2 M. Balcerzak, *Odpowiedzialność państwa-strony Europejskiej konwencji o ochronie praw człowieka i podstawowych wolności. Studium prawnomiędzynarodowe*, TNOIK Toruń 2013; fragment of the book's review by Prof. Janusz Symonides.

3 ISBN: 978-83-264-9606-6 (*Pilot Judgment Procedure in the Practice of European Court of Human Rights*).

4 *Broniowski v. Poland*, Application no. 31443/96, judgment of 22 June 2004.

5 The most important monographs that focused on PJP for many years are: P. Leach *et al*, *Responding to Systemic Human Rights Violations. An Analysis of 'Pilot Judgments' of the European Court of Human Rights and their Impact at National Level*, Antwerp, Intersentia 2010 and D. Haider, *The Pilot Judgment Procedure of the European Court of Human Rights*, Leiden, Brill Nijhoff 2013.

6 J. Wołasiwicz (Ed.), *Pilot Judgment Procedure in the European Court of Human Rights, 3rd Informal Seminar for Government Agents and other Institutions*, 2009.

That is why there was a great necessity for such complex analysis of the PJP and other methods designed for solving large-scale dysfunctions. The research conducted by M. Lubiszewski and J. Czepek is an important response to this necessity. The authors do not focus solely on the PJP, but also on other methods of solving systemic or structural problems. They also seek to analyse this mechanism in a wider context and study the perspectives of future application of the pilot judgment procedure.

According to the reviewer, this monograph is the first study dedicated solely to the PJP and other ECtHR reactions to the systemic and structural dysfunctions within the state's legal systems. The authors analysed the PJP and quasi-pilot judgments and the methods of their implementation. It was possible thanks to a series of interviews with ECtHR judges, employees of the Court and the experts responsible for the execution of judgments.⁷

This book consists of seven chapters. The first one refers to the reform of the ECtHR and issues surrounding the backlog of cases in the 1990s. It presents the idea of the Court's reform and the necessity of a mechanism for solving wide-scale dysfunctions. The second chapter presents the general characteristics of the PJP mechanism, its genesis, definition and its legal basis. The third chapter is the study of pilot judgments delivered by the Court. The fourth chapter presents the elements of the PJP, such as systemic and structural dysfunction, their sources, general domestic remedies and the optional elements of pilot judgments.

In Chapters V-VII, the authors seek to go beyond the PJP and look at the problem from a wider perspective. This is a very important study. They also analyse other methods of solving wide-scale dysfunctions, such as quasi-pilot judgments, third tier judgments, simplified committee procedure, grouped judgments, joined judgments, judgments of principle, and other methods, concerning mostly effective 'case management'. The last chapter is an interesting study of perspectives of future applicability of PJP and other mechanisms for solving large-scale dysfunctions.

This monograph is an important study, not only because it is the first such study in Polish science. It is also complex and innovative in its structure and sees the PJP not as a sole mechanism but as one of many other mechanisms for solving wide-scale dysfunctions.

1.3. *Morawska Elżbieta Hanna Morawska, Zobowiązania pozytywne państw-Stron Konwencji o ochronie praw człowieka i podstawowych wolności (2016)*⁸

The question of a state's positive obligations under the European Convention of Human Rights is an important issue. This is the sphere in which the development of the Court's case law in recent years has been very noticeable. It is particularly visible within the sphere of right to life and freedom from torture, where the con-

7 M. Lubiszewski & J. Czepek, *Procedura wyroku pilotażowego w praktyce Europejskiego Trybunału Praw Człowieka*, Warsaw, Wolters Kluwer Polska 2016, fragment of the book's review by Prof. dr hab. B. Gronowska.

8 *Prawa Człowieka i Prawo Międzynarodowe* (2016), ISBN: 978-83-64298-05-9 (The Positive Obligations of States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms).

struction of positive obligations is the most developed and complex. Naturally, positive obligations, at some point, arise in all of the Convention rights. However, it is most visible within the sphere of the aforementioned Articles 2, 3 and Article 8, guaranteeing the right to respect for private and family life.

The importance of positive obligations is the reason why many researchers study this sphere. There are already several monographs that have taken up this subject. Even within the Polish science of international law of human rights, it isn't the first such publication.⁹ However, this monograph is an important study of the state's positive obligations, their theory and genesis.

The author begins with an analysis of the character of obligations binding states parties to the ECHR. It includes the character of the Convention itself, from the perspective of international law, the vertical and horizontal aspects of a state's obligations and the mechanisms serving the protection of objective obligations.

The book also focuses on the development of positive obligations, mostly based on the application of Article 1 of the ECHR, taken together with the protected right or freedom. It also studies the evolution of obligations and the eventual isolation of the positive obligations as the elements of the rights protected. Additionally, the author studies the typology of positive obligations, which is a particularly important part of this work. It includes the theory of the particular positive obligations, their results, the various types of obligations and their effects. An essential part of the research is also the one focused on the execution of positive obligations by states parties.

This study of positive obligations is an important one. It is a complex and theoretical analysis of this issue. The problem is still evolving, which is why there is a need for research that is concentrated on the theory and the very basis of the positive obligations. The deep analysis of the issue clearly demonstrates the author's dedication and involvement in the research.

1.4. Adam Bodnar and Adam Płoszka (eds), *Wpływ Europejskiej Konwencji Praw Człowieka na funkcjonowanie biznesu* (2016)¹⁰

States and international organizations¹¹ have, in recent years, paid more attention to the problem of relations between human rights and business. There is no doubt that at the European level the ECHR is the most effective instrument for protecting entrepreneurs' rights.

The ECtHR developed particularly important case law concerning business in connection with allegations of infringement of the right to property (Article 1 of

9 J. Czepek, *Zobowiązania pozytywne państwa w sferze praw człowieka pierwszej generacji na tle Europejskiej Konwencji Praw Człowieka*, Olsztyn, Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego 2014.

10 ISBN 978-83-80922-42-6, (The Impact of the European Convention on Human Rights on Functioning of Business).

11 Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework confirmed by Human Rights Council in resolution 17/4 from 16 June 2011; Parliamentary Assembly Resolution no. 1757 (2010) 'Human rights and business'; Parliamentary Assembly Recommendation no. 1936 (2010) 'Human rights and business'.

Protocol No. 1 to the ECHR) and the right to a fair trial (Article 6 of the ECHR), as well as freedom of expression (Article 10 of the ECHR), no punishment without law (Article 7 ECHR), the right to an effective remedy (Article 13 of the ECHR), or the right not to be tried or punished twice (Article 4 of Protocol No. 7 to the ECHR). The texts are divided into five sections and concern the following: political issues, the impact of the ECHR on the functioning of the free market, procedural justice in business, the employer's obligations and individuals' rights in light of the ECHR, and the trader status as an entity seeking protection before the European Court of Human Rights. Among its authors, there are prominent experts focused on the ECHR system in Polish science such as: Leszek Garlicki, Adam Bodnar, Ireneusz C. Kamiński, Katarzyna Kowalik-Bańczyk, Artur Nowacki, Katarzyna Łasak, Paweł Wajda.

1.5. *Marta Szuniewicz, Ochrona bezpieczeństwa państwa jako przesłanka ograniczenia praw i wolności jednostki w świetle Europejskiej Konwencji Praw Człowieka, (2016)*¹²

Radical changes are taking place in the twenty-first century. They include not only international or non-international armed conflicts, but also civil violence, terrorism, weapons of mass destruction, deadly infectious diseases and environmental degradation. All of these may have equally catastrophic consequences, and international law should be able to handle them. Implementing the obligation to protect the security of a state may partly involve the violation of human rights. Therefore, the aim of this publication is to analyse to what extent it is admissible to limit human rights and fundamental freedoms in the name of a state's security protection and the public well-being.

In respective chapters, the author analyses the elements of conventional limitation clauses and derogation as the unique mechanism of human rights limitation within the ECHR system. According to the reviewer, the most important part of this publication is Chapter IV, in which the author presents selected issues focused on the sphere of human rights limitation due to the interests of state security. The author begins with an analysis of the scope of acceptable use of lethal force against individuals threatening state security and human life. The second problem is the prohibition of torture and inhuman treatment in the context of interviewing persons suspected of terrorism and the deportation of foreigners threatening the state's security and its citizens. Thereafter, the researcher focuses on the issue of the prohibition of arbitrary deprivation of liberty with Article 5 of the ECHR and the difficulty of states struggling with conventional standards of 'justified suspicion' or immediate judicial review.

It is also worth noting that the analysis of the issues presented in the publication has been made on the basis of an extensive bibliography and, in particular, an exhausting choice of ECtHR case law. Such complex research may be helpful not only for scientists but also for entities exercising elements of governmental authority.

12 ISBN 978-83-25584-61-0 (Protection of State Security as a Prerequisite for Limiting Individuals' Rights and Freedoms in the Light of the European Convention on Human Rights).

1.6. Bartosz Liżewski, *Operacjonalizacja ochrony praw człowieka w porządku Europejskiej Konwencji Praw Człowieka. Studium teoretycznoprawne* (2015)¹³

This book consists of six chapters. The first one presents typological and conceptual issues related to the concept of operationalization of human rights protection. In Chapter II, the author presents a complex structure of human rights protection in the Council of Europe system. The researcher points out that in addition to the ECHR, seen as the most powerful and effective instrument of human rights protection, the Council of Europe builds a much wider area of guarantees focused on the European Social Charter and the Revised European Social Charter.

The author also underlines that the system is supplemented by numerous international agreements regulating the matter of human rights protection, both objectively and subjectively. Considering that human rights are, in a special way, axiologically determined, a very important part of this publication is Chapter III, in which the discussion includes axiology, legislation and decision-making, with a particular emphasis on the interpretation processes.

In the fourth chapter, the author focuses on the interpretation of the provisions of the ECHR. He emphasizes that the specificity of the text of the Convention and the changing conditions of the social reality associated with the problem of permanence and volatility of values do not allow for the adoption of the unequivocal and definitive norm. Chapter V is also very important, since in it the author presents the multitasking of margin of appreciation concept developed by the ECHR. The author analyses the connection between the introduction of restrictions in national law and the actual limitation of human rights through the application of the law and the discretionary control of the national authorities' decisions taken by the ECHR.

The last chapter refers to the operationalization of human rights protection in the sphere of domestic law, particularly taking into account the Polish legal system. The author analyses the instruments by which the Strasbourg authorities appraise the level of respect for human rights within the state, as well as its actions and the effectiveness of national legislative, executive and judicial bodies.

Sebastian Sykuna notes that this monograph is a comprehensive and exhaustive analysis of extremely important issues of human rights protection from the legal philosophy perspective, including the issues of human rights protection, which explicitly seek to guarantee effective protection of the individual's rights in the state.¹⁴

2. Relevant Legal Journals

Polski Rocznik Praw Człowieka i Prawa Humanitarnego (Polish Yearbook of Human Rights and Humanitarian Law, published since 2010, Nos 1-8, ISSN 2082-1786).

13 ISBN 978-83-77946-25-4, (Operationalization of the Protection of Human Rights in the European Convention on Human Rights. Theoretical Study).

14 B. Liżewski, *Operacjonalizacja ochrony praw człowieka w porządku Europejskiej Konwencji Praw Człowieka. Studium teoretycznoprawne*, UMCS Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej 2015, fragment of the book's review by dr hab. Prof. UG Sebastian Sykuna.

Polish scientists have an opportunity to publish in many legal journals, such as the *Polish Yearbook of International Law* (published since 1966 in English), the *Polish Review of International and European Law* (published in English, but it is also possible to publish one text in French in each issue), *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego* (*Problems of Contemporary International, European and Comparative Law*), *Międzynarodowe Prawo Humanitarne* (*International Humanitarian Law*), *Europejski Przegląd Sądowy* (*European Judicial Review*), and many others.

However, the most noteworthy human rights journal is *Polski Rocznik Praw Człowieka i Prawa Humanitarnego* (*Polish Yearbook of Human Rights and Humanitarian Law*). Since 2010, many famous Polish researchers focused on international law of human rights and humanitarian law have published in this yearbook. The founding father of the yearbook was professor Tadeusz Jasudowicz. Thanks to him the yearbook still maintains high scientific value and is one of the most important periodicals in this sphere. The yearbook publishes articles both in Polish and English. This means that not only Polish scientists but also researchers from various foreign scientific centres are most welcome to publish their studies, articles, reviews, case comments and other materials in this journal.

3. Summary

Over the past few years, the Polish doctrine of international human rights law has been enriched by numerous relevant and up-to-date publications. It is impossible to discuss all of them in this review. Without any doubt, they constitute invaluable aid not only for researchers but also for practicing lawyers. Such studies are important for judges, prosecutors, attorneys and legal advisors focused on the international protection of human rights, both within a state's legal system and international human rights protection within the European Union, Council of Europe and United Nations systems.

Polish researchers focused on international law of human rights constitute a group that is ambitious in the choices of analysed scientific issues. Their studies aim to give answers to pressing and actual legal problems. They are not satisfied with easy answers, but seek to dig deeper in order to provide valuable scientific research.

The latest examples of studies on contemporary international law of human rights reflect the necessities of legal analysis for very recent developments and issues arising within the areas of international law and protection of an individual. Some examples of the most recent publications, which were not discussed in this review but also deserve to be emphasized, are: Przemysław Domagała, *Międzynarodowa Konwencja ONZ w sprawie ochrony wszelkich osób przed wymuszonym zaginięciem* (*International Convention for the Protection of All Persons from Enforced Disappearance*) (2017);¹⁵ Marta Szuniewicz, *Ochrona rodziny w konfliktach zbrojnych, studium prawnym międzynarodowe* (*The Protection of Family in Armed Conflicts*.

15 ISBN 978-83-2559-65-90.

International Law Perspective) (2017);¹⁶ Grażyna Baranowska, *Wymuszone zaginięcia w Europie. Kształtowanie się międzynarodowych standardów zapobiegania i egzekwowania odpowiedzialności państw (Enforced Disappearances in Europe. Developing International Standards for Preventing and Enforcing the Responsibility of States)* (2017);¹⁷ Małgorzata Andrzejczak-Świątek, *Ochrona praw dziecka w sytuacjach nadzwyczajnych (Protection of the Rights of the Child in Emergency Situations)* (2016).¹⁸

The studies concerning the issue of ‘enforced disappearance’ are particularly important. The International Convention for the Protection of All Persons from Enforced Disappearance, as an autonomous treaty endowed with its own treaty-monitoring body, has been signed by Poland in 2013 but has not been ratified. The research studies conducted by P. Domagała and G. Baranowska are very complex and exhaustive studies, even though the issue of enforced disappearances had already been taken up before by many researchers.¹⁹ P. Domagała analyses how the ratification of the Convention by Poland will strengthen the protection of enforced disappearance victims and their families. Additionally, he analyses what kind of legal changes should be made in order to effectively implement the provisions of the Convention. G. Baranowska presents a deep analysis of the process of developing international legal standards for protection against enforced disappearances, particularly in the European context. The author mainly focused on the assessment of the execution of a state’s responsibility in enforced disappearances in the judgments of the European Court of Human Rights.

16 ISBN 978-83-65763-01-3.

17 ISBN 978-83-25593-40-7.

18 ISBN 978-83-89658-32-6.

19 For example, A. Szpak, *Wymuszone Zaginięcia. Wybrane zagadnienia*, Toruń, Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika 2009; A. Szpak, ‘Wymuszone zaginięcia w orzecznictwie Europejskiego Trybunału Praw Człowieka – “sprawy czeczeńskie”’, in M. Balcerzak, T. Jasudowicz & J. Kapelańska-Pręgowska (Eds.), *Europejska Konwencja Praw Człowieka i jej system kontrolny – perspektywa systemowa i orzecznicza*, Toruń 2011, p. 231, at 250.