

International Human Rights Law

Przejdź do produktu na ksiegarnia.beck.pl

Preface

In order to meet the growing interest in the practical response of the most rapidly developing branch of international law – human rights – we share with you the book titled ‘International Human Rights Law’. Human rights are characterized by an increasing degree of concreteness and recognition of norms in the various international systems and increasingly influence the application of domestic law.

International law becomes a fundamental part of national law through ratification by states. This happens at three levels of the application and enforcement of international law, not limited by the subject matter, at the international, regional and national levels. It is expressed through its sources: treaties, agreements between states, as well as in the norms of customary international human rights law. The authors aim to show how the legislators of international law were guided by the ideas of protecting, promoting and ensuring the fulfilment of human rights to their fullest extent.

Human rights are deeply rooted both in the science of Polish law and in the normative sphere. Already at the time of drafting the Polish Constitution of 3 May 1791, which was the first on the European continent and the second in the world after the US Constitution, human rights had firmly established meanings. One of the co-authors of the Polish Constitution, Hugo Kołłątaj, creatively developing the thoughts of Thomas Paine, presented his concept of rights with such a high degree of generality and the highest power of influence that it determined the content of the constitution and laws.

As examples of Polish science’s contributions to the international norm-making activity, we can point to the role of Rafał Lemkin in the context of the international legal treatment of the crime of genocide, or Ludwik Rajchman, the initiator of the World Health Organisation. Similarly undeniable are the roles of Professor Bohdan Winiarski – president of the International Court of Justice, Professor Zbigniew Resich – chairman of the UN Commission on Human Rights who oversaw the adoption of the International Covenants on Human Rights, and Professor Manfred Lachs – a judge at the International Court of Justice. The centuries-old experience of Polish jurists translates into a broad spectrum of human rights research in Poland.

The authors of this book work at the Department of Human Rights and Humanitarian Law at the Faculty of Law, Canon Law and Administration at the John Paul II Catholic University of Lublin. The research team at the Catholic University of Lublin naturally draws significantly on the achievements of the Lublin School of Philosophy. Experts in the field of scientific research on human rights and their protection methods continue the best traditions of outstanding professors of the Catholic University of Lublin, respecting and creatively developing the works of the pioneers of the Lublin School of Human Rights: Professor Franciszek Mazurek and Associate Professor Hanna Waśkiewicz. The systematics

of human rights presented in the textbook also draws on Christian personalism and the scientific achievements of *Karol Wojtyła*.

With this, and great research traditions, in mind, the book provides a synthetic overview international human rights law, taking into account current case law and the views of legal scholars. In this way, the book fundamentally fills a gap in the publishing market concerning human rights, in particular of international human rights law.

The principle of respect for the inherent dignity of every human being is the basis for the entire concept of the book. It is not without reason that the idea of dignity is thoroughly imbued throughout the Constitution of the Republic of Poland, as well as its axiological and normative matrices: The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms. The principle of respect for the dignity and human rights is considered a *lex fundamentalis* and a source of international human rights law also by the authors of this book.

We present this academic book believing that it will be useful for a wide group of recipients: students of law, administration, European studies, canon law, and especially for all those who are interested in the international protection of human rights. We hope that the book will be of interest not only to students, doctoral students and academic staff, but because of its practical aspects, also to representatives of the foreign service and legal practitioners: judges, advocates, attorneys-at-law, court enforcement officers and notaries. Throughout the book, the idea is expressed that human rights make it possible to properly pursue the purpose of the legal system and administer justice.

The express value of this book is its systematisation based on the principle of the inherent dignity of a human being. The book, which is strictly legal in nature, comprehensively considers the specific nature of the interaction of international human rights law norms with national systems. The structure of the book is innovative in that, on the one hand, it meets the traditional classifications on substantive human rights, clustered within particular generational groups, while, on the other hand, it places them, in a completely pioneering way, into groups considered by legal practitioners to be the most useful in the process of constructing, applying and interpreting laws. The book is drafted to reflect the issues in a synthetic way, and provide as much practical content as possible. In addition to systematising human rights issues, it is intended to convey that this is a system of practical protection of individual rights, not merely a theoretical or didactic structure.

The book consists of six main chapters divided into subsections developed by expert authors in each area of international human rights law. It is worth noting that it was mostly developed by practicing lawyers experienced in resolving legal problems related to the application of international law. Each chapter is preceded by a list of selected literature in the area under discussion, which will help readers to deepen the topic of interest. Undoubtedly, the rulings and decisions of human rights authorities set out in the text should be particularly useful for legal practitioners, making the book even more valuable.

Although its core subject matter concerns international human rights law, the book devotes considerable space to the Polish domestic system of protecting human rights. There are two reasons for this.

The first is the belief that human rights constitute *ius cogens* of public international law and that these norms are not just an empty slogan, but a specific obligation of the state. Since the state has a duty to protect human rights, as required by the essence of *ius cogens* of public international law, this protection must take a real form. In order for a legal system to work, it requires both institutions/authorities and means of protection. As such, the state is obliged to establish an effective system of human rights protection at the national level. This duty of the state is also confirmed by what is known as the margin of appreciation concept, where a national human rights protection authority and procedure must be in place for a national judge to pronounce the conflict of human rights.

The second reason is that the human rights system has multiple aspects, i.e. international, regional and domestic, which complement each other. The choice of the Polish order was largely dictated by the fact the authors are most familiar with it, and yet it is less described in the international literature. However, there are also substantive grounds for this choice. Poland regained its independence after the collapse of communism, at which time it started to build a system for the protection of human rights, taking its cues from Western European countries. This makes it a fairly new system that has been able to combine elements and achievements of many countries. Central European countries went down a similar path and should also be able to contribute to the protection of human rights. These countries were particularly affected by the non-observance of human rights under the totalitarian regime, and therefore very strongly emphasise their essence and importance.

Chapter I, titled 'Conceptual framework and general principles of human rights', sets out the basic principles and structure of international human rights law. Dignity as a source of human rights in the national and international systems, as well as the relationship that links human rights and public international law, are analysed in detail. Various subjects, including subjects of sensitive human rights, are presented. The concept of generativity is included as the dominant theoretical and legal concept. The fundamental declarations, guidelines and principles adopted at the international level are discussed, while recognising that they contribute to the understanding, implementation and development of international law.

Chapter II presents the normative system of human rights protection. The human rights models applicable in the national system, which are interesting not only from the point of view of the national legal order, but also in light of the systemic approach, are analysed in detail, looking at the organisations that created them: the United Nations, the Council of Europe, the European Union, and the Organization for Security and Co-operation in Europe. Non-European systems deserving consideration are the inter-American, African, Arab-Muslim and emerging Asian systems.

Chapter III concerns the various authorities and measures for protecting human rights in the universal system. Measures for the protection of human rights in regional systems, including the: inter-American and African Courts, are covered broadly. The activities of the League of Arab States towards human rights are presented. Due to the importance of the measures of human rights protection discussed in the classes, a special place was given to such instruments as a constitutional appeal to the Polish Constitutional Court, an extraordinary appeal to the Polish Supreme Court, and applications/complaints to the European Court of Human Rights, the European Committee of Social Rights, UN

committee bodies or to the Court of Justice of the European Union. The national human rights protection measures that an individual can file with the ombudsman institutions are exhaustively described.

Subsequent chapters deal with specific aspects of international human rights law in action, taking into account specific and emergency situations. Chapter IV deals with international humanitarian law and the implementation of human rights protection in states of emergency. Chapter V describes the protection of the rights of national minorities, refugees and migrants as an implementation of human rights protection. The relations linking international humanitarian law and human rights are described in detail. The application of international humanitarian law is analysed, as well as the responsibility of states for crimes of international law, violations of the rights of migrants, national and ethnic minorities. Detailed rights of individuals whose rights have been violated are described.

The last chapter discusses selected human rights. The methodology used in this part of the book, which captures individual human rights in a functional and dynamic way, thus escaping the classical division into different generations of human rights, unquestionably adds value to it. The essential criterion for the division was the degree and specific nature of the threat to individual dignity. The following issues are then addressed: personal human rights, the protection of vulnerable human rights in the face of the state imperium, and the institution of prohibition in the human rights system.

The book is another joint publication of the department's members. We would like to express special thanks to the reviewers and all those who have contributed to this book. Since the subject matter of international law is enormous, some issues have been intentionally ignored or limited. The authors hope to receive helpful comments and feedback to improve the book.

The book takes into account the legal status as of 1 January 2023 and is the result of the implementation of the Research Grant of the Ministry of Education and Science DBF-WFSN.9700.6.2021.HŻ.1 awarded by Decision No. 12/WFSN/2021 of 30 April 2021.

Lublin 2023

*Krzysztof Orzeszyna
Michał Skwarzynski
Robert Tabaszewski*

[Przejdź do księgarni →](#)



ksiegarnia.beck.pl