



BRONISŁAW SITEK

University of Social Sciences
and Humanities in Warsaw, Poland

ORCID iD: 0000-0002-7365-6954

HUMAN RIGHTS VS. THE INTEREST OF THE STATE



ABSTRACT

This article analyzes the problem of human rights violations committed by democratic states under the justification of protecting national interests, particularly internal security and public order. The research hypothesis assumes that even well-established democracies may restrict individual rights using broadly defined public interest clauses. The aim of the paper is to present selected examples of such practices and evaluate the effectiveness of domestic and international human rights protection mechanisms. The study employs the dogmatic-legal method, case analysis, and critical examination of international documents. The findings point to the need for stronger international oversight, greater transparency of state actions, and enhanced safeguards for individuals against arbitrary restrictions.

KEYWORDS: *human rights, state interest, rule of law, democracy, human rights violations, international control, NGOs*

1. INTRODUCTION

The Second World War was a terrible experience for all mankind. The hostile states used weapons of mass destruction against each other, including the atomic bomb. The new techniques of warfare were used, including carpet bombing on civilians. Destruction was also carried out through deliberately planned actions targeting the civilian population in the aftermath of frontline advances. These included random street round-ups, public executions – especially of members of the intelligentsia intended to intimidate society – as well as forced labour imposed for the benefit of the occupying forces. Other tools of destruction must also be acknowledged, such as extermination camps, prisoner-of-war camps, mass resettlements, and the deportation of civilian populations.

In the political dimension, the right of nations to self-determination was broken, including the deciding by the leaders of the great powers of the borders of states and the fate of entire nations without their participation. This was the case with the agreements of Yalta and Potsdam, where it was decided about other nations, and where the division of Europe into zones of political influence was made. Poles were one of such nations were Poles who fought on all fronts of the world against Germany and Russia.

Polish people did not collaborate with the invaders, and despite, Poland was treated by the leaders of the great powers, just like the loser country (Bodziany, 2010: 88-89).

The consequence of this terrible war were millions of people who lost their lives, the extermination of nations, the loss of property, the deprivation of dignity belonging to human being, the loss of health as a result of devastating work in concentration camps or labour camps, as well as the poverty caused by the destruction of the economy. The dominant political doctrines at that time were not less destructive to humans. The biological or cultural racism was an important component of Nazism. The idea of class struggle, typical for communist ideology, fuelled the war machine on the Russians side.

The Second World War became a symbol of the great disaster of both Western and Eastern civilization. The greatest crimes were committed by the descendants of great thinkers and writers such as J.W. Goethe, F. Schiller, and Th. Mommsen. This demonstrates that even a high level of civilizational development does not necessarily prevent nations from committing horrific crimes in an organized and deliberate manner.”

In order to prevent similar events in the future, on December 10, 1948, the United Nations adopted a document of such great importance for all humanity, which is undoubtedly the Universal Declaration of Human Rights (Stankiewicz, 2004: 73-97).

The subject of this study is to show the interface between human rights and the interests of the modern state. The aim is to define the possible level of human rights protection considering the interests of the state. The implementation of state's interest pushes politicians into the actions which violate the human rights or the rights of local communities (Sitek, 2016: 124-142; Sitek, 2017: 79-90; Sitek, 2015: 61-70).

2. THE PROTECTION OF HUMAN RIGHTS – THE NORMATIVE REALITIES

Human rights are an essential component of every current constitution. In other words, every modern state declares itself as a state of law or as a democratic state. The legitimacy for these claims is found in the formulations of various international human rights conferences and declarations (M. Sitek, 2016: 75). The most important international legal acts concerning human rights include:

- a. the Universal Declaration of Human Rights of 1948;
- b. the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950;
- c. the International Covenant on Civil and Political Rights of 1966;
- d. the International Covenant of Economic, Social and Cultural Rights of 1966;
- e. the Convention on the Elimination of All Forms of Discrimination against Women of 1979;
- f. the Convention on the Rights of the Child of 1989;
- g. the Charter of Fundamental Rights of the European Union of 2000.

We should also mention the regional conventions, which include:

- a. the Arab Charter on Human Rights of 2004
- b. the African Charter on Human and People's Rights of 1981;
- c. the OAU Convention Governing The Specific Aspects Of Refugee Problems in Africa of 1969;
- d. the African Charter on the Rights and Welfare of the Child of 1990.

The consequence of such declarations is the inclusion at the very beginning of each constitution of specific provisions regarding specific contents. While comparing the provisions of individual constitutions, the provisions of the Universal Declaration of Human Rights can be clearly seen.

The constitution is a legal act of a general nature, which is why its provisions often have a declaratory and framework character. A concrete understanding of human rights should primarily be sought in statutory legislation – ranging from the civil and criminal codes to laws on healthcare, social welfare,

and civil rights. Although constitutional regulations are general in nature, they play an important symbolic role – they are often solemn and affirmative, forming the foundation for building the ethos of a democratic, tolerant, and law-abiding state (Garlicki, 2016: 43-62).

3. THE PROTECTION OF HUMAN RIGHTS BY THE STATE – THE STUDY BETWEEN THE ILLUSION AND POSSIBILITIES OF THE STATE

The research problem put forward in the title of the current subsection is not a research fiction. As it has already been shown, the modern states are proud of the normative provisions on human rights. The fundamental question, however, concerns the effectiveness of respect for human rights by the state, that is, its organs, including courts. To what extent are human rights respected for the sake of human being himself or herself, and to what extent are the actions taken by the state illusion, the aim of which is to obtain international recognition or legitimacy of one or another government team? (Stępień, 2019: 321-334) There is no one simple answer to this doubt.

According to Amnesty International's report for 2016/2017, the information about selected countries, including EU countries, has been provided. In 2015, in France, there were approximately 4,000 private apartment searches without a court order, and more than 400 people were forced to stay at their place of residence, which means that the freedom of movement was restricted. The numerous cases of police use of force against interrogated persons have also been noted. In the same year, the illegal refugees in Calais were liquidated. The refugees were deployed in various centres. As a result of this action, about 1600 minors remained unaccompanied. In addition, a ban on assembly was introduced, while those who violated this ban met with forceful solutions (M. Sitek, 2016: 160-162).

Similar cases of the human rights violations have also occurred in Greece. The refugees were subjected to the punishment of unjustified readmission to Turkey, condemning these people to torture and degrading behaviour. Most of the refugees did not receive elementary humanitarian aid. They were left alone. There have also been instances of torture and unlawful detention by

Greek services (Kanellis, 2024; 1-11). The authorities of Poland are accused of introducing new or amended acts in 2015. The most severe were those that concerned the Constitutional Tribunal. According to Amnesty International, the Polish political authorities limited not only the independence of the judges, but above all, the right to court was limited (Bojarski, 2021: 1344-1384). In Hungary, in turn, an amendment was introduced into the Constitution, entitling the government to introduce a state of emergency (a martial law) for unspecified reasons. There are also numerous cases of discrimination against Gypsies and refugees (Mészáros, 2024: 288-307).

These cases and these areas of human rights violations in some European Union states indicate that this is not an illusory problem even in this part of the world. It is very real.

The violation of human rights by the state bodies has various causes. The first of these is the shape and content of the policy of the governing teams. Each political group implements the assumptions of its political program. Sometimes, those programs are contrary to constitutional provisions. However, the political interpretations of these actions or constitutional provisions are pushing policy-makers into their intentions, even at the expense of human rights abuses. An example of this is the situation in Hungary, where civil liberties are gradually being restricted. Undoubtedly, the desire to establish the current position of power for a longer time period may be a reason for this. In Poland, the changes in the judiciary are aimed at the exchange of personnel in order to make political dependence of judges on the current political system.

The conflict of values is another cause of human rights violations. The state authorities are obliged to ensure security, both on the collective and individual levels. This is not an easy task, especially in the situation of an influx of refugees from particularly dangerous countries, among which terrorists try to hide. Hence, in France, the authorities are taking action against refugees to identify people related to terrorists. For this purpose, the relevant services perform searches of apartments or rooms in which refugees reside. In critical situations, however, the coercive measures or treatment tantamount to torture are applied to these people. Therefore, the several values have collided, including collective and individual security with the right to life, privacy, the prohibition of discrimination or the freedom of movement.

The human rights violations in EU countries are also caused by social events. Such events include a sudden mass migration inflows from Asia and Africa to Germany, France, Spain, Italy and Greece. The number of refugees in recent years has reached several million. Such a large number of people creates numerous social problems and the need to spend large sums of money from the budget despite the help of the European Union. These problems include: the accommodation, the food, the sanitary facilities, the medical help and the education for children as well as the cultural assimilation for adults. In addition to financial outlays, it is also necessary to involve a large number of people to service the needs of refugees. For these reasons, we can observe the deterioration of social conditions of refugees, the tiredness and the acts of aggression of the local population, or an unauthorized readmission to the country where the refugees came from.

The above analysis shows that cases of violation of human rights in EU countries cannot be unambiguously assessed. This does not mean, however, that this is not a problem which can be neglected. Further action is needed to reduce the level of violations of human rights.

4. THE NEED FOR INTERNATIONAL CONTROL ON THE HUMAN RIGHTS OBSERVANCE BY STATES

The observance of human rights by state bodies is subject to international and social controls. This is due to the fact that the implementation of political goals by the ruling groups, even in countries with a very high political culture, may be in conflict with human rights and, consequently, may lead to their violations. Such facts are noted by the numerous international organizations. Therefore, the main measures to control the observance of human rights include the activities of the international organizations, the international pressure, as well as the activities of the European Court of Human Rights (hereinafter ECHR) and the Court of Justice of the European Union (hereinafter: the CJEU).

Undoubtedly, the international organizations play an important role in monitoring human rights observance or, better, in the process of monitoring

human rights violations. Their basic task is to monitor and disclose the cases of human rights violations. For this purpose, they not only collect data, but also publicize cases of particularly violent human rights violations by state authorities. In this way, non-governmental organizations, especially those with an international character, exert international pressure, thanks to which the authorities of a given state are forced to correct their actions.

There are many organizations monitoring human rights violations by state authorities. Each organization operates within its own specific scope. The most important include the already mentioned the Amnesty International (hereinafter: AI). Artificial intelligence (AI) is currently used in virtually every country in the world – that is, in over 190 nations. However, the level of advancement and the extent of AI implementation vary significantly depending on each country's technological development, infrastructure availability, and public policy (Geist, 2016: 6). One of the main goals of the AI is to monitor the execution of penal penalties in humanitarian way. In its activity, the AI is guided by the provisions of the Universal Declaration of Human Rights (Kmieciak, 2013: 153-171.).

The compliance with human rights by states is also a task of the international organizations and the international courts. Among these official institutions, the United Nations (hereinafter UN) should be mentioned first. Already, in the preamble to the UN Charter, one of the tasks of the United Nations was to restore the faith in human rights. However, this task was repeated in the article 1 of this Charter. The Human Rights Committee established on the basis of article 28 of the International Covenant on Civil and Political Rights in 1966 is an important UN body responsible for the observance of human rights. This Committee may, *inter alia*, consider individual complaints about violations of human rights by states, but also complaints from one country to another. An important element of the Committee's activities is the acceptance and consideration of reports prepared by the States Parties to the Covenant on the protection of human rights on their territory (Michalska, 1996: 3-14).

An important role in respect for human rights by states is played by the international tribunals, two of which are the most important. The first is the European Court of Human Rights, which was established on the basis of article 19 of the European Convention on Human Rights of 1950. According to

the article 32, paragraph 1 of the Convention, the European Court of Human Rights is competent to hear all matters concerning the interpretation and application of the provisions of the Convention. As a rule, ECHR may accept complaints from any person, as well as from the non-governmental organization or from the group of individuals who are considered to be a victim of violation of its rights by States Parties (the article 34 of the Convention) (Dajnowicz, 2014: 79; Nowicki, 2021: 21). The number of cases pending before the ECHR can be indicative of the scale of human rights violations, for example: in 2011 there were about 150 000 of them. The number is constantly increasing, and it can be seen when we compare the current number of cases with the number of cases in 2010, which were only 61,300. The so-called Polish cases pending before the ECHR in 2010 were 6 452^[1]. At present, the number of cases brought against Poland is declining. In 2023, the number of new applications from Poland was approximately 1,300, which represents a significant decrease compared to the situation several years ago. Most cases come from Romania – about 17.6%, then Russia – 13.8% and Turkey – 13.3%. The cases from Poland at the ECHR are only 2.5% (1403 cases). There are 625 applications from Bulgaria, which is one of the lowest rates in the entire European Union (Analysis of statistics 2017).

Finally, one more institution must be mentioned, whose activity also enters the field of protection of human rights against state violations. It is the Court of Justice of the European Union. The legal basis for its organization and functioning are the provisions of articles 251-281 of the Treaty on the Functioning of the European Union. The competences of the CJEU to deal with cases of human rights violations by the Member States of the Union do not expressis verbis arise from those provisions. The powers of the CJEU in this respect result from the process of gradual acceptance of competences by Community bodies, and then EU, on compliance by Member States with common values. These include human rights formulated first in the European Convention on Human Rights (1950) and then in the Charter of Fundamental Rights (2000). Moreover, the particular treaties indicate values that are common to all Member States, such as the 1987 Single European Act, which indicates that Member States should cooperate on the promotion of democratic values, the foundation of which are fundamental rights contained in constitutions – especially human rights (Defeis, 2008: 1110; Bisztyga, 2011: 179-188). However,

it is symptomatic that in the annual report of the CJEU, there is not a category of matters defined as human rights. Such issues are combined with other categories of cases (Court of Justice of the European Union. 2017).

5. CONCLUSIONS

Human rights can be violated in various ways. The author of these violations may also be the state or its organs (state authorities). The media quite often report about the facts of human rights violations by state authorities, especially in Asian, African and South African countries. Such a message is in some part a stereotype, because cases of human rights violations also occur in European countries. Such cases are noted by international organizations, including Amnesty International. This is the case in countries such as France, Poland, Greece Italy or Spain.

The reasons for the violation of human rights in countries, with highly developed legal culture and with a widely developed democratic system, are numerous and different. These include the implementation of political goals and the lack of other possibilities to solve social or political problems. The reasons for this are also to be found in the need to solve problems quickly, even in the perspective of breaking certain human rights.

This picture, outlined in this study, indicates the need to strengthen the monitoring of cases of violation of human rights by states, even those which have the democratic or legal state principles written down in the constitutions. The international non-governmental organizations play an important role here, and such cases are publicized. In this way, the pressure is put on such countries to respect human rights. It seems that there is insufficient control in this sphere through such institutions as the Court of Justice of the European Union or the European Court of Human Rights. Despite the numerous cases examined by these tribunals, the number of violations of human rights by states is not decreasing. It is therefore justified to introduce the larger financial sanctions as well as the trade sanctions which could be imposed on those states for notorious violations of human rights.

REFERENCES

- Biszyga, A. (2011). Europejska Konwencja Praw Człowieka a Karta Praw Podstawowych Unii Europejskiej – stan kompatybilności czy konkurencyjności? *Przegląd Prawa Konstytucyjnego* 3: 179–188.
- Bodziany, M. (2010). Społeczne skutki wojen. *Bellona* 2: 88–99.
- Bojarski, Ł. (2012). Civil society organizations for and with the courts and judges – struggle for the rule of law and judicial independence: The case of Poland 1976–2020. *German Law Journal* 22 no. 7: 1344–1384.
- Dajnowicz, D. (2014). Prawna ochrona kobiet w świetle wybranych orzeczeń Europejskiego Trybunału Praw Człowieka. *Studia Podlaskie* 22: 77–90.
- Defeis, E. F. (2008). Human Rights and the European Court of Justice: An Appraisal. *Fordham International Law Journal* 31, no. 5: 1104–1117.
- Frankiewicz-Bodynek, A. (2018). About the Constitutional Concept of Human Dignity. *Opole Studies in Administration and Law* 16: 43–62.
- Garlicki, L. (2016). Sądy a Konstytucja Rzeczypospolitej Polskiej. *Przegląd Sądowy* 7: 7–25.
- Geist, D. (2016). Amnesty International's Empty Promises: Decriminalization, Prostituted Women, and Sex Trafficking. *Dignity: A Journal on Sexual Exploitation and Violence* 1, no. 1: 6.
- Kanellis, G. (2025). Refugee Protection in Greece: Compliance Challenges and Legal Obligations Under European and International Law. Available at SSRN. In: <https://ssrn.com/abstract=5176149>.
- Kmiecik, B. (2013). Stowarzyszenie Amnesty International jako ruch społeczny praw człowieka. *Studia Socjologiczne* 1 no. 208): 153–171.
- Mészáros, G. (2024). How misuse of emergency powers dismantled the rule of law in Hungary. *Israel Law Review* 57 no. 2: 288–307.
- Michalska, A. (1996). Ewolucja kompetycji Komitetu Praw Człowieka. *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 1 no. 57: 3–14.
- Nikolaeva, S. (2024). *Border Pushbacks in Greece: Human Rights Violations and Psychological Impacts*. *Glocality* 7.1: 1–11.
- Nowicki, M. A. (2021). Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka. Warszawa: Wydawnictwo Wolters Kluwer.
- Sitek, B. (2015). Human Rights vs protection of the State Treasury's interest. In: Sitek, M. ed al., (ed), *Collective human rights in the first half of the 21st century*, Józefów: Wydawnictwo WSGE.
- Sitek, B. (2017). Rzecznik Interesu Publicznego w Niemczech. *Journal of Modern Science*. 35 no. 4: 79–90.
- Sitek, M. (2016). *Prawa (potrzeby) człowieka w ponowoczesności*. Warszawa: Wydawnictwo C.H. BECK.
- Stankiewicz, W. (2005). Rola ONZ w utrzymaniu pokoju i bezpieczeństwa międzynarodowego na początku XXI wieku – ocena i oczekiwania. *Krakowskie Studia Międzynarodowe* 2, no. 3: 73–97.
- Ściepiń, M. (2019). Say it with Images: Drawing on Jerome Frank's Ideas on Judicial Decision Making. *International Journal for the Semiotics of Law* 32, no. 2: 321–334.

DOCUMENTS

Amnesty International. *Amnesty International Report 2016/17: The State of the World's Human Rights*. Accessed May 19, 2018. [https://www.amnesty.org/download/Documents/POL 1048002017ENGLISH.PDF](https://www.amnesty.org/download/Documents/POL%201048002017ENGLISH.PDF).

European Court of Human Rights. *Analysis of Statistics 2017*. Accessed May 18, 2018. https://echr.coe.int/Documents/Stats_analysis_2017_ENG.pdf.

Court of Justice of the European Union. *2017 Annual Report: The Year in Review*, 37. Accessed May 18, 2018. https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-04/ra_pan_2018.0421_en.pdf.

ENDNOTES

[1] These data comes from the website of the Polish Ministry of Foreign Affairs. Text online: <https://www.msz.gov.pl/resource/db629b9e-2eda-40d6-96d1-b6986e649900> [access: 18.11.2018].