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Human Rights Committees Recommendations and their Position Within Slovak Legal Order

- **ABSTRACT:** *This chapter presents and analyses the position of the Slovak Republic in relation to the decisions of various human rights committees established at the universal level and their processing within the Slovak legal framework. It explains relevant clauses of the Slovak Constitution and compares several different attitudes of selected countries and their particular views on the committees, namely, decisions of the Spanish Supreme Court and the Slovak Supreme and Constitutional Courts.*
- **KEYWORDS:** human rights committees' recommendations, legally binding acts, Slovak constitution, CEDAW, individual complaints

1. Introduction

The concept of human rights in the area of protection by states differs when compared to the concepts of natural law and positive law; the difference lies in the need for recognition or consent provided by states. In this context, it is appropriate to distinguish between the right to life, which is a natural part of every individual because of their existence as a human being and the related human dignity, and the legal claim that arises from such a right under certain conditions, which is also applicable at the level of international law.¹ Therefore, it is important to understand the institutional background created during the development of the legal field of international human rights protection, which is related to several international treaties adopted by states at both universal and regional levels.

1 See e. g. Donnelly, 2003, p. 7 et seq.

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By acceding to various international treaties, various states have started recognising and ensuring the protection of human rights and fundamental freedoms at different levels and through different means.

The establishment of the United Nations (UN) in 1945 was an important milestone in international human rights protection even though it was not the first step in protecting individual rights. Before World War II, international law understood the concepts of diplomatic protection, protection of minorities, protection of foreigners, and protection of victims of armed conflict. For example, the Declaration of the Rights of the Child was adopted in 1924.² However, the status of nationals was understood to be a matter of the domestic jurisdiction of sovereign states.³ The importance of naming and developing international human rights protection after the founding of the UN integrated the previous *ad hoc* response of the international community to the status of foreigners, slave trade, workers, and other groups or individuals into a universal system that concerned every individual. However, the internationalisation of the protection system did not change the fact that the essential actor in the field of human rights protection – whether at the international, regional, or national level – has always been the state. National authorities bear the primary responsibility for the protection of human rights. The role of the UN and other organisations is secondary and subsidiary.

According to the Preamble of the UN Charter, the protection of human rights is both a goal of the UN and a means of achieving other goals. Simultaneously, the new concept of human rights introduced after World War II emphasised the belief that respect for human rights is closely connected with maintaining and ensuring international peace and security.⁴

Each of the principal UN bodies (the General Assembly, Security Council, Economic and Social Council, Secretariat, Trusteeship Council, and International Court of Justice) plays an irreplaceable role in the UN's goal of promoting respect for human rights.

In addition to the principal UN bodies, the UN Human Rights Council (hereinafter, the Council) operates in the human rights protection system at the UN, which, according to the year of its establishment (2010), is a relatively young body in the UN system for the support and protection of human rights; however, it was *de facto* replaced by the Commission for Human Rights established in 1946. It began to address situations of gross and systematic violations of human rights (as part of a public investigation) and complaints from individuals or groups against systematic and mass violations of human rights (through non-public and confidential proceedings that took place in written form). Apart from these UN

2 See e. g. Vandenhole, Lembrechts and Turkelli, 2019, p. 2.

3 Harris, 2004, p. 654.

4 Potočný and Ondřej, 2003, p. 78.

charter-based human rights bodies, a treaty-based system was created step-by-step under the umbrella of the UN.

This article aims to present and analyse the position of the Slovak Republic in relation to the decisions of various human rights committees established at the universal level and their processing within the Slovak legal framework. The remainder of this article is divided into three sections. The first concerns the status of human rights committees under international law. The second chapter focuses on the interpretation of international treaties and relationship between international and Slovak law as regulated by the Constitution of the Slovak Republic. Finally, the third chapter analyses a human rights committee recommendation for the Slovak Republic and examines recommendations for individual petitions only.⁵ This section first analyses a decision adopted by the Supreme Court of the Kingdom of Spain, because it is also mentioned in the legal submission of an individual to a Slovak court and compares it to the Slovak position of understanding international human rights committees and their recommendations. The difference between the two is influenced by the interpretation of an international treaty and the relationship between international and national law regulated in the supreme legal act of a state, namely, its constitution. Finally, the issue of considering international human rights committees and their recommendations as legally binding is taken into account from the viewpoint of General Recommendation No. 33, drafted by the Committee on the Elimination of All Forms of Discrimination against Women. This recommendation originally included legal obligations of the states to respect the views of this Committee.

2. Human Rights UN Committees and international law

When analysing human rights committee recommendations, it is important to explain what these committees are. As for the international human rights law, these committees are bodies that have been established through the adoption of specific international treaties governing interstate relations in human rights protection.

Before legally binding treaties were adopted under the auspices of the UN, which dealt with the protection of human rights and established an institutional framework for their protection, the Universal Declaration of Human Rights (UDHR) was adopted on 10 December 1948. Although this document is not legally binding, it must be considered a 'general standard to be achieved for all individuals

⁵ Apart from recommendations in individual communications, these human rights bodies adopt general recommendations as well. See e. g. general recommendation no. 36 (2017) on the right of girls and women to education.

and nations.⁶ The UDHR was adopted as one of the first documents of the UN General Assembly.

The UDHR contains a list of civil, political, economic, social, and cultural rights, but no implementation or control mechanisms are specified. Despite its non-legally binding nature, it influenced the content of later legally binding documents. Together with the Covenants of 1966, it created the International Charter of Human Rights (ICHR). Additionally, some of its provisions can be considered norms of customary law.⁷

The nature of the UDHR and international community's focus on creating a real system of human rights protection presupposes the adoption of legally binding norms. However, because of growing tensions between the Eastern and Western blocs, this was only realised in 1966, even though the Human Rights Commission had already fulfilled its role in 1954, when it submitted the texts of the proposed Covenants to the UN General Assembly.

Although the area of human rights protection might be detected within various types of international treaties, for example, within the Convention on the Prevention and Punishment of the Crime of Genocide (1948, in force since 1951) or Convention on the Suppression and Punishment of the Crime of Apartheid (1973, in force since 1976), the following list of international treaties is specific because of the institutional system established to support the effective protection and promotion of human rights at the universal level.

In addition to the International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social, and Cultural Rights (1966), which entered into force in 1976, the following international treaties formed the basis of the treaty system for the protection of human rights under the UN's umbrella: Convention on the Elimination of All Forms of Racial Discrimination (CERD, adopted in 1965 and in force since 1969); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, adopted in 1984, in force since 1987); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, adopted in 1979 and in force since 1981); The Convention on the Rights of the Child (CRC, adopted in 1989, in force since 1990); The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW, adopted in 1990 and in force since 2003); The Convention on the Rights of Persons with Disabilities (hereinafter referred to as CRPD, adopted in 2006, in force since 2008); The Convention for the Protection of All Persons from Enforced Disappearance (CED, adopted in 2006 and in force since 2010).

6 Para. 8 of the Preamble of the Vienna Declaration and Program of Action adopted at the World Conference on Human Rights, 25 June 1993.

7 For more details see Shaw, 2008, p. 260.

Although the first list of conventions is specific in that they regulate *jus cogens* norms⁸ and represent a special form of human rights protection that requires states to prosecute persons suspected of committing genocide or apartheid; however, the selection of the second list of international treaties is justified by the existence of the committees established by them, which supervise the implementation of the obligations arising from these treaties for the individual contracting parties. The number of members in these committees varies from 10 to 23 experts nominated and elected by contracting parties but are supposed to perform their functions as independent experts.⁹

These expert bodies are authorised to adopt the following three types of recommendations: general recommendations, recommendations after receiving and discussing monitoring reports from the requested individual states, and recommendations after an individual complaint has been submitted and heard.

This mechanism is available to the committees because the possibility of filing complaints by individuals has been established either by the original treaty itself or, in some cases, by an additional protocol. As of 2023, there are only eight committees that are authorised to deal with a complaint under certain circumstances. They are the Committee on the Protection of the Rights of All Migrant Workers and their Families and it has this competence foreseen in Article 77 of the Convention; however, this mechanism will become operative when 10 state parties have made the necessary declaration under Article 77. Finally, in terms of terminology, within the language used at the UN, the term communication is preferred over complaint because it is a more acceptable term for states. However, the term complaint is used in this article because it provides a clearer understanding of the entire process.

The possibility of individuals to file a complaint in the field of human rights protection has usually been considered as a fundamental turning point in the effectiveness of the activities of international bodies and has a major impact on the actual protection of human rights at the national level. Although the decisions of committees as quasi-judicial bodies are generally not considered legally binding,¹⁰ even as recommendations, they represent considerable political pressure on the actions of states. Additionally, most states try to reach an amicable settlement with the complainant as a precaution so that a possible decision is not made at all, and the case can be deleted from the list of cases dealt with by an international body.

8 *Ius cogens* aspect of prohibition of genocide was declared e. g. by International Court of Justice in its Advisory Opinion Reservation to the Convention on the Prevention and Punishment of the Crime of Genocide from 28 May 1951, ICJ Reports 1951, p. 15 et seq.

9 Committee on Human Rights, Committee against Torture, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination against Women, Committee on the Rights of the Child, Committee on Persons with Disabilities, Committee on the Protection of the Rights of Migrant Workers and Members of Their Families, Committee on Enforced Disappearances.

10 See the analysis in the third chapter of this article.

Individual committees determine whether a complaint is acceptable. The complaint can be submitted by individuals or groups of individuals who object to the violation of their rights protected by the relevant convention, that is, victims of human rights violations (CCPR, CERD, CAT, CEDAW, CRPD, and CED allow the filing of a report not by the victim themselves but by a person close to them on their behalf). Controlling authorities reject the complaint if it is clearly unfounded or insufficiently justified (CEDAW and OP-CRPD state this explicitly, along with other committees, in their rules of procedure). Another question that the committees examine regarding the admissibility of the complaint is the question of liti-pendency or *res iudicata*. Most committees reject the complaint if the same matter has already been decided upon by another judicial or quasi-judicial international body or is pending in such a forum. This approach reflects the efforts of states not to overload the UN's human rights protection system and prevent one committee from becoming an appealing body for another.¹¹

A fundamental question in the decision regarding the admissibility of a complaint is the exhaustion of national remedies.¹² The rationale for this condition is obvious; states have the option before they act, otherwise, failure to act will be evaluated on an international forum to correct violations of their international obligations by themselves. However, the committees do not insist on the requirement that national remedies have been exhausted unless the proceedings based on them are too long or there is no real possibility of securing a relevant remedy for the injured party. Therefore, national remedies must be effective and accessible to victims of human rights violations.

In the UN system, individual complaints reach committees through the UN Office of the High Commissioner for Human Rights, which invites complainants to complete their reports. When the Committee decides that the complaint is acceptable, it asks for a statement from the concerned state. Proceedings occur exclusively in written form and are not available to the public. Therefore, they do not include witnesses or experts.

3. Interpretation of international conventions and relationship between international and Slovak law

When analysing human rights committees and their recommendations, apart from the relationship between international and Slovak national law, it is also important to understand the interpretation rules applied by international law

11 Cf. Tomuschat, 2003, p. 213.

12 For more comprehensive summary of admissibility requirements see [Online]. Available at: <https://www.ohchr.org/en/treaty-bodies/individual-communications#theadmissibility> (Accessed: 31 July 2023).

because they might influence the decision-making procedure within the human rights protection system.

According to the general rule of interpretation of Article 31 of the Vienna Convention on the Law of Treaties,¹³ a treaty shall be interpreted in good faith in accordance with the ordinary meaning given to the terms of the treaty in its context and in light of its object and purpose. Moreover, the Vienna Convention has specified that the context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, its preamble, and annexes, any agreement relating to the treaty made between all parties in connection with the conclusion of the treaty and any instrument related to one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. Furthermore, along with the context, any subsequential agreement between the parties regarding the interpretation of the treaty or the application of its provisions, any subsequential practice in the application of the treaty that also establishes the agreement of the parties regarding its interpretation, and any relevant rules of international law applicable to the relations between the parties shall be considered. This is particularly the subsequential practice that is relevant to this issue.

The Vienna Convention also determines supplementary means of interpretation, including the preparatory work of the treaty¹⁴ and the circumstances of its conclusion, to confirm the meaning resulting from the application of Article 31, determine the meaning when the interpretation according to Article 31 leaves the meaning ambiguous or obscure, or leads to a result that is manifestly absurd or unreasonable.¹⁵

Finally, the Vienna Convention allows a special meaning to be given to a term if it is established that the parties intend to. It is important to interpret the term recommendation because it is the subject of the research in this article. Nevertheless, it is submitted that the state parties do not intend to give special meaning to this term and vice versa. Both the state parties and committees understand this term in its ordinary meaning.

To clarify, the aforementioned UN human rights conventions that authorise established committees to make decisions upon accepted complaints adopt these decisions in the form of recommendations. A recommendation is submitted as a suggestion that something is good or suitable for a particular purpose or job; it may also be advice.¹⁶ There is no specific understanding of the term recommendation in relation to any legal framework. If one refers to the Vienna Convention on

13 For more details see e. g. Aust, 2007, p. 234.

14 Travaux préparatoires were important in *Johnston and others v. Ireland*, 18 December 1986, No. 9697/82, para. 52.

15 Art. 32 of the Vienna Convention on the Law of Treaties.

16 Compare Cambridge Dictionary [Online]. Available at: <https://dictionary.cambridge.org/dictionary/english/recommendation> (Accessed: 31 July 2023).

the Law of Treaties, the general rule of interpretation and term recommendation are interpreted in good faith in accordance with its ordinary meaning; there is no other ordinary meaning of this term even if interpreted in the context and in light of the object and purpose of such a committee recommendation or of a concerned treaty. However, the situation may differ for individual states, as explained in the following subsection.

All the aforementioned conventions have also been ratified by the Slovak Republic and not by the International Convention on the Protection of the Rights of All Migrant Workers and their Families. In this article, it is important to understand the relationship between Slovak national and international law. If there is a sharp division among the three theories,¹⁷ namely, the monistic one with international law taking priority, the monistic one with national law taking priority, and the dualistic one in which Slovakia would take the priority as the first one.

As for the general rule, originating from the Constitution of the Slovak Republic (the Constitution), the Slovak Republic acknowledges and adheres to the general rules of international law, the international treaties by which it is bound, and its other international obligations.¹⁸ However, this Constitution article is simply a statement specifying the position and orientation of Slovakia within the international community. To be more precise regarding international treaties, one must reflect on Article 7 of the Constitution, which regulates the precedence of international treaties over laws.¹⁹ Nevertheless, such a position is provided for only under certain conditions and for certain types of international treaties. Precedence over laws is possible only for international treaties on human rights and fundamental freedoms, international treaties that do not necessitate exercising a law, and international treaties that directly confer rights or impose duties on natural or legal persons. Moreover, all of these must be ratified and promulgated in a manner laid down by law. Obviously, Slovakia must be a contracting party to such treaties.²⁰

This article has been included in the Constitution based on the great amendment of the Constitution, which was essential in relation to Slovakia's EU membership.²¹ It changed the position of international treaties within the Slovak

17 See e. g. Čepelka and Šturma, 2008, p. 194.

18 Art. 1(2) of the Constitution of the Slovak Republic.

19 However, this precedence does not include precedence over the Constitution.

20 Moreover, according to Art. 7(4) of the Convention, the validity of international treaties on human rights and fundamental freedoms, international political treaties, international treaties of a military character, international treaties from which a membership of the Slovak Republic in international organizations arises, international economic treaties of a general character, international treaties for whose exercise a law is necessary and international treaties which directly confer rights or impose duties on natural persons or legal persons, require the approval of the National Council of the Slovak Republic before ratification.

21 Constitutional Act No. 90/2001 Coll.

legal order, which was especially important for international treaties ratified by Slovakia before the great amendment of the Constitution. Therefore, transitory Article 154 c of the Constitution is the most important one in relation to the Convention and other international treaties ratified by Slovakia before 1 July 2001. According to this article, international treaties on human rights and fundamental freedoms that the Slovak Republic has ratified and promulgated in the manner laid down by law shall be part of its legal order and have precedence over laws before taking effect of this constitutional act. This is only if they provide a greater scope of constitutional rights and freedoms.²² Other international treaties that the Slovakia has ratified and promulgated in accordance with law before taking effect of this constitutional act are part of its legal order, if specified in accordance with law.²³

Some of the aforementioned international treaties were ratified by the Slovak Republic before and after 1 July 2001. Nevertheless, all of them have precedence over national legal acts, either because they provide a greater scope of fundamental rights or freedoms or because they confer rights to natural or legal persons. However, the issue of this article is more specific, concerning, the status of recommendations adopted by bodies established by relevant international treaties and not the status of international treaties that only partially influence research submission. Nevertheless, it is a very important pre-step in the status of UN human rights committees' recommendations.

4. Committees recommendations and their position in the Slovak legal framework

Before examining the position of committee recommendations within the Slovak legal framework, it is important to address a decision of the Supreme Tribunal of the Kingdom of Spain because it has also been referred to in the Slovak legal environment. More precisely, this Spanish case has been presented as a turning point for the enforceability of the UN treaty body recommendation because it was ruled that, once an international human rights treaty is ratified by the state, there should be a mechanism within the state for the enforcement of a result adopted by the body established by that treaty.²⁴ Nevertheless, as will be emphasised later, this decision largely depends on the Spanish Constitution.

To summarise the facts, in April 2003, a seven-year-old girl called Andrea was murdered by her father, who subsequently committed suicide. This happened during a court-approved parental visit even though Andrea's mother, Ms.

22 Constitution, Art. 154c(1).

23 Ibid., para 2.

24 Contentious-Administrative Chamber, Spanish Supreme Court's Judgment of 17 July 2018 (STS 1263/2018).

González Garreño, reported many instances of physical abuse to the police and sought restraining orders to protect herself and her daughter. Nevertheless, the court finally allowed unsupervised visits, which led to Andrea's murder. After the murder, Ms. Gonzalez Garreño initiated several legal cases against the Spanish authorities in national courts for 'abnormal functioning of the Administration of Justice' especially by their failure to take into account the history of domestic violence when determining a right of the father to visit. After the exhaustion of domestic remedies (including the Spanish Supreme Court, which confirmed state acts, and the Spanish Constitutional Court, which declared the case inadmissible), Ms. Gonzalez Garreño filed a complaint with the CEDAW Committee. The Committee held in favour of Ms. Gonzalez Garreño and ruled against the Spanish authorities for their failure to exercise the necessary steps to prevent violation of the CEDAW.²⁵ Moreover, the Committee recommended that Spain grant Ms. Gonzalez Garreño comprehensive compensation and conduct an exhaustive and impartial investigation.²⁶

Since February 2015, Ms. Gonzalez Garreño has filed several administrative and legal submissions requesting that the Ministry of Justice or relevant courts comply with orders within the CEDAW recommendations. There were several issues at stake, such as *res judicata*, that is, the abnormal functioning of the Administration of Justice; however, all these claims were dismissed. Finally, the Supreme Court upheld that Spanish authorities were required to act in accordance with the CEDAW recommendations that had been adopted in the form of so-called views. The Supreme Court pointed out Article 24 of the CEDAW Convention, according to which, all ratifying states must adopt the necessary means of protecting fundamental rights outlined in the Convention. According to the Supreme Court, the views of the CEDAW Committee are obligatory for the state party to ratify in accordance with the Convention and Protocol. Moreover, consideration must also be given to Article 7(4) of the Optional Protocol, which states that the state party shall give due consideration to the views of the Committee, together with its recommendations, and that the state party shall submit to the Committee a written response within six months after the recommendations are received. Furthermore, according to the Supreme Court, the state party should expressly recognise the Committee's competence under Article 1 of the Protocol.²⁷

Finally, moving on to domestic law, the Supreme Court explained that the international treaty that provides the basis for the CEDAW Committee and its views forms part of the Spanish legal order under Article 96 of the Spanish Constitution. Moreover, under Article 10(2) of the Spanish Constitution, fundamental rights

25 CEDAW, case no. 47/2012.

26 Ibid., para. 11 a).

27 STS 1263/2018, p. 11.

ought to be interpreted in accordance with the UDHR²⁸ and international human rights treaties ratified by Spain. Furthermore, Article 9(3) of the Spanish Constitution provides with the principle of legality and normative hierarchy. Therefore, according to the Spanish Supreme Court, international obligations relating to the execution of the decisions of the CEDAW Committee are a part of the Spanish legal order and enjoy a hierarchical position over ordinary domestic law.²⁹

The Supreme Court ordered the state to pay EUR 600, 000 for moral damages to Ms. Gonzalez Garreño, which might have influenced several opinions. According to them, the Spanish Supreme Court's decision overestimated the legal value of the CEDAW's decision.³⁰

Nevertheless, the crucial point is not whether Spain violated the international legal obligations derived from the CEDAW Convention. Spain ratified the CEDAW Convention and recognised the competence of the CEDAW Committee to adopt its views on individual communication. Furthermore, for the international responsibility of a state to be established, only two requirements must be met. The first is the violation of an international legal obligation, and the second is the attributability of this violation to a particular state. Both these conditions have been fulfilled in the present case, which means that Spain has been under the obligation to make full reparations for the injury caused by its internationally wrongful act³¹ in a form that is possible and acceptable.³² However, the issue conflicts with the status of the recommendations of the UN human rights committees, whether they are legally binding or not, and consequently, whether not fulfilling these recommendations has established another international responsibility of a state for an internationally wrongful act. Nevertheless, as already mentioned, the CEDAW drafted its General Recommendation Number 33 in such a way that it included the obligation of the State Parties to CEDAW to respect the CEDAW Committees' views, that is, to consider them legally binding and several State Parties clearly disagreed with such a draft.³³

Knowing the original draft of the CEDAW and the Spanish case, the author of this article has made an appointment to discuss the UN human rights committees and their recommendations or views at the Ministry of Foreign and European Affairs of the Slovak Republic, namely, at the Department of Human Rights, which is in charge of administering communication with the examined UN human rights committees.³⁴ The visit confirmed that there are no special internal instructions or

28 Understanding of the UDHR is completely different in Slovakia if compared to its character as a tool to interpret fundamental rights. See e. g. Jaichand and Suksi, 2009.

29 See e. g. Kanetake, 2019.

30 Pineda, 2019, p. 133.

31 Art. 31 of the Articles on Responsibility of States for Internationally Wrongful Acts.

32 Ibid., Art. 34 et seq.

33 See e. g. Report of the International Law Commission, UN GAOR, 73rd Sess., Supp. No. 10, at 110–12, paras. 9–15, UN Doc. A/73/10 (2018).

34 The meeting at the Ministry of Foreign and European Affairs of the Slovak Republic took place on April 25, 2023.

special formal procedures when communication from the UN human rights committees reaches the Slovak state body, and that the Slovak state authorities consider recommendations adopted by these UN human rights committees as non-legally binding. Moreover, even though no decision had yet been adopted that ruled upon the CEDAW views within the Slovak legal order, there have already been some submissions at a court for the Ministry to provide its legal viewpoint.

The following set of facts and laws has been discussed at the Ministry. The relevant case has concerned a lawsuit that has not yet been decided upon at the national level, within which the complainant has asserted her rights and claims based on the opinion adopted by the CEDAW.³⁵ According to the CEDAW recommendations, the complainant is provided with financial compensation for lost wages, non-pecuniary damage, and legal representation costs related to legal proceedings for violations of her rights under the CEDAW Convention.³⁶

As for the facts, the complainant has argued in the original submission that the state-run company had violated the principle of equal treatment because the decision to declare her redundant was taken by her employer, who respectively had informed her that she was nobody's *protégé* and that she would be at home with sick children all the time. The author has also argued that, after the termination of her employment, the employer engaged two other persons to perform tasks that had previously been performed by her. She alleged that the main reason for her dismissal was the fact that she was the mother of two small children who had just returned from maternity and parental leave.³⁷

Leaving aside those aspects that are similar to the Spanish case in that there are no legal grounds for a formal procedure to implement committee recommendations within the Slovak legal order, it is important to point out that, according to the information provided, the CEDAW positively evaluated all the general measures that the Slovak Republic adopted in connection with the recommendation on the violation of the CEDAW Convention. However, dissatisfaction has remained with the non-payment of compensation to the complainant. This fact has allegedly prevented the CEDAW from ending its follow-up. The members of the working group for communication have expressly emphasised that there was no specific form of compensation and that it could also be non-monetary compensation.

Nevertheless, the Ministry of Foreign Affairs has interpreted this recommendation as not legally binding. The basis for such an interpretation is the assessment that the CEDAW Committee was established by an international treaty. Its authority to assess the notifications of individuals who complained that they have become victims of a violation of one of the rights of the Convention was established by another international treaty, the Optional Protocol to the Convention,

35 CEDAW, complaint no. 66/2014, 7 November 2016.

36 Ibid.

37 Ibid., paras. 2, 11.

both of which were ratified by the Slovak Republic. Nevertheless, there is no provision in the CEDAW regarding the Optional Protocol regulating the legally binding nature of the output, which ends the process of assessing notifications received from individuals.

On one hand, there is the expressly stated obligation of the CEDAW Committee to inform the affected state of the receipt of a notification directed against that state; the right of the state to be informed is followed by the obligation of the state to provide information or the cooperation of the CEDAW in processing this notification. In addition to Articles 1 and 2, Article 6 of the Optional Protocol to the Convention is also categorically formulated and directly and unambiguously states the obligation of the contracting state.

Consequently, Article 7(1) of the Optional Protocol to the Convention stipulates that the CEDAW shall consider all information available to it submitted by individuals or groups or on their behalf and the relevant state and shall forward its opinion on it together with recommendations, if any, to the parties concerned.

Giving ordinary meaning to the terms of the treaty in their context and in light of the object and purpose of the CEDAW n, Article 7(3) of the Optional Protocol to the Convention has established that the process before CEDAW does not end with a legally binding act. This conclusion is also confirmed by a comparison with the aforementioned articles on the Optional Protocol to the Convention,³⁸ clearly formulating the obligations of the contracting state and corresponding with relevant articles by other international treaties that have established mechanisms to resolve individual complaints completed by a legally binding act. For example, the Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), to which the Slovak Republic is a contracting party in connection with its membership in the Council of Europe, and pursuant to which the European Court of Human Rights was established to ensure the fulfilment of the obligations assumed by the ECHR. Article 46 of the ECHR expressly provides for 'Binding force and execution of judgments.' Its wording clearly states that 'the High contracting parties undertake to abide by the final judgment of the Court in any case to which they are parties.'

Moreover, as for the Slovak national judiciary, the Constitutional Court of the Slovak Republic has already openly dealt with³⁹ the nature of the opinions of UN committees in its resolution, in which it has referred to the Czech jurisprudence⁴⁰ and identified the UN Human Rights Committee (analogously applicable

38 Arts. 1, 2 and Art. 6.

39 Nevertheless, it is true that the Spanish Supreme Court has already also analysed the status of the UN human rights committees' recommendations and came to a conclusion that they are not legally binding. The 2018 decision has been chosen because it was a turning point in general practice and second, it has been referred to in various submission (not only in Slovakia).

40 Judgment of the Supreme Administrative Court of the Czech Republic, file no.: III. ÚS 296/14.

also to the CEDAW Committee) as an example of the ‘quasi-judicial international body.’⁴¹ According to the Constitutional Court of the Slovak Republic, these bodies differ from judicial bodies in presenting their opinions in the form of legally non-binding albeit factually respected opinions.⁴²

Furthermore, it is important to emphasise that even though the decisions of other states’ supreme courts might influence the decisions of the Slovak Supreme Court (especially the Czech courts), the Slovak Supreme Court has clearly stated that the term of the established decision-making practice of the appellate court includes decisions of the Constitutional Court of the Slovak Republic, European Court of Human Rights, and Court of Justice of the European Union.⁴³ Nevertheless, the decisions of the courts of other states, not even those of the Constitutional Court of the Czech Republic and Supreme Court of the Czech Republic, do not fall under this term.⁴⁴ Therefore, it is clear that, under the term established decision-making practice of the court of appeal, only decisions of the Supreme Court of the Slovak Republic and the Constitutional Court of the Slovak Republic can be considered by the courts of the Slovak Republic.

Moreover, there has been a consistent understanding of the non-legally binding character of UN human rights committees in academic publications, both in international⁴⁵ and national.⁴⁶

In addition to substantive legal differences and absence of a legal basis for binding decisions, procedural differences must also be considered. This is because the members of the CEDAW Committee are 23 experts from the world in the field of women’s rights; that is, a condition for their election is not complete legal education, which is the case for judges of the European Court of Human Rights, where legal experience is also required. Moreover, the opinions of the UN Human Rights Committees do not contain a provision on the possibility of an appeal that is part of fair trial rules.⁴⁷

5. Conclusion

Based on the text of the relevant international treaties, court jurisprudence, and established international and domestic legal doctrines, the opinions of the CEDAW (another UN human rights quasi-judicial bodies) are not legally binding to the parties to the Convention. This also reflects the position of the Slovak Republic.

41 III. ÚS 319/2018 from 30 of 7 August 2018.

42 Ibid.

43 Resolution of the Supreme Court of the Slovak Republic of October 31, 2017, 6 Cdo 129/2017.

44 Ibid.

45 See e. g. Shaw, 2008, p. 320.

46 See e. g. Jankuv et al., 2016.

47 For further information upon the right to appeal see e. g. Marshall, 2011, p. 2.

Although the international responsibility of a state can arise by not fulfilling the obligations set forth by an international treaty, the non-implementation of the recommendations stated in the opinion cannot establish another responsibility for a state to violate an international obligation. However, it is true that by adopting these special procedures within the UN, the contracting states have also accepted the obligation to respect their conclusions. Therefore, the unfulfilled recommendations remain part of the political, but not legal, dialogue between the UN committees and the individual contracting states of the Convention.

States, including Slovakia, usually respect the positions of UN human rights committees and reflect on their recommendations to prevent future situations that individual complainants draw attention to. In a broader context, although the given context and considerations do not change the legal nature of the CEDAW's conclusions, competent authorities and representatives of the state consider them when considering whether and what measures the state will take in response to a certain opinion of the CEDAW in the foreign policy context.

In one of the cases examined in this article, the Spanish court decided on the basis of Spain's national legislation. This entailed going beyond the international obligations of the contracting parties to the Convention and international customs, the common practice of states resulting from control mechanisms, and the nature of opinions issued by UN committees, which remain legally non-binding. Considering the absence of the same or similar national regulations in the Slovak Republic, which would allow or attribute effects to the opinions of the CEDAW beyond the scope of international legal obligations, the decision of the Supreme Court of the Kingdom of Spain cannot be considered as a supporting or binding source for deriving obligations for the Slovak Republic in the case of any complainant relating to the obligations of Slovakia as a state party to the Convention on the Elimination of All Forms of Discrimination Against Women.

Additionally, the imperative wording used in the *draft* version of CEDAW General Comment Number 33 on women's access to justice received criticism from several states.⁴⁸ The final version of General Comment Number 33 omitted the phrase concerning the 'obligation to respect the views' and limited itself to reminding states of their duty to cooperate with the Committee based on the basic obligation to observe treaty provisions in good faith.⁴⁹ The states' behaviour behind the adoption of CEDAW General Comment Number 33 illustrated that other states' parties may also not be open to the position adopted by the Spanish Supreme Court.⁵⁰ Finally, in the 2018 ruling, the Spanish Supreme Court emphasised the

48 See Report of the International Law Commission, UN GAOR, 73rd Sess., Supp. No. 10, at 110–12, paras. 9–15, UN Doc. A/73/10 (2018).

49 Cf. Art. 26 of the Vienna Convention on the Law of Treaties.

50 See Kanetake, 2019.

special aspects of a particular violation and suggested the limited applicability of the Court's reasoning to this specific case.⁵¹

Overall, one must be cautious not to generalise the Supreme Court rule. It remains to be seen whether and to what extent Spanish courts will continue to acknowledge the obligatory characteristics of the recommendations of the CEDAW and other human rights treaty monitoring bodies. This decision was based on the relationship between Spanish national law and the international law. This formal aspect is one of the factors that must be considered, even though the material aspects are from several areas.

The first is the composition of the committees that are created by different types of professionals, belonging to neither legal education nor profession. Second, fair trial matters include the issue of appeal.

Finally, even if the committees themselves do not consider their recommendations to be legally binding, the term constructive dialogue is used; thus, it is effective not just in the case of providing recommendations upon monitoring reports. The entire procedure is not supposed to be adverse; the committee does not aim to pass a judgment on the state party in a judicial sense. Instead, the aim is to engage with the state party in a constructive dialogue to assist the state in its efforts to implement the treaty as fully and effectively as possible. The notion of constructive dialogue underpins the view that treaty bodies are not judicial bodies (even if some of their functions are quasi-judicial) but instead bodies created to monitor the implementation of the treaties.⁵²

Finally, the impact of the Spanish Supreme Court has also been considered in other national judiciaries, such as the UK courts. Nevertheless, even the Spanish Supreme Court, in its later 2020 Banesto decision, has pointed out a distinction between the legal character of the European Court of Human Rights' decisions and those of the United Nations Human Rights committees. It has emphasised that only the former could be the basis for the revision of earlier domestic judicial rulings.⁵³ Therefore, it might be submitted that, even though some cases have occasionally given rise to the issue of a legally binding character of UN Human Rights committee's recommendations based on and reasoned by specific features of national law, especially its constitution, most states, including Slovakia, consider the recommendations of these bodies to be political rather than legal in character.

51 STS 1263/2018, pp. 13–14.

52 For further information see the website of the Office of the High Commissioner of Human Rights [Online]. Available at: <https://www2.ohchr.org/english/bodies/treaty/glossary.htm> (Accessed: 31 July 2023).

53 Supreme Tribunal: STS 1263/2018, 17 July 2018, quoted from [Online]. Available at: <https://www.esqr-net.org/caselaw/2021/sts-12632018-17-july-2018> (Accessed: 31 July 2023).

Bibliography

- Aust, A. (2007) *Modern Treaty Law and Practice*. 2nd ed. Cambridge: Cambridge University Press; <https://doi.org/10.1017/CBO9780511811517>.
- Čepelka, Č., Šturma, P. (2008) *Mezinárodní právo veřejné*. Praha: C. H. Beck
- Donnelly, J. (2003) *Universal Human Rights in Theory & Practice*. 2nd edn. Ithaca and London: Cornell University Press.
- Harris, D. J. (2004) *Cases and Materials on International Law*. 6th edn. London: Sweet & Maxwell.
- Jaichand, V., Suksi, M. (eds.) (2009) *60 Years of the Universal Declaration of Human Rights in Europe*. Mortset: Intersentia.
- Jankuv, J., Lantajová, D., Blaškovič, K., Buchta, T., Arbet, D. (2016) *Mezinárodní právo veřejné. 2nd Part*. 1st edn. Plzeň: Aleš Čeněk.
- Kanetake, M. (2019) 'María de los Ángeles González Carreño v. Ministry of Justice', *American Journal of International Law*, 113(3), pp. 586–592; <https://doi.org/10.1017/ajil.2019.31>.
- Marshall, P. D. (2011) 'A Comparative Analysis of the Right to Appeal', *Duke Journal of Comparative and International Law*, 22(1), pp. 1–46.
- Pineda, E. J. (2019) 'A commentary on the Supreme Court's Judgment of 17 July 2018 (STS 1263/2018) and its supposed impact for a legally binding value of the decisions adopted by the Committee on the Elimination of Discrimination against Women (CEDAW)', *Spanish Yearbook of International Law*, 2019/23, pp. 129–145; <https://doi.org/10.17103/sybil.23.6>.
- Potočný, M., Ondřej, J. (2003) *Mezinárodní právo veřejné – zvláštní část*. Prague: C.H. Beck.
- Shaw, M. N. (2008) *International Law*. 6th edn. Cambridge: Cambridge University Press.
- Tomuschat, Ch. (2003) *Human Rights. Between Idealism and Realism*. Oxford: Oxford University Press.
- Vandenhoe, W., Lembrechts, S., Turkelli, G. E. (2019) *Legal Commentary on the Convention on the Rights of the Child and its Protocols*. Cheltenham: Edward Elgar Publishing; <https://doi.org/10.4337/9781786433138.00022>.