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**The Protection of Human Rights under the ECHR and Central Europe:
Poland**^{**},^{***}

ABSTRACT: This article elucidates the process of Poland's integration with the Council of Europe, and its commitment to the fuller implementation of the Council's body of law, particularly the provisions of the European Convention on Human Rights. Notably, the Council of Europe was the first Western organization to open its doors to Poland – the largest country in the region. The article focuses on the conditions underlying Poland's accession to European structures and evaluates its progress in establishing dialogue and partnership with the other members of the organization. Furthermore, it examines whether aligning with European standards has been a linear process or encumbered with difficulties in the formulation and enforcement of legal norms. Additionally, the Poles' participated in the democratization process and the extent to which they cooperated with other members of the Council of Europe in developing solutions beneficial to the statutory objectives of the organization are analysed. This article verifies whether the current political system of the Republic of Poland is fully compliant with the statutory requirements of the Council of Europe. Moreover, it examines the Polish decision-making process within the various decision-making bodies of the Council of Europe, Poland's participation in the most important human rights conventions of the Council of Europe, and the implementation of obligations arising from the European Convention on Human Rights to domestic law. The article further illustrates how these obligations have been integrated into the Constitution of the Republic of Poland of 1997 and other legal acts, highlighting the role of Polish courts in applying the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms.

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Key cases brought by Polish citizens to the Polish legal system are examined. Lastly, the article describes significant legal reforms in Poland over the last thirty years, the impact of Strasbourg rulings on Polish domestic law, and the challenges related to aligning the Polish legal system with European standards.

KEYWORDS: Poland, European Convention on Human Rights, Council of Europe, European Court of Human Rights, Polish Legislation.

1. Introduction: Historical context

Among the former communist bloc countries, Poland was the second state – after Hungary – to join the Council of Europe (CoE),¹ on 26 November 1991.² Poland's accession to the CoE was facilitated by the political transformations in the country during the 1980s, initiated by the activities of “Solidarity” and the diplomatic efforts of Pope John Paul II.³ Under communist rule, Poland was unable to meet the standards of democracy and the rule of law required by the CoE. After the installation of the communist government in 1944⁴ and the introduction of the Stalinist Constitution in 1952,⁵ despite formal guarantees of rights and freedoms, human rights in Poland remained merely theoretical. Effective mechanisms for monitoring their observance were absent, as were procedures enabling individuals to seek redress for violations of their rights.⁶ Non-governmental organisations

¹ Tarschys, 2002, p. 15; Roszkowski, 1992, p. 410; Wrońska, 2011, p. 72.

² Schwimmer, 2002, p. 9; Lalumière, 2002, p. 13; Daranowski, 2015, p. 425; Antonowicz, 2003, p. 171; Jaskiernia, 2011, p. 3; Izdebski, 1996, p. 5.

³ Makowski, 2017, p. 113; Rybicki, 2002, p. 79.

⁴ Czubiński, 2003, p. 493; Roszkowski, 1992, pp. 208-211.

⁵ Dz. U. 1952, No. 33, pos. 232.; Machowicz, 2009, p. 27; Grzybowski, 2003, p. 97.

⁶ The situation in Poland – and other countries of the region – was the subject of several analyses by the CoE in the 1950s and 1960s; these emphasised the need to establish and maintain contact with intellectual groups in Poland. See: PACE, Committee on Relations with European Non-Member Countries, 10th Session – First part, Karl K. Wistrand (Sweden), Karl Bøgholm (Denmark), Peter Kirk (UK), Report, Present situation (A) in Poland, (B) in Rumania, Bulgaria and Albania, (C) in Estonia, Latvia and Lithuania, 23 April 1958, Doc. 812; Parliamentary Assembly, Ronald Russell (UK), Report, Conditions in Poland and the establishment of cultural links with the Polish people and with Polish refugees, 20 September 1961, Doc. 1354, Committee on Relations with European Non-Member Countries, 13th Session – Second part.; Parliamentary Assembly, Ronald Russell

that could provide assistance to the victims of communist repression were also lacking.⁷ A pivotal moment in communist Poland was the country's accession to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights.⁸ The ICCPR, in particular, paved the way for a limited debate on human rights, granting such rights as the right to life, the prohibition of torture, the right to humane conditions of detention, and political rights such as the right to freedom of association.⁹ The few obligations implemented by Poland allowed for the emergence of the first organisations assisting the aggrieved, including the "Solidarity" movement that was supported by volunteers from the West and the CoE after 1981.¹⁰

Nevertheless, formal adoption of United Nations instruments – including both Covenants and the non-binding Universal Declaration of Human Rights – without the provision of effective judicial and non-judicial mechanisms to guarantee the realisation of human rights was insufficient.¹¹ The failure to ensure basic standards led to growing social resistance, resulting in protests across Poland. The immediate catalyst for opposing the communist regime and the desire to realise the nation's right to self-determination was Pope John Paul II's visit to Poland in 1979, wherein he called for respect for fundamental human rights. Nationwide protests led to the formation of the nationwide workers' trade union "Solidarity", which was officially registered by the communist authorities on 10 November 1980¹² under social pressure. The workers demanded, among other things, freedom of speech, access to the media, an end to repression for expressing political views, and social support for families and working parents.¹³ However, the communist authorities broke this agreement by imposing martial law on 13 December 1981,¹⁴ triggering widespread crimes and

(UK), Written question, No. 112 - Establishment of cultural links with intellectuals from Poland and other Eastern European countries, 28 February 1964, Doc. 1724.

⁷ Roszkowski, 1992, p. 360.

⁸ United Nations, 1966, Dz.U. 1977, No. 38 pos. 167 and Dz.U. 1977, No. 38 pos. 169.

⁹ The ICCPR, adopted by the United Nations General Assembly on 19 December 1966, was ratified by the authorities of the People's Republic of Poland on 3 March 1977 and came into force on 18 June of the same year.

¹⁰ Czubiński, p. 658.

¹¹ Mamoń, 2020, p. 169.

¹² Roszkowski, 1992, p. 362.

¹³ Trembicka and Bachrynowski, 2020, pp. 119-121.

¹⁴ Czubiński, 2003, p. 659.

human rights violations. “Solidarity” was forced underground, and its activists were interned.¹⁵ The CoE strongly condemned the actions of the communist authorities, calling for an end to the repression and the restoration of the democratisation process.¹⁶

Only in the second half of the 1980s, when it became clear that communist dominance in Central and Eastern Europe was coming to an end, did the need for an agreement with the opposition arise.¹⁷ In communist Poland, legal changes began to take place that favoured the process of democratisation and alignment with Western standards. Institutions typical of a democratic state governed by the rule of law – previously unknown under the communist regime – were introduced: the Constitutional Tribunal¹⁸ and the Office of the Ombudsman.¹⁹ In 1982, the State Tribunal was also established.²⁰ The Constitutional Tribunal, which began its operations in 1986, was established to judicially review the compliance of laws with the constitution. Meanwhile, the Ombudsman, appointed in 1987, was tasked with intervening in cases where public authorities violated civil liberties.²¹ These institutions, while drawing on pre-war and ancient Polish law, were also based on modern Western models of liberal democracy.²²

Despite these changes and the formal opening of the CoE to Central and Eastern European countries, no one at the end of the 1980s anticipated that Poland would so quickly become a full member of an organisation that promotes democracy, the rule of law, and human rights.²³ This article aims to analyse how and to what extent Poland has implemented the CoE standards following its political transformation. The thesis put forward is that these changes were made possible by mutual openness and deepened

¹⁵ PACE, Jacques Baumel (France), Report, General policy of the CoE - Situation in Poland, 19 January 1982, Doc. 4834, Political Affairs Committee/Committee on General Affairs, 33rd Session – Third part.

¹⁶ PACE, Resolution 763, Situation in Poland (General Policy of the CoE), 27 January 1982, Res. 763, 33rd Session – Third part; Parliamentary Assembly, Resolution 775 (1982), Situation in Poland and East-West relations (general policy of the Council of Europe), Assembly debate on 30 April 1982 (8th Sitting), text adopted on 30 April 1982, Doc. 4880, report of the Political Affairs Committee.

¹⁷ Czubiński, 2003, p. 660.

¹⁸ Dz.U. 1985, No. 22 pos. 98.

¹⁹ Dz.U. 1987 No. 21 pos. 123.

²⁰ Dz.U. 1982 No. 9 pos. 61.

²¹ Tabaszewski, 2013, 170.

²² Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 225.

²³ Tarschys, 2002, p. 15.

dialogue between the existing members of the CoE and Poland. To prove this hypothesis, the following research methods were employed: the dogmatic method, the comparative method, and an analysis of the Polish legal system and the CoE standards. Additionally, the historical method was used as an auxiliary tool. The article examines whether the process of adapting to European standards proceeded in a linear manner or if certain difficulties were encountered in the process of law-making and enforcement, typical for young democracies.²⁴ Furthermore, it investigates whether, and in what manner, Polish politicians participated in the democratisation process, and to what extent they collaborated within the framework of the CoE to develop solutions beneficial to the organisation's statutory objectives. Moreover, the analysis will assess whether, and to what degree, Poland currently fulfils its obligations under the CoE's conventions – particularly the European Convention on Human Rights (ECHR)²⁵ – and its case law, and the broader body of Strasbourg jurisprudence.

2. The Council of Europe Standards and Poland's Political Transformation

Poland's accession to the CoE was preceded by a series of preparatory measures. Prior to the formal transition to a democratic system, the Secretary General, Marcelino Oreja Aguirre, visited Poland in March 1988, followed by a visit to the Polish Sejm in November 1988 by Luis Jung, the President of the Parliamentary Assembly of the Council of Europe (PACE).²⁶ Shortly after Poland submitted its application for CoE membership, the process of consideration commenced within the PACE committees. However, the Round Table Agreement of 5 April 1989 between the government and the extra-parliamentary opposition truly paved the way for democratic changes in Poland.²⁷ In June 1989, within the communist framework, the first partially free parliamentary elections were held, wherein the opposition achieved a significant victory, securing the maximum number of seats in the Sejm (35%) and all the seats in the Senate. These events paved the way for the formation of the first non-communist

²⁴ Matyasik, 2009b, pp. 85–99.

²⁵ E.T.S. No. 5.

²⁶ Rybicki, 2002, p. 80.

²⁷ Roszkowski, 1992, pp. 404–405; Izdebski, 1996, p. 22.

government in Central and Eastern Europe²⁸ in September 1989. Shortly after the election results were recognised, PACE granted Poland “special guest” status and an invitation to participate in its activities. Thus, Poland attained the status of an “honorary guest”.²⁹ On 30 January 1990, following the systemic changes and the restoration of national symbols, Prime Minister Tadeusz Mazowiecki submitted an official application for Poland’s accession to the CoE,³⁰ thereby opening Poland’s path to the organisation.

From the very beginning, Polish politicians were strongly committed to securing Poland’s accession to the organisation, believing that it would mark the country’s return to the community of states that value democracy and human rights. At the meeting of the Committee on Legal Affairs and Human Rights, held on 10 September 1990 in Warsaw, the Committee heard from the Presidents of the Sejm and Senate, as well as Poland’s Prime Minister, Tadeusz Mazowiecki, and the Minister of Foreign Affairs, Krzysztof Skubiszewski. During the meeting, the Committee also considered the report by Sir Geoffrey Finsberg that outlined the actions Poland needed to undertake in the near future to align with the objectives of the organisation.³¹ The report invoked the statutory principle that, to become and remain a member of the CoE, a country must, above all, respect human rights and the rule of law, and be a parliamentary democracy.³² First and foremost, Poland had to meet the requirement of respecting human rights, one of the three core pillars of the CoE. Consequently, Poland swiftly enacted numerous laws aimed at improving the functioning of the justice system, including ensuring judicial independence, abolishing undemocratic powers of the prosecutor, disbanding the citizens’ militia, and introducing guarantees for freedom of the press, expression, and religion³³.

Regarding democratic standards, the elections held for the Sejm and Senate on 4 June 1989 were deemed insufficient for Poland’s accession to the CoE in 1990. PACE concluded that the elections had been conducted under communist control, and thus could not be considered fully free

²⁸ Czubiński, 2003, pp. 712-713; Izdebski, 1996, p. 5.

²⁹ Kaczmarek, 2002, p. 92.

³⁰ Roszkowski, 1992, p. 410; Rybicki, 2002, p. 80.

³¹ Jaskiernia, 2011, p. 8.

³² PACE, Committee on Legal Affairs and Human Rights, Committee Opinion, Poland’s application for membership of the Council of Europe, 28 September 1990, Doc. 6307.

³³ Rybicki, 2002, pp. 81-83; Jaskiernia, 2011, pp. 8-10.

according to the Convention standards.³⁴ Consequently, all communist ministers were removed from Prime Minister Tadeusz Mazowiecki's government.³⁵ The CoE also deemed it necessary for Poland to adopt a new electoral law, and to resolve various issues such as whether voting in general elections would follow a proportional or majority-based system. PACE further expressed disapproval of Wojciech Jaruzelski continuing to serve as President of Poland, as he was the same leader who imposed martial law in 1981. PACE called for new presidential elections, which were held in November 1990, resulting in Lech Wałęsa defeating Stanisław Tymiński.³⁶ In the meantime, the local government elections were held in Poland, supported by the Congress of Local and Regional Authorities of the Council of Europe, were deemed to meet all the Convention's criteria.³⁷

Notably, the 1990 report highlighted the need for constitutional reform as essential in the area of the rule of law. The previous constitution, despite numerous amendments, dated back to the Stalinist era.³⁸ Despite the adoption of the so-called "Small Constitution" in 1992, which regulated the mutual relations between the legislative and executive branches, as well as the powers of local governments, the constitutional provisions did not adequately address the protection of human rights. Furthermore, President Lech Wałęsa's proposal of a separate "Bill of Rights" that would comprehensively regulate human rights and freedoms was not enacted, leaving this task to Parliament until the adoption of a new constitution.³⁹

All these efforts resulted in highly favourable opinions in the report of the Political Affairs Committee of PACE, which concluded that Poland should be invited to join the CoE without undue delay.⁴⁰ The invitation was extended shortly after the parliamentary elections of 27 October 1991, when the Committee on Legal Affairs and Human Rights, followed by PACE, recognised that Poland had fulfilled the requirement of holding fully free parliamentary elections. Consequently, PACE recommended that the Committee of Ministers immediately admit Poland into membership.⁴¹ On

³⁴ PACE, Committee Opinion, Poland's application for membership of the Council of Europe, Doc. 6307.

³⁵ Roszkowski, 1992, p. 410-412; Izdebski, 1996, p. 5.

³⁶ Czubiński, 2003, p. 712; Roszkowski, 1992, p. 413.

³⁷ Kamiński, 2012, pp. 40-41; Izdebski, 1996, p. 22; Tabaszewski, 2020, p. 1-9,

³⁸ Machowicz, 2009, p. 27.

³⁹ Garlicki, 2006, p. 24; Grzybowski, 2003, p. 98.

⁴⁰ Rybicki, 2002, p. 81.

⁴¹ Jaskiernia, 2011, p. 9.

26 November 1991, Krzysztof Skubiszewski, Minister of Foreign Affairs submitted Poland's accession document to the Secretary General and signed the European Convention on Human Rights and Fundamental Freedoms.⁴² In this way, Poland became the 32nd member of the CoE.

Poland's accession to the CoE by no means concluded its political transformation but rather accelerated it. The Constitution of the Republic of Poland, adopted on 2 April 1997, laid the foundation for its continued membership in the CoE, and paved the way for its accession to the European Union in 2004.⁴³ The first draft of the Constitution was developed as early as October 1990, and in consultation with numerous prominent experts from the CoE, working closely with the European Commission for Democracy through Law, commonly known as the Venice Commission.⁴⁴ Consequently, in terms of the political system, Poland's governance was to be based on a parliamentary-cabinet model with presidential elements.⁴⁵ An important innovation was the adoption of the principle in the Constitution that the foundation of solutions would be the inherent dignity of the human person, with the principle of personalism at its core.⁴⁶ Therefore, Poland currently regards human rights not merely as a binding international legal obligation, but as an integral part of its domestic law. This is reflected in the principle expressed in Article 9 and Chapter II of the Constitution of the Republic of Poland, titled "Freedoms, Rights, and Obligations of Man and Citizen".⁴⁷

To safeguard rights and freedoms, the Polish system provides for institutions closely linked to the protection of individual rights⁴⁸ such as the Office of the Ombudsman and the Office of the Commissioner for Children's Rights.⁴⁹ The Ombudsman, safeguards the freedoms and rights of individuals and citizens as defined in the Constitution and other legal acts. They operate independently, without being subject to other state bodies, and are accountable only to the Sejm, in accordance with the principles set out in law. As the guardian of human and civil rights and freedoms, the Ombudsman monitors and takes appropriate action when the principles of

⁴² Rybicki, 2002, p. 81; Góralczyk, Karski and Sawicki, 2024, p. 378.

⁴³ Garlicki, 2006, pp. 425-430; Kaczmarek, 2002, p. 93; Izdebski, 1996, p. 5.

⁴⁴ Zieliński, 2010, p. 163; Izdebski, 1996, p. 39.

⁴⁵ Garlicki, 2006, p. 53; Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 107.

⁴⁶ Orzeszyna, 2013, p. 17.

⁴⁷ Garlicki, 2006, pp. 89-96; Machowicz, 2009, p. 27; Tabaszewski, 2017b, p. 192.

⁴⁸ Banaszak, 2011, pp. 157-158; Tabaszewski, 2013, p. 170.

⁴⁹ Garlicki, 2006, pp. 395-404.

social coexistence and social justice have been violated in the exercise of civil rights and freedoms due to deliberate actions or omissions by authorities, organisations, or institutions.⁵⁰ On the other hand, the Commissioner for Children's Rights was established within the Polish human rights protection system in 2000.⁵¹ The Commissioner for Children's Rights, in accordance with the law, takes steps to ensure the full and harmonious development of children, respectful of their dignity and individuality.⁵² The Commissioner may request information and access to documents from public authorities, organisations, or institutions, and demand that these bodies take action in the interests of children.⁵³ The scope and procedure of work for both the Ombudsman and the Commissioner for Children's Rights are defined by law.⁵⁴ In addition to the constitutional ombudsmen, the Polish system also includes specialised commissioners such as the Financial Ombudsman, the Patient Ombudsman, the Ombudsman for Psychiatric Hospital Patients, the Ombudsman for Small and Medium-Sized Enterprises, the Consumer Ombudsman, and others who focus on protecting the rights and interests of specific groups.⁵⁵

The current constitutional system of the Republic of Poland is now fully aligned with the statutory requirements of the CoE. Article 2 of the Polish Constitution enshrines the fundamental principle that "the Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice." This means that public authorities must act on the basis, and within the limits, of the law, while citizens are guaranteed rights and freedoms that are protected by courts and other institutions. The rule of law encompasses the following principles: legality, which entails a transparent, accountable, democratic, and pluralistic process of law-making; legal certainty; the prohibition of arbitrary action by the executive authorities; the independence and impartiality of the judiciary; effective judicial oversight, including the protection of human rights; and equality before the law.⁵⁶ Consequently, in accordance with the 1997 Constitution, the judiciary, regarded as part of the human rights protection system, is exercised by the Supreme Court, common courts, administrative

⁵⁰ Tabaszewski, 2013, p. 170.

⁵¹ Dz.U. 2000, No. 6, pos. 69.

⁵² Zieliński, 1995/96, pp. 7-26.

⁵³ Pawlik, 1995, pp. 31-45; Tabaszewski, 2013, p. 170.

⁵⁴ Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 225.

⁵⁵ Tabaszewski, 2017a, pp. 57-71.

⁵⁶ Closa, Kochenov and Weiler, 2014, pp. 866-872.

courts, and military courts.⁵⁷ To ensure maximum compliance with the *acquis conventionnel*, between 1997 and 2004, the Polish Parliament enacted a series of laws detailing the judiciary's functioning. In 2001, the Act on Common Courts was passed,⁵⁸ and in 2002, a new Act on the Supreme Court was established.⁵⁹ Both laws were enacted based on the guidelines of the CoE and Strasbourg jurisprudence. This established system remained in place until the so-called constitutional crisis of 2015–2023. Following the 2015 elections, a new government came into power and passed new laws that modified the existing *status quo* in the Constitutional Tribunal, the Supreme Court, and the common courts.⁶⁰ The change in the composition of judicial panels became a point of contention between the government and the opposition, which ultimately led to protests by judges and paralysed the functioning of the courts.⁶¹ Following numerous rulings by the European Court of Human Rights (ECtHR) and recommendations from the Venice Commission, some of the changes were reversed in 2024. However, the dispute over the rule of law in Poland has not been fully resolved.

3. Poland's representation in the institutions of the Council of Europe

Poland, as a full member of the CoE since 1991, has played an active role in its work from the outset, participating in the key bodies of the organisation.⁶² After Poland's accession, the country has been represented in the Committee of Ministers, the CoE's main decision-making body, by the Polish Minister of Foreign Affairs. This important role was first undertaken by Krzysztof Skubiszewski from 1991 to 1993.⁶³ Thereafter, the role of

⁵⁷ Tabaszewski, 2013, pp. 170-174.

⁵⁸ Dz.U. 2001 No. 98 pos. 1070.

⁵⁹ Dz.U. 2002 No. 240 pos. 2052; Tabaszewski, 2013, p. 172.

⁶⁰ The legal changes particularly focused on modifying the judiciary, prosecution system, and state control mechanisms, including Dz.U. 2015, pos. 2217 (Amendment to the Act on the Constitutional Tribunal), Dz.U. 2018, pos. 5 (Act of 12 July 2017 on the Supreme Court), Dz.U. 2017, pos. 1452 (Act on the National Council of the Judiciary), Dz.U. 2017, pos. 1452 (Amendments to the Act on Ordinary Courts), and Dz.U. 2018, pos. 1045 (Amendments to the Act on the Supreme Court). These acts altered the independence and functioning of key judicial bodies and introduced new mechanisms for government oversight of the courts. See: Florczak-Wątor, M., 2023.

⁶¹ Orzeszyna, Skwarzyński and Tabaszewski, 2023, pp. 231-234.

⁶² Wrońska, 2011, p. 72.

⁶³ Rybicki, 2002, p. 81; Roszkowski, 1992, p. 410.

Poland's representative in the Committee of Ministers has been held by several Foreign Ministers. When the Minister of Foreign Affairs is not present in Strasbourg, the position is filled by the Permanent Representative of Poland to the Council of Europe, typically holding the rank of ambassador. The Permanent Representative assumes day-to-day responsibilities and represents the country during meetings and negotiations.⁶⁴ Poland has had several notable Permanent Representatives,⁶⁵ each of whom made a significant contribution to strengthening Poland's position within the CoE, bringing the Polish perspective to key debates on human rights and the rule of law in Europe.

The most important statutory representative body of the CoE is PACE.⁶⁶ Poland was invited to this body as a special guest in 1989, two years before its official accession to the organisation. Currently, following Russia's exclusion, PACE has 612 members and an equivalent number of substitutes. However, at the time of Poland's accession to the CoE, it had only 170 members. This significant increase reflects the rapid enlargement of the organisation in the post-Cold War era, as more Central and Eastern European countries embraced democratic reforms and sought integration with Western institutions.⁶⁷ Within PACE, Poland has a 12-member delegation, with half serving as full members and the other half as substitutes. Polish representatives come from various political groups and represent both the Sejm and the Senate, ensuring a diversity of opinions and interests in debates concerning the protection of human rights, democracy, and the rule of law. The Polish delegation plays an active role in PACE, participating in work related to the protection of human rights, democracy, and the rule of law. From 1991 to 2024, across seven PACE terms, more than a hundred Polish politicians have participated, including many future prime ministers and deputy prime ministers.⁶⁸ Some of the active

⁶⁴ Kaczmarek, 2002, p. 92.

⁶⁵ The first was Jerzy Regulski, who held the position from 4 May 1992 to 31 January 1997. From 24 February 1997 to 15 August 2001, Poland was represented by Marcin Rybicki. The subsequent ambassadors were: Krzysztof Kocel (10 September 2001 – 10 October 2005), Piotr Świtalski (24 October 2005 – 31 August 2010), Urszula Gacek (3 February 2011 – 30 November 2014), and Janusz Stańczyk (July 2015 – 31 July 2020). Most recently, Jerzy Bauriski held the position from August 2020 to July 2024. After the end of his term, in July 2024, Iwona Marczyk-Stępniewska took over as *chargé d'affaires a.i.*

⁶⁶ Jaskiernia, 2003; Kaczmarek, 2002, p. 92.

⁶⁷ Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 180.

⁶⁸ Rybicki, 2002, p. 88.

individuals who made significant contributions to PACE's work in the early phase of Poland's participation in the CoE include Hanna Suchocka, Alicja Grześkowiak, Włodzimierz Cimoszewicz, and Jerzy Jaskiernia. Tadeusz Iwiński was particularly active in the field of parliamentary diplomacy.⁶⁹ The group of parliamentarians holding leadership positions in PACE committees and political groups also includes Arkadiusz Mularczyk, Marek Borowski, Bogdan Klich, Ewa Tomaszewska, and Aleksander Pociąg. Additionally, Krzysztof Kwiatkowski, Danuta Jałowiecka, Jan Olbrycht, and Róża Thun, as well as Witold Waszczykowski and Dominik Tarczyński, should also be mentioned for their active involvement in PACE, representing Poland and participating in key debates and committee work.⁷⁰

On the PACE forum, Polish presidents have publicly addressed the Assembly on several occasions, representing Poland and discussing key issues related to democracy, human rights, and European integration. Their visits highlight the importance of parliamentary relations between Poland and the CoE. The first Polish president to deliver a speech at PACE was Lech Wałęsa⁷¹ on 4 February 1992, shortly after his victory in the first free presidential elections in Poland since the Second World War. Aleksander Kwaśniewski addressed PACE on several occasions, beginning in 1996, when he discussed legal and constitutional reforms in the context of Poland's planned accession to the European Union.⁷² Human rights and freedoms were the focus of Bronisław Komorowski's address in 2012, followed by Andrzej Duda in 2022, who emphasised the importance of CoE members' support for Ukraine. Since 1988, PACE Presidents have regularly visited Poland. After Poland's accession to the EU, some of the most significant visits were those by René van der Linden in 2006, Mevlüt Çavuşoğlu in 2011, and Anne Brasseur in 2015. Subsequently, PACE

⁶⁹ Jaskiernia, 2011, p. 14; Kaczmarek, 2002, p. 92.

⁷⁰ In 2024, the Polish delegation to PACE included: Agnieszka Pomaska (Chair, KO), Wanda Nowicka (Lewica), Mirosław Adam Orliński (Polskie Stronnictwo Ludowe), Ryszard Petru (Polska 2050), Włodzimierz Bernacki (PiS), Magdalena Biejat (Lewica), Marek Borowski (KO), Paweł Jabłoński (PiS), Danuta Jazłowiecka (KO), Katarzyna Sójka (PiS), and Krzysztof Truskolaski (KO). The substitutes were: Bogdan Klich (KO), Iwona Arent (PiS), Anna Bogucka (PiS), Krzysztof Bosak (Konfederacja), Konrad Fryszak (KO), Kamila Gasiuk-Pihowicz (KO), Jan Filip Libicki (Trzecia Droga), Daniel Milewski (PiS), Barbara Oliwiecka (Polska 2050), Kacper Maciej Płazyński (PiS), Jakub Rutnicki (KO), and Marcin Romanowski (PiS).

⁷¹ Klebes, 2002, p. 28.

⁷² Kaczmarek, 2002, p. 95.

Presidents visited Poland several more times, with their visits primarily concerning key issues related to the rule of law and the protection of human rights.⁷³ In 2016, Pedro Agramunt visited Poland, followed by Liliane Maury in 2019. In the context of the migration crisis at the Polish–Belarusian border, the visit of Rik Daems in October 2021 was of great significance. During his visit, he met with the Speakers of the Sejm and the Senate, and the Minister of Foreign Affairs, discussing key issues related to supporting democracy in Belarus, which is still not a CoE member.

The Secretary General plays a pivotal role in the CoE, responsible for leading the organisation, strategic planning, and overseeing the implementation of its action programme.⁷⁴ Poland has made several attempts to secure the position of Secretary General of the CoE. In 1999, the candidate for this role was Hanna Suchocka, former Prime Minister of Poland. However, the position was ultimately assumed by Austrian, Walter Schwimmer.⁷⁵ Another attempt to nominate a Polish candidate for the position of Secretary General took place in 2009, when Włodzimierz Cimoszewicz, former Prime Minister of Poland, competed against Norwegian candidate Thorbjørn Jagland, who ultimately won. The most recent attempt was in 2019, when Poland considered nominating Jacek Czaputowicz; however, the final candidates came from Belgium and Croatia, with Marija Pejčinović Burić from Croatia eventually securing the position. Nevertheless, Poland has actively cooperated with the CoE Secretariat on many fronts, benefiting from numerous programs, particularly in the early years of its membership. This close cooperation is evidenced by official working visits to Poland. In 2016, Thorbjørn Jagland met with President Andrzej Duda and other government representatives to discuss Poland's relations with the CoE, matters related to democratic security, and the migration crisis. Subsequently, on 4 June 2019, during the 30th anniversary of the semi-free elections to the Sejm, Marija Pejčinović Burić visited Poland shortly before assuming the role of Secretary General, emphasizing the importance of the right to free and fair elections.⁷⁶

⁷³ Council of Europe, 2015. Visits of the Presidents of the Parliamentary Assembly of the Council of Europe to Poland [Online]. Available at: <https://www.coe.int/pl/web/portal> (Accessed 24 September 2024).

⁷⁴ Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 114.

⁷⁵ Jaskiernia, 2011, p. 15; Czubiński, 2003, p. 713.

⁷⁶ Permanent Representative of Poland met with the Secretary General of the Council of Europe [Online]. Available at: <https://www.gov.pl/web/coe/permanent-representative-of->

Poles have also not held the position of Commissioner for Human Rights of the Council of Europe – a key role in the organisation responsible for monitoring the observance of human rights in the member states.⁷⁷ Poland remains in regular contact with the Commissioner, with the most recent visit taking place in September 2024. This visit, conducted by Michael O’Flaherty, focused on the Polish–Belarusian border, across which migrants are being sent into the Schengen zone.⁷⁸ Similarly, Poles have not held any positions in the European Committee of Social Rights, as Poland has not signed the additional protocols to the 1961 original version, nor has it acceded to the Revised European Social Charter of 1961.⁷⁹ However, Poles have actively participated in various efforts related to human rights protection within the CoE, including as members of the European Committee for the Prevention of Torture (CPT). One such member was Zbigniew Hołda, who actively engaged in inspections and visitations of detention facilities, assessed their conditions, and prepared reports and recommendations for improving them. Under the auspices of the CoE, on 8 February 1996, Adam Zieliński was appointed to the Human Rights Chamber for Bosnia and Herzegovina, and on 11 July 2000, Marek Antoni Nowicki assumed the role of Ombudsman in Kosovo.⁸⁰

In addition, the Congress of Local and Regional Authorities of the CoE played a significant role, particularly in the reform of Poland’s local governance. This body includes a Polish delegation consisting of 6 full members and 6 substitutes.⁸¹ Over the years, the Congress has represented the authorities of Polish voivodeships, counties, and municipalities, supporting them in promoting good governance practices, protecting human rights at the local level, and fostering local development. Some of the most active Polish representatives included Leon Kieres, Andrzej Porawski, Władysław Ortyl, and Rafał Dutkiewicz, all of whom contributed to the

poland-met-with-the-secretary-general-of-the-council-of-europe (Accessed: 24 September 2024).

⁷⁷ Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 195.

⁷⁸ Mission to Poland: Poland needs to respect its international human rights obligations on the Belarusian border, says Commissioner O’Flaherty [Online]. Available at: <https://www.coe.int/en/web/commissioner/-/poland-needs-to-respect-its-international-human-rights-obligations-on-the-belarusian-border-says-commissioner-o-flaherty> (Accessed: 24 September 2024).

⁷⁹ Zwolan, 2014, p. 42.

⁸⁰ Rybicki, 2002, p. 89; Kaczmarek, 2002, p. 90.

⁸¹ Kamiński, 2012, pp. 36-37; Kaczmarek, 2002, p. 92.

promotion of democratic solutions.⁸² On the other hand, members of the Venice Commission, which has been operating since 10 May 1990, included notable figures such as Hanna Suchocka, Krzysztof Drzewicki, Lech Garlicki, and Wojciech Sadurski. As evidenced by the active participation of its delegates in the CoE, Poland has solidified its position on the international stage, particularly in the areas of regional cooperation and strengthening relations among member states.

4. Poland's contribution to the achievements of the Council of Europe

Upon its accession to the CoE, Poland ranked among the leading countries in terms of the number of CoE conventions adopted and ratified.⁸³ This resulted not only from the desire to eliminate the backlog and delays caused by the absence of participation in the European legal space, but also from the wish to simultaneously adopt national solutions and ensure their compliance (harmonisation) with already proven Conventions. Consequently, many of the regulations adopted by the Polish Sejm and Senate in the 1990s demonstrate significant alignment not only with the Conventions but also with the non-binding recommendations proposed by the CoE's steering bodies and committees.⁸⁴ Even before formally joining the CoE, on 16 November 1989, Poland acceded to the European Cultural Convention,⁸⁵ which aims to promote cooperation in the fields of culture, education, science, and sport across Europe.⁸⁶ The next two conventions adopted by Poland were the European Convention on Information on Foreign Law,⁸⁷ ratified on 29 May 1990, and the European Convention on the Equivalence of Diplomas Leading to Admission to Universities,⁸⁸ ratified on 5 January 1990. A necessary condition for Poland's accession to the CoE was the signing and subsequent ratification of the ECHR. Poland, along with the Additional Protocols ratified by that time, made the ECHR not only a guiding principle but a binding imperative for the entire Polish human rights system as part of the *acquis conventionnel*.⁸⁹

⁸² Jaskiernia, 2011, p. 14.

⁸³ Rybicki, 2002, p. 83; Kaczmarek, 2002, p. 92.

⁸⁴ Grzelak-Bach and Karski, 2020, p. 20.

⁸⁵ ETS No. 024; Kaczmarek, 2002, p. 92; Izdebski, 1996, p. 37.

⁸⁶ Kaczmarek, 2002, p. 92.

⁸⁷ ETS No. 062.

⁸⁸ ETS No. 138.

⁸⁹ Jaskiernia, 2011, p. 9.

Poland has ratified 91 CoE conventions to date, meaning that all codes and laws relating to human rights and freedoms are aligned with this body of work. Thus, Poland has emerged as a leader among Central and Eastern European countries in terms of the number of commitments undertaken.⁹⁰ The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,⁹¹ dated 26 November 1987, is functionally linked to Article 3 of the ECHR. Poland ratified this convention on 1 February 1995, becoming one of the most active members of the CPT. In addition, one of Poland's most significant challenges during the initial phase of its membership was the ratification of the European Social Charter,⁹² drafted on 18 October 1961 in Turin, which Poland ratified on 25 June 1997. Poland also ratified the Amending Protocol of 21 October 1991.⁹³ Poland committed to fully adhering to the provisions of Part II of the European Social Charter, which includes Article 1 (the right to work), Article 3 (the right to safe and healthy working conditions), Article 5 (the right of workers and employers to organise), Article 9 (the right to vocational guidance), Article 11 (the right to protection of health), Article 12 (the right to social security), Article 15 (the right of persons with disabilities to training, rehabilitation, and social and occupational reintegration), Article 16 (the right of the family to social, legal, and economic protection), Article 17 (the right of mothers and children to social and economic protection), and Article 19 (the right of migrant workers and their families to protection and assistance). However, Poland opted not to ratify the Additional Protocol to the European Social Charter of 5 May 1988,⁹⁴ or the Protocol introducing a system of collective complaints,⁹⁵ which came into force in 1998. This means that complaints provided for under Article 5 of the Additional Protocol to the European Social Charter of 1995, concerning the system of collective complaints, cannot be filed against Poland. These complaints are reviewed by the European Committee of Social Rights.⁹⁶

⁹⁰ Jaskiernia, 2011, p. 12.

⁹¹ ETS No. 126.

⁹² ETS No. 035.

⁹³ ETS No. 142; Izdebski, 1996, p. 37.

⁹⁴ ETS No. 128.

⁹⁵ ETS No. 158.

⁹⁶ Tabaszewski, 2025; Izdebski, 1996, p. 37.

Poland has essentially adopted all the important CoE Conventions related to criminal law.⁹⁷ These instruments include the European Convention on Extradition,⁹⁸ Criminal Law Convention on Corruption,⁹⁹ Convention on Cybercrime,¹⁰⁰ European Convention on the Suppression of Terrorism,¹⁰¹ and CoE Convention on the Prevention of Terrorism.¹⁰² Other important conventions include those related to migration and refugees, such as the European Agreement on Transfer of Responsibility for Refugees,¹⁰³ European Agreement on the Abolition of Visas for Refugees,¹⁰⁴ and European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.¹⁰⁵

The accession to and ratification of the Framework Convention for the Protection of National Minorities of 1 February 1995¹⁰⁶ had significant importance in Polish domestic law. This convention imposes an obligation on states to protect the rights and culture of national minorities. Similarly, the ratification of the European Charter for Regional or Minority Languages of 5 November 1992¹⁰⁷ also obliges states to protect the rights and culture of national minorities. A direct result of the implementation of these conventions is Poland's Act on National and Ethnic Minorities and on the Regional Language, adopted on 6 January 2005.¹⁰⁸ This law serves as an example of the introduction of one of the most effective mechanisms for the protection of minorities in Europe. Despite controversies and numerous declarations by Polish politicians proposing withdrawal from the Convention, Poland remains a party to the Istanbul Convention, also known

⁹⁷ Izdebski, 1996, p. 38.

⁹⁸ ETS No. 024.

⁹⁹ ETS No. 173.

¹⁰⁰ ETS No. 185.

¹⁰¹ ETS No. 90.

¹⁰² ETS No. 196.

¹⁰³ ETS No. 107.

¹⁰⁴ ETS No. 31.

¹⁰⁵ ETS No. 112.

¹⁰⁶ ETS No. 157.

¹⁰⁷ ETS No. 148.

¹⁰⁸ Dz.U. 2005 No. 17 pos. 141.

as the Convention on Preventing and Combating Violence Against Women and Domestic Violence, adopted on 11 May 2011.¹⁰⁹

The large number of conventions adopted, particularly during the early stages of Poland's membership in the organisation, resulted from several key factors related to both domestic policy and international obligations. The ratification process for each convention requires a detailed analysis of its compliance with the Polish legal system, including the 1997 Constitution and lower-ranking regulations, particularly laws. It is also an expression of political will, connected to decision-making processes, parliamentary debates, and public consultations. The slowing down of ratification efforts that occurred after Poland's accession to the European Union was linked to Poland's commitment to the European Union's extensive and detailed body of law. Additionally, the strong functional and axiological connection between the legal frameworks of the CoE and the European Union is noteworthy.¹¹⁰ An important factor limiting the ratification of a greater number of conventions is the financial obligations arising from some international documents. For this reason, Poland has not yet adopted the Revised European Social Charter or even the additional protocols to the original version of the Social Charter, as the rights contained within – particularly those concerning health protection, social security, and workers' rights – would entail significant financial expenditures.¹¹¹ Additionally, some conventions, particularly those signed in the 1960s and 1970s relating to social security law, and even those adopted in the last decade of the 20th century, are considered outdated and obsolete. One such example is the still unratified Oviedo Convention of 1997.¹¹² Although Poland signed the Oviedo Convention on 7 May 1999, the ratification process has been prolonged. The issue of implementing the Convention and its four additional protocols into the Polish legal system has been raised multiple times, most recently in 2008, when a special government commission was appointed. Ultimately the ratification process has stalled in the European Convention for the Protection of Animals during International Transport, with neither the original version¹¹³ nor the revised

¹⁰⁹ ETS No. 210. On the Polish side, since 2022, the expert in GREVIO, the executive committee of this Convention, is Dr. Grzegorz Wrona, a specialist in the field of domestic violence prevention law.

¹¹⁰ Machińska, 2002, p. 204, pp. 210-214.

¹¹¹ Izdebski, 1996, p. 38.

¹¹² ETS No. 164.

¹¹³ ETS No. 065.

version ratified.¹¹⁴ This state of affairs hinders the alignment of Polish medical law, patient rights, social security law, and animal protection law with European legal standards.¹¹⁵

Among the most recent commitments undertaken by Poland are those arising from ratified conventions such as the CoE Convention against Trafficking in Human Organs,¹¹⁶ CoE Convention on Cinematographic Co-Production (Revised)¹¹⁷ ratified by Poland on 18 April 2019, and the Convention on Cybercrime¹¹⁸ ratified by Poland on 12 May 2022. The one most recently signed by Poland is the CoE Framework Convention on the Value of Cultural Heritage for Society,¹¹⁹ which Poland signed on 10 May 2021, becoming its 28th signatory. This convention emphasises the importance of cultural heritage in the context of respect for human rights and democracy, while also promoting its protection and sustainable use.¹²⁰ Further harmonization of national law with the CoE's body of work, which includes not only conventions but also documents developed by various Council bodies such as the Venice Commission, depends on the political will to fulfil the commitments made under the principle of the rule of law.¹²¹

The most important category of conventions that has had, and continues to have, a fundamental impact on shaping the Polish legal system are the conventions related to human rights, including the frequently mentioned ECHR. The standards introduced by the Convention – along with the body of case law developed by the ECtHR, and previously by the Human Rights Commission – have had a profound influence on the entire Polish legal system.¹²² Poland ratified and accepted the obligations arising from the Convention drafted in Rome on 4 November 1950, as subsequently amended by Protocols No. 3, 5, and 8, and supplemented by Protocol No.

¹¹⁴ ETS No. 193.

¹¹⁵ Izdebski, 1996, p. 37.

¹¹⁶ ETS No. 216.

¹¹⁷ ETS No. 120.

¹¹⁸ ETS No. 185.

¹¹⁹ ETS No. 199.

¹²⁰ See: Orzeszyna and Tabaszewski, 2021, pp. 1049–1050.

¹²¹ Venice Commission, Opinion on European Standards Regulating the Status of Judges (No. 1206/2024), Opinion on the Draft Amendments to the Law on the Public Prosecutor's Office (No. 1204/2024), Opinion on the Draft Constitutional Amendments Concerning the Constitutional Tribunal and Two Draft Laws on the Constitutional Tribunal (No. 1203/2024), 2024.

¹²² Izdebski, 1996, p. 5; Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 107.

2.¹²³ With the ratification process, the provisions of the Convention came into effect in Poland, and since 1 May 1993, Polish citizens have been able to submit individual complaints to the ECtHR if their rights and freedoms guaranteed by the Convention have been violated. Given that the Convention is a living instrument and subject to reforms, Poland has successively adopted additional protocols; Protocol No. 9 of 6 November 1990,¹²⁴ and subsequently, Protocol No. 10 of 11 May 1994, concerning the transformation of the supervisory mechanism established by the Convention, were both ratified by Poland on 10 October 1994. In connection with the public debate on the use of the death penalty, Protocol No. 13 of 3 May 2002,¹²⁵ concerning the abolition of the death penalty in all circumstances, was ratified by Poland only on 23 May 2014, during the presidency of Bronisław Komorowski, despite having come into force on 1 July 2003.¹²⁶

In Poland, the death penalty was formally abolished in 1997; however, debates regarding its reinstatement have resurfaced multiple times, especially in the context of brutal crimes. Notably, after 2004, Poland ratified two additional Protocols to the Convention: Protocol No. 14 of 13 May 2004,¹²⁷ which amended the Convention's control system, was ratified by Poland on 12 October 2006,¹²⁸ and entered into force on 1 June 2010; and Protocol No. 15 of 24 June 2013,¹²⁹ was ratified by Poland on 10 September 2015 and came into force on 1 August 2021. Poland has not ratified Protocol No. 16 of 2 October 2013, which allows the highest courts and tribunals to request advisory opinions from the ECtHR on fundamental questions concerning the interpretation or application of the rights and freedoms defined in the Convention and its protocols.¹³⁰ Importantly, Poland has still not signed or ratified Protocol No. 12 of 4 November 2000,¹³¹ which introduces a general prohibition of discrimination by any public authority. Changes and the ratification of both Protocols are anticipated.

¹²³ Dz.U. 1993 No. 61 pos. 284; Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 108.

¹²⁴ ETS No. 140.

¹²⁵ ETS No. 187.

¹²⁶ Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 109.

¹²⁷ ETS No. 194.

¹²⁸ Dz.U. z 2010 r. Nr 90, poz. 587.

¹²⁹ ETS No. 213.

¹³⁰ ETS No. 214.

¹³¹ ETS No. 177.

5. Impact of Strasbourg case law on the evolution of Polish legislation

Poland's accession to the ECHR system signified its agreement to submit to the oversight mechanisms of the ECtHR in Strasbourg. Since 1 May 1993, when Polish citizens gained the right to file complaints, this influence has become significant.¹³² Until 1998, oversight of the Convention was based on two bodies: the European Commission of Human Rights and the ECtHR.¹³³ The Commission examined complaints at the preliminary stage, while the Court considered those that were referred to it. Currently, judges bear the responsibility for maintaining and strengthening the authority of the ECtHR. Since 1992, this task has rested on judges from Poland. In 1992, in accordance with the requirements of the Convention, Poland submitted three candidates for the position of judge at the ECtHR: Jerzy Makarczyk, Bogusław Nizieński, and Hanna Waśkiewicz.¹³⁴ Ultimately, Jerzy Makarczyk, a distinguished lawyer and professor of international law, was selected and served as a judge at ECtHR from 1992 to 2002.¹³⁵ The second Polish judge at the ECtHR, appointed in 2002, was Professor Lech Garlicki. As an experienced lawyer and professor of constitutional law, he played a significant role in shaping the interpretation of key provisions of the ECHR, including co-authoring a highly regarded commentary on the Convention.¹³⁶ After the conclusion of Lech Garlicki's 9-year term, Professor Krzysztof Wojtyczek was elected as the next Polish judge at ECtHR.¹³⁷ Krzysztof

¹³² Kropiwnicki, 2014, p. 301; Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 108; Dembour and Krzyżanowska-Mierzeńska, 2004, p. 402.

¹³³ The only Polish representative in the European Commission of Human Rights since March 1993 was Marek A. Nowicki.

¹³⁴ Tabaszewski, 2022, pp. 289-307.

¹³⁵ Professor Makarczyk was also a member of the Court of Justice of the European Union and a judge at the Constitutional Tribunal in Poland. During his term, the Strasbourg mechanism underwent reform following the entry into force of Protocol No. 11, and the first judgments against Poland were issued.

¹³⁶ In addition to Lech Garlicki, Poland nominated Ireneusz Kondak, a law professor at the University of Warsaw, and Wiesław Wasilewski, a lawyer and former judge of the Supreme Court.

¹³⁷ In 2012, Poland presented three new candidates: Professor Krzysztof Wojtyczek, a specialist in constitutional and international law, Professor Elżbieta Karska, and Dr. Agnieszka Szklanna. Professor Karska, a law professor and member of the Permanent Court of Arbitration in The Hague, also served as an ad hoc judge at the European Court of Human Rights. Dr. Szklanna, on the other hand, had worked at the CoE for many years.

Wojtyczek's term was the longest among Polish judges at the ECtHR, as he continued to serve beyond the standard 9-year term which expired in 2021. However, his stint ended with the recent appointment of Agnieszka Adamska-Gallant, the first Polish woman to hold this position.¹³⁸

Poles readily use the individual complaint mechanism, which is generally filed with the ECtHR against their own state. This is different from inter-state cases, wherein, to date, neither has Poland initiated, nor has any complaint been initiated against Poland.¹³⁹ In my opinion, analysing the popularity of individual complaints in Poland reveals four stages: 1) From 1993 to 2004, when the number of complaints gradually increased; 2) From 2005 to 2014, with the number of complaints remaining steady at around 580–680 per year; 3) From 2015 to 2020, when the number of complaints gradually decreased to approximately 450 per year; 4) After 2020, with a renewed increase in the number of complaints. As the number of submitted complaints increased, the number of cases reviewed by the Court also grew. By June 2001, 32 judgments had been issued in Polish cases, most of which concerned the excessive length of court proceedings, especially in civil cases. Other issues primarily related to the lack of equality of arms in criminal proceedings, prolonged judicial review of the grounds for pretrial detention, the conduct of judicial review of detention, and the handling of proceedings in the absence of the detainee and their defence counsel.¹⁴⁰

Starting with the case of *Podbielski*,¹⁴¹ Poland, stands out from other CoE member states for having a relatively low number of cases based on allegations of violations of absolute rights, such as the right to life (Article 2) or the prohibition of torture (Article 3). However, allegations based on Article 6 or 13 of the ECHR are overrepresented. Over the years, there has been a noticeable increase in interest in cases filed by applicants seeking just compensation.¹⁴² As of 1 January 2024, ECtHR has adjudicated 4,183

¹³⁸ To select Wojtyczek's successor, Poland submitted candidates thrice; however, PACE rejected the proposals twice, largely due to the ongoing rule of law dispute in Poland. The list of Polish candidates included Agnieszka Szklanna, Elżbieta Karska, and Aleksander Stępkowski, with Kamil Strzępek later replacing Aleksander Stępkowski in subsequent attempts. It was not until the list of candidates submitted in July 2024, which included Anna Adamska-Gallant, Małgorzata Wąsek-Wiaderek, and Adam Wiśniewski, that PACE considered the proposal, opening the way for the selection of Judge Wojtyczek's successor.

¹³⁹ Machowicz and Tabaszewski, 2023, p. 192.

¹⁴⁰ Nowicki, 2002, p. 174.

¹⁴¹ *Case of Podbielski v. Poland*, App. No. 27916/95, 30 October 1998.

¹⁴² Machowicz and Tabaszewski, 2023, p. 197.

Polish cases. However, the actual number of cases brought against Poland is significantly higher.¹⁴³ On the one hand, that Poles are aware of the Strasbourg mechanism is encouraging. This trend may indicate systemic issues within domestic legal frameworks rather than a mere reluctance or distrust on the part of individuals. This is evident from the fact that in 2023 alone, ECtHR issued 81 rulings against the Polish government (in relation to 261 complaints) and only 38 favourable rulings (in relation to 991 complaints), while 421 new complaints were communicated to Poland.¹⁴⁴ At the same time, many complaints are so-called repetitive cases. An example of such repetitive litigation is the case of *Przybyszewska and Others v. Poland*,¹⁴⁵ which concerned the excessive length of judicial proceedings and illustrated persistent systemic issues within the Polish justice system. In recent years, the majority of complaints has been related to the lack of effective oversight of the judiciary and broadly understood rule of law. The next two large categories of complaints concern the protection of minorities and foreigners. Since the first case was adjudicated against Poland, the impact of Strasbourg case law on the transformations of the Polish legal system has been immense and cannot be overstated.¹⁴⁶ The most significant changes in this regard concern the provisions of criminal and civil procedure related to the excessive length of proceedings, fairness of trials, and the principle of judicial independence, all of which contribute to the broadly understood concept of the rule of law. These changes also addressed the rules governing deprivation of liberty, arbitrary arrests and detentions, and their judicial review.¹⁴⁷

To a lesser extent, Strasbourg case law has influenced the shaping of substantive law, where changes have focused on issues related to the right to privacy, property rights, and personal security.¹⁴⁸ In addition to systemic issues relating to the judiciary, the European Court of Human Rights has also issued several landmark rulings concerning reproductive rights in Poland, including *Tysi c v. Poland*, *R.R. v. Poland*, and *P. and S. v. Poland*. These judgments revealed serious deficiencies in access to lawful abortion, prenatal testing, and healthcare information, particularly for vulnerable

¹⁴³ Jaskiernia, 2011, p. 11.

¹⁴⁴ Ministerstwo Spraw Zagranicznych, 2024, p. 4.

¹⁴⁵ *Case of Przybyszewska and Others v. Poland*, App. No. 11454/17, 6 October 2022.

¹⁴⁶ Matysiak, 2009b, p. 129.

¹⁴⁷ *Case of Ladent v. Poland*, App. No. 11036/03, 18 March 2008.

¹⁴⁸ See: *Case of Musiał v. Poland*, App. No. 24557/94, 25 March 1999; *Case of B czkowski and Others v. Poland*, No. 1543/06, 3 May 2007.

groups such as minors and women with high-risk pregnancies.¹⁴⁹ All three judgments remain under enhanced supervision by the Committee of Ministers of the CoE, due to incomplete implementation by Polish authorities. The Court also found Poland in violation of the Convention in two high-profile cases involving secret detention: *Al Nashiri v. Poland* and *Husayn (Abu Zubaydah) v. Poland*.¹⁵⁰ Despite their significance, Poland has yet to adopt a comprehensive law on the execution of ECtHR judgments, which creates practical difficulties for citizens seeking enforcement of their rights, and delays the systemic reforms required by the Court.

Among the cases concerning the protection of property, particular attention is drawn to the case of *Broniowski v. Poland*, wherein the first pilot judgment was issued.¹⁵¹ The applicant, Andrzej Broniowski, lost his property as a result of the westward shift of Poland's borders after the Second World War. Despite several years of pursuit, he neither recovered his property nor any form of compensation, although there was legislation in place guaranteeing such restitution. The issue of compensation for former property owners remained unresolved even under the new democratic regime.¹⁵² In considering the complaint, the Court found that Poland had violated the right to the peaceful enjoyment of possessions (Article 1 of Protocol No. 1), and the case revealed the existence of a structural problem within the Polish legal system that prevented a large number of individuals (80,000 people) from peacefully enjoying their property rights. Consequently, the Court ordered that appropriate legal and administrative measures be implemented to ensure that other claimants could either exercise their property rights in the "Eastern Borderlands" or receive equivalent compensation. Thus, in July 2005, Poland enacted new legislation providing financial compensation in exchange for the abandoned Eastern Borderlands property.¹⁵³

From the outset, the majority of cases brought by Polish citizens concerned complaints regarding the ineffective justice system and excessively lengthy court proceedings, which Poland had inherited from the

¹⁴⁹ *Case of Tysiąc v. Poland*, App. No. 5410/03, 20 March 2007; *Case of R.R. v. Poland*, App. No. 27617/04, 26 May 2011; *Case of P. and S. v. Poland*, App. No. 57375/08, 30 October 2012.

¹⁵⁰ *Case of Al Nashiri v. Poland* and *Husayn (Abu Zubaydah) v. Poland*, App. Nos. 28761/11 and 7511/13, 24 July 2014.

¹⁵¹ Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 199.

¹⁵² See: *Case of Hutten-Czapska v. Poland*, App. No. 35014/97, 19 June 2006.

¹⁵³ Dz.U. 2005 No. 169 pos. 1418

previous regime.¹⁵⁴ In the Proszak case, which was decided on 16 December 1997, with facts dating back to the communist era, the primary complaint of the applicant was the excessive length of civil proceedings. The complaint filed by Bronisława Proszak concerned prolonged civil proceedings surrounding a lawsuit for damages brought by Ms. Proszak against her neighbour, which she argued constituted a violation of Article 6§1 of the Convention.¹⁵⁵ The Court found that, while the proceedings had been lengthy, the delays were largely caused by the claimant's own litigious behaviour. In fact, the Polish judicial authorities had made every effort to expedite the proceedings. Consequently, the Court concluded that, in light of the circumstances, there had been no violation of Article 6§1 of the Convention, marking one of the few cases wherein the Court sided with the government. However, in subsequent cases brought against Poland, the Court extensively addressed the issue of excessive delays in both criminal, civil, and administrative proceedings.

A significant case for the reform of criminal law in Poland was that of Andrzej Kudła, who was accused of fraud and spent a substantial portion of the proceedings in pre-trial detention.¹⁵⁶ The applicant claimed that the criminal proceedings against him were excessively prolonged, lasting over 10 years, which violated his right to a fair trial as guaranteed by Article 6§1 of the Convention. Additionally, given that Kudła suffered from numerous health issues, he argued that the healthcare provided during his pre-trial detention was inadequate, thereby also violating Article 3 of the Convention (prohibition of inhuman and degrading treatment). In addressing these complaints, the Court found that the excessive delays in Kudła's criminal proceedings were incompatible with the Convention's requirement for cases to be heard within a reasonable time. The Court emphasised that states have an obligation to provide an effective remedy to address and prevent the excessive length of proceedings.¹⁵⁷ However, the Court did not find a violation of Article 3, despite the unsatisfactory conditions of medical care provided, as they did not reach a level that could be considered inhuman or

¹⁵⁴ Nowicki, 2002, p. 174; Ministerstwo Spraw Zagranicznych, 2022, p. 50.

¹⁵⁵ *Case of Proszak v. Poland*, App. No. 25086/94, 16 December 1997.

¹⁵⁶ *Case of Kudła v. Poland*, App. No. 30210/96, 26 October 2000.

¹⁵⁷ Because of the lack of an effective measure in national law to combat the lengthiness of criminal proceedings within the meaning of Article 13 of the ECHR, the ECtHR found a violation of the Convention. Consequently, a provision allowing complaints regarding the lengthiness of court proceedings was introduced into the Polish legal order. Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 358.

degrading treatment. For the Polish authorities, the judgment in Kudła was of significant importance, as it was the first time the Court had so clearly recognised the necessity of an effective domestic remedy in relation to Poland.¹⁵⁸

The impetus for introducing changes in administrative procedure came from the case of *Fuchs v. Poland*.¹⁵⁹ The applicant, Maria Fuchs, claimed that the administrative proceedings concerning the restitution of her property were excessively long and drawn-out, lasting over 10 years. The proceedings significantly exceeded the reasonable time required by the Convention, as they prevented the swift and fair resolution of her case. The Court, agreeing with the applicant, held that the length of the proceedings was excessive and disproportionate to the complexity of the case, and consequently, Poland had violated Article 6§1 of the Convention. Similarly, in the case of *Majewski v. Poland*, the Court found that the delays in the proceedings concerning the restitution of the applicant's property were excessive and unjustified.¹⁶⁰ The applicant sought the restitution of property nationalised after the Second World War; however, the administrative proceedings lasted many years without a resolution. These judgments were part of a series addressing the issue of excessively lengthy proceedings in Poland, highlighting a systemic problem in the efficiency of public administration. The Court emphasised the state's obligation to ensure that administrative proceedings are conducted efficiently, and citizens have access to prompt and effective protection of their rights.¹⁶¹

Similar judgments were issued in cases concerning excessively lengthy civil proceedings such as that of *Howiecki v. Poland*,¹⁶² wherein the Court emphasised that the excessive length of the proceedings not only

¹⁵⁸ *Case of Howiecki v. Poland*, App. No. 27504/95, 4 October 2001. Similarly, in the case of the complainant Bąk, ECHR found that Poland violated Article 6(1) of the European Convention on Human Rights (ECHR), as the proceedings were not concluded within a reasonable time. The Court further emphasised that the right to a prompt resolution of a case is a crucial element of procedural justice, and the excessive length of proceedings represents a systemic issue in Poland. See: *Case of Bąk v. Poland*, App. No. 7870/04, 16 January 2007.

¹⁵⁹ *Case of Fuchs v. Poland*, App. No. 33870/96, 11 February 2003.

¹⁶⁰ *Case of Majewski v. Poland*, App. No. 52690/99, 11 October 2005.

¹⁶¹ *Por.* Similarly, the Court ruled in the case of *Beller v. Poland*, App. No. 51837/99, 1 February 2006.

¹⁶² In this case, Andrzej Howiecki participated in a civil proceeding concerning a property dispute that lasted for over 7 years, starting in 1990. According to the Court, this constituted an excessive length of the proceedings.

violated the applicant's right to a fair trial but also pointed to a systemic problem with the excessive duration of judicial proceedings in Poland. However, it was the case of *Rutkowski and Others v. Poland* that became pivotal for legislative changes in Poland.¹⁶³ This case also concerned the excessive length of judicial proceedings, resulting from three complaints submitted to the ECtHR in 2011 and 2012. The applicants alleged that civil proceedings in Poland – lasting from several years to more than a dozen without a final resolution – were excessively prolonged. Despite the existence of a legal remedy in Polish law, the applicants claimed it was ineffective as it neither accelerated the proceedings nor provided adequate compensation for the delays. The ECtHR found this to be a violation by Poland not only of Article 6§1 but also of Article 13, which relates to the lack of an effective domestic remedy in civil proceedings. Additionally, in 2015, the ECtHR applied a pilot judgment procedure against Poland due to the widespread violations of the right to a trial within a reasonable time. In its judgment of 7 July 2015, the ECtHR held that Poland had violated Article 13 of the ECHR, as the national courts failed to follow the Court's jurisprudence regarding the assessment of reasonable time, particularly in considering the entire duration of domestic proceedings rather than just individual stages. The Court also provided guidance to the Polish authorities on how to address the problem of fragmented proceedings, where delays were assessed only at specific stages rather than as a whole. This judgment led to the amendment of Article 2(2) of the 2004 Act on Complaints for Violation of a Party's Right to Have a Case Examined in Preparatory Proceedings Conducted or Supervised by a Prosecutor and in Judicial Proceedings Without Unjustified Delay.¹⁶⁴ The amendment required that, when assessing whether a delay had occurred, the total duration of the proceedings was to be considered, from the initiation of the case until the resolution of the complaint, regardless of the stage at which the complaint was filed.¹⁶⁵ Ultimately, Poland introduced amendments to the Code of

¹⁶³ *Case of Rutkowski and Others v. Poland*, App. Nos. 72287/10, 13927/11, 46187/11, 7 July 2015.

¹⁶⁴ Orzeszyna, Skwarzyński and Tabaszewski, 2023, pp. 357-358.

¹⁶⁵ The amendment to Article 2 of the 2004 Act aimed to take into account the total duration of the proceedings – from their initiation to the consideration of the complaint – regardless of the stage at which the complaint was filed. Before the amendment, the regulations allowed for an assessment of delays only for a portion of the proceedings, which led to ineffective protection of the parties' rights. After the changes, the regulations

Civil Procedure and the Code of Criminal Procedure in 2019, aimed at addressing the issue of poor organization of hearings, which had been identified as one of the causes of the excessive length of proceedings.¹⁶⁶

In addition to cases concerning the excessive length of proceedings, the Court also addressed cases brought against Poland related to fair trial rights before the ECtHR, including on the lack of access to a court,¹⁶⁷ limited right to defence,¹⁶⁸ lack of public hearings,¹⁶⁹ lack of judicial independence and impartiality,¹⁷⁰ refusal to enforce final judgments,¹⁷¹ and inadequate reasoning in court decisions.¹⁷²

In these cases, the Court's judgments and recommendations were generally used by the legislature in subsequent judicial reforms.¹⁷³ With regard to changes in the general judiciary, the case of *Iwańczuk v. Poland* deserves particular attention,¹⁷⁴ wherein the ECtHR examined the issue of the applicant's right to a defence and fair trial. The applicant, Andrzej Iwańczuk, was charged with robbery and sentenced to imprisonment. However, throughout the trial, he was not granted access to legal counsel, nor was he afforded an effective defence. Moreover, during sentencing, the court passed judgment in the absence of a defence lawyer, which the Court found to be a violation of Article 6§1 and Article 6§3(c) of the Convention. Similarly, in the case of *Dzieciak v. Poland*, the Court held that Poland had violated the provisions of the ECHR, as the applicant, Andrzej Dzieciak, who had been charged with a criminal offense, was not given adequate opportunities to consult with his lawyer at crucial stages of the proceedings.¹⁷⁵ This impacted his ability to defend himself throughout the

consider the cumulative duration of the proceedings, better fulfilling the right to have a case heard within a reasonable time.

¹⁶⁶ Orzeszyna, Skwarzyński and Tabaszewski, 2023, pp. 357-358; Ministerstwo Spraw Zagranicznych, 2017, pp. 168-175.

¹⁶⁷ *Case of Kreuz v. Poland*, App. No. 28249/95, 19 June 2001.

¹⁶⁸ *Case of Siałkowska v. Poland*, App. No. 8932/05, 22 March 2007; *Case of Staroszczyk v. Poland*, App. No. 59519/00, 22 March 2007.

¹⁶⁹ *Case of Wizeraniuk v. Poland*, App. No. 18990/05, 5 July 2011.

¹⁷⁰ *Case of Reczkiewicz v. Poland*, App. No. 43447/19, 22 July 2021; *Case of Dolińska-Ficek and Ozimek v. Poland*, App. Nos. 49868/19, 57511/19, 8 November 2021.

¹⁷¹ *Case of Broniowski v. Poland*, App. No. 31443/96, 22 June 2004.

¹⁷² *Case of Piętka v. Poland*, App. No. 34216/07, 3 November 2009.

¹⁷³ Ministerstwo Spraw Zagranicznych, 2024, p. 4.

¹⁷⁴ *Case of Iwańczuk v. Poland*, App. No. 25196/94, 15 November 2001.

¹⁷⁵ *Case of Dzieciak v. Poland*, App. No. 77766/01, 9 December 2008.

trial, which constituted a violation of his fundamental right to a defence, protected under Article 6§3(c) of the ECHR.¹⁷⁶

The ECtHR also examined the right of access to the Supreme Court and the Constitutional Tribunal as institutions responsible for ensuring the legality of judicial decisions and the protection of constitutional rights. This right is considered a key element of the right to a fair trial.¹⁷⁷ In the case of journalist Jan Wizeniaruk, who claimed that he had been deprived of the opportunity to appeal a conviction for defamation in criminal proceedings, the Court found that there had been a violation of Article 6 (right to a court). The refusal to hear his cassation appeal was deemed to have infringed upon his right to a fair trial.¹⁷⁸ In particular, in the cases of *Siałkowska v. Poland* (no. 8932/05) and *Staroszczyk v. Poland* (no. 59519/00), the applicants alleged a violation of their right of access to the Supreme Court.¹⁷⁹ The applicant was not informed that court-appointed lawyers refused to file cassation complaints, which limited their right to a court.. Consequently, the applicants claimed their right to a fair trial was breached. Specifically, the court-appointed lawyers declined to submit cassation complaints but failed to inform their clients of this decision in a timely manner, which, according to the applicants, prevented them from independently attempting to file a cassation appeal. Thus, the applicants were denied the opportunity to effectively file a cassation appeal with the Supreme Court, restricting their right to a fair trial under Article 6§1 of the Convention. In both cases, the Court held that the lack of proper notification regarding the refusal to file a cassation appeal by the court-appointed lawyers constituted a violation of Article 6§1 of the ECHR, as it deprived the applicants of a real opportunity to use this legal remedy. These judgments provided a pretext for the Polish government to undertake broader reforms of the Constitutional Court and the Supreme Court. However, these reforms did not gain widespread approval. The outcome of these reforms led to two prominent rulings in the cases of *Xero Flor*¹⁸⁰ and *Wałęsa*,¹⁸¹ which confirmed the existence of a systemic problem related to the improper composition of courts and the flawed functioning of extraordinary remedies. These cases highlighted

¹⁷⁶ *Case of Por. R.D. v. Poland*, App. Nos. 29692/96 and 34612/97, 18 December 2001.

¹⁷⁷ *Case of Wizeraniuk v. Poland*, App. No. 18990/05, 5 July 2011.

¹⁷⁸ Orzeszyna, Skwarzyński and Tabaszewski, 2023, p. 228.

¹⁷⁹ *Case of Siałkowska v. Poland*, App. No. 8932/05, 22 March 2007; *Case of Staroszczyk v. Poland*, App. No. 59519/00, 22 March 2007.

¹⁸⁰ *Case of Xero Flor w Polsce sp. z o.o. v. Poland*, App. No. 4907/18, 7 May 2021.

¹⁸¹ *Case of Wałęsa v. Poland*, App. No. 50849/21, 23 November 2023.

deeper issues within the judiciary, particularly regarding judicial appointments and the effective operation of mechanisms intended to ensure justice and legal oversight.

In the Xero Flor case, the applicant was an agricultural company that, after exhausting remedies in the general courts, filed a constitutional complaint with the Constitutional Tribunal. However, on 5 July 2017, the Tribunal, by a majority of three votes to two, issued a decision to discontinue the proceedings, a decision with which Xero Flor disagreed. The company, as the applicant, challenged the legality of the Constitutional Tribunal's composition, arguing that one of the judges had been appointed in a manner inconsistent with the Constitution. The ECtHR found that the participation of a judge whose appointment raised constitutional concerns violated Article 6§1 of the Convention. Consequently, the Court held that the composition of the Constitutional Tribunal compromised its independence and impartiality, leading to a violation of the company's right to a fair trial.¹⁸² Similarly, the issue of proper judicial appointments, as a condition for a fair trial, arose in the Wałęsa case. The applicant alleged that the ruling in his case – within the framework of the new extraordinary appeal procedure submitted to the Supreme Court – was delivered by unlawfully appointed judges. In his view, this violated his right to a fair trial and the principle of legal certainty, and negatively impacted his reputation. Responding to the applicant's arguments, the ECtHR found a violation of Article 6§1 of the ECHR concerning the right to an independent and impartial tribunal, and the principle of legal certainty. Additionally, the Court found a violation of Article 8 of the ECHR, which relates to the respect for the applicant's private and family life. The Court held that the current structure of the extraordinary appeal in the Polish legal system was flawed. As part of its pilot judgment, the ECtHR ordered the Polish authorities to address the systemic problems within the judiciary, including reforms to Poland's judicial appointment process and the institution of extraordinary appeals.¹⁸³ The judgment was finalised on 23 February 2024 and is currently awaiting a response from the Polish authorities.

¹⁸² Notably, the Polish government contested this ruling, arguing that the ECtHR does not have the competence to assess the validity of the appointment of Constitutional Tribunal judges, considering it a domestic matter of a member state and a violation of the principle of sovereignty. See: Florczak-Wątor, 2023, pp. 115-135.

¹⁸³ See: *case of Grzęda v. Poland*, App. No. 43572/18, 15 March 2022.

6. Conclusion

Poland's accession to the CoE has altered the political conditions, the country's economic situation, and the legal framework within which Polish society operates. After 1991, the social transformation affected the standard of living and quality of life of citizens, which in turn influenced their views on shared European values. The approach to the protection of human rights and democratic standards also evolved, with Poland beginning to actively participate in the bodies and committees of the CoE at all levels. Integration with the structures of the CoE also strengthened the Polish legal system, enabling better monitoring of compliance with European standards of rule of law and democracy. However, this was not a linear process, as the political dynamics, which have undergone significant evolution in recent years, affected mutual dialogue and understanding.

In analysing the processes of Poland's constitutional transformation after its accession to the CoE, one must affirm the thesis of the undeniable influence of this organisation's body of work, including the impact of Strasbourg case law, on Polish legislation. The multidirectional dialogue contributed to Poland's swift adaptation to the democratic and legal requirements promoted by the CoE. Even in the early years of its membership, Poland became a promoter of these values, particularly in Central and Eastern Europe and across the post-Soviet space. The rapid implementation of CoE standards, particularly the ECHR, was made possible by close political and legal cooperation, and by the involvement of institutions such as the CoE's Information Office in Warsaw, established on 1 November 1991.

Today, Poland and the CoE face common challenges related to the migration and humanitarian crisis¹⁸⁴, dynamic social and demographic changes in Europe, and unforeseeable crises such as the COVID-19 pandemic, which impact the current model of human rights protection. As an active member of the CoE, Poland should continue to cooperate in strengthening the rule of law, democratic institutions, and further enhancing the protection of human rights.

¹⁸⁴ Orzeszyna, 2013, pp. 237-252

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