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The *International Covenant on Civil and Political Rights* of 1966 as a Contribution to Debates on Torture in Polish Legal and Philosophical Publications in 1977–1980

Introduction

The *International Covenant on Civil and Political Rights* was opened for signature in New York in 1966. Its subject scope was broad. In 53 articles, it referred to, among others: the right of nations to self-determination, equal (regardless of sex and origin) enjoyment of rights and freedoms, protection of the right to life, prohibition of slavery and human trafficking, humane treatment of persons deprived of liberty, the legal status of foreigners, the principle of equality before courts and tribunals, and the right to freedom of thought, conscience, religion and beliefs. Article 7 states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."[1] It should be emphasised that this legal act did not contain a legal definition of torture. The first sentence of

[1] *International Covenant on Civil and Political Rights*.

this article was a repetition of Article 5 of the 1948 *Universal Declaration of Human Rights*.[2]

The research subject of the article will be the discourse on Polish legal and philosophical thought from 1977 to 1980 regarding Article 7 of *International Covenant on Civil and Political Rights (ICCPR)*. The time period covered here comprises only three years, from Poland's ratification in 1977[3] to 1980. In the following year, legal discourse focused on the legalisation of the Independent Self-Governing Trade Union "Solidarity" (Niezależny Samorządny Związek Zawodowy NSZZ "Solidarność") and the legal qualification of the Gdańsk Agreement (or August Agreement, in Polish: Porozumienia sierpniowe)[4], thus departing from the topic of interest to us.

A separate analysis of this provision is important because the communist bloc countries, especially in the times of Stalinism, used torture against opposition activists.[5] In 1956, the process of transition from totalitarianism to an authoritarian state began,[6] which also resulted in the use of torture. Law enforcement agencies still practised torture during investigations, but on a smaller scale. A perfect illustration of these changes comes from Karol Modzelewski,[7] who spent eight and a half years in prison: "For me – with

[2] *Universal Declaration of Human Rights*, "Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

[3] *Międzynarodowy Pakt Praw Obywatelskich i Politycznych*.

[4] See Fiktus: *Kilka uwag na temat postrzegania porozumień sierpniowych 1980 roku*, pp. 37–54.

[5] During Stalinism, brutal investigative methods were used against suspects and accused persons. See Szwagrzyk: *Golgota wrocławska*; *Jaworzno*; Szwagrzyk: *Kryptonim*. In addition, examples of torture were presented in biographical materials. See Woźniak: *Droga do wolnej Polski*. Research on rehabilitation processes also provides a lot of information about the torture practised. See Kutkowski: *Polskie rehabilitacje*; Zamroczyńska: *Postępowania rehabilitacyjne*.

[6] See Walicki: *Idee i ludzie*, pp. 61–62.

[7] Karol Modzelewski (1937–2019) – born Cyryl Budniewicz (Russian: Кирилл Будневич). His mother, Natalia Wilter, became involved with the Polish communist Zygmunt Modzelewski, and her son took his stepfather's surname. In 1964, Karol Modzelewski and Jacek Kuroń published an *Open Letter to the Party* in which they criticised the policy pursued by the Polish United Workers' Party (Polska Zjednoczona Partia Robotnicza, PZPR). In 1965, he was sentenced to three years and six months in prison (reduced to two years and five months). He was also imprisoned for participating in the student strikes of 1968. In 1980, he joined Independent Self-Governing Trade Union "Solidarity" (Niezależny Samorządny Związek Zawodowy "Solidarność"). After the introduction of martial law on 13 December 1981, he was detained and arrested. He was then convicted in

apologies – my skin is essential. The difference between what I experienced then [in prisons during the governments of Władysław Gomułka (1956–1970), Edward Gierek (1970–1980) and Wojciech Jaruzelski (1981–1989)] and Stalinist investigative (1944–1956), judicial and penitentiary practice is striking".[8]

The communist countries delayed the ratification and introduction of this legal act into their national legal systems due to the possibility of its use by opposition organisations.[9] These fears were absolutely justified, because the opposition expanded its operations after the Stalinist period. For example, the Workers' Defence Committee (Komitet Obrony Robotników, 1976)[10] was established in Poland, and Charter 77[11] (1977) was established in Czechoslovakia. Despite the ratification of the *International Covenant on Civil and Political Rights*, cases of torture by law enforcement agencies continued.

However, the article's research subject is not the history of legal practice but the legal and philosophical discourse on torture. Therefore, the research question is whether its ratification had any significance for this discourse.

1982 of attempting to overthrow the state system and released during the amnesty of 1984. He was a historian, and in 2008, he received the title of full professor. See Modzelewski: *Zajeździmy kobyłę historii*; Modzelewski et. al.: *Polska Ludowa*; Bikont et al.: *Jacek*.

[8] Modzelewski: *Zajedźmy kobyłę historii*, p. 91. "After 1956, only those who exceeded the limits of opposition and entered into conflict with the system could expect criminal repression of a political nature. The state did not claim to interfere in what citizens thought and said privately." Ibidem.

[9] The Union of Soviet Socialist Republics had signed and ratified the Convention on 7 October 1968 in 1973, Czechoslovakia in 1975, and Romania in 1974.

[10] Workers' Defence Committee (KOR) – a Polish opposition organisation operating in 1976–77 that helped repressed workers. Its leading activists were Jacek Kuroń, Adam Michnik and Jan Józef Lipski. KOR activists organised money collections. The lawyers, Jan Olszewski, Władysław Głosa-Nowicki and Aniela Steinsberg represented injured workers during court proceedings. See Friszke, *Czas KOR-u*.

[11] Charter 77 – *The Charter Act*, announced in 1977, demanded respect for broadly understood human and citizen rights. Charter activists faced brutal repression from the Czechoslovak security services, as exemplified by torture during interrogation and the murder of philosophy professor and first Charter spokesman Jan Patočka, who was arrested after meeting Max van der Stoel (the Dutch Minister of Foreign Affairs and champion of civil rights). See Fiktus: *Charter 77*, pp. 173–210; Kaczorowski: *Havel*, pp. 273–288.

The analysis will focus on commentaries published in academic journals by scholars specialising in human rights and public international law. In the 1970s, underground journals did not address this topic. Underground periodicals began addressing legal issues only after the introduction of martial law, e.g., *Prawo i Bezprawie* (*Law and Lawlessness*) or *Praworządność* (*Rule of Law*) begin to be published. However, leading journals published in exile, e.g., *Kultura* (*Culture*), published by the Literary Institute in Maisons-Laffitte, France, the London-based *Wiadomości* (*News*) or *Aneks* (*Annexe*) did not address this topic during the period we specified. We have omitted comments from politicians from the Polish United Workers' Party (PZRP), the United People's Party (ZSL), and the Alliance of Democrats (SD) published in party journals, as they were politically demagogic and did not contribute anything constructive to the topic discussed in this article.

1. The prohibition of torture and the *International Covenant on Civil and Political Rights* in legal and philosophical discourse in 1977–1980

Poland's ratification in 1977 initiated a discussion among people dealing with both law and political and social philosophy. Minister of Justice Jerzy Bafia[12] emphasised that the *International Covenant on Civil and Political Rights* did not significantly revolutionise the Polish legal system.[13] He even claimed that the human rights pacts ratified by Poland were "essentially the achievements of socialist legal thought. They also correspond to socialist constitutionalism, which unconventionally recognises the scope of rights expanding with social development in individual countries and the development of international cooperation."[14] He emphasised the importance of Poland's achievements with regard to human rights, adding that respect for human rights was reflected not only in constitutional regulations but

[12] Jerzy Bafia (1926–1991) – law professor, judge. From 1954, he was a judge delegated to the Supreme Court, where, from 1972 to 1976, he served as the First President. Member of the Polish United Workers' Party. In the years 1976–1981 he served as Minister of Justice. His most significant publications: *Polskie prawo karne* (1989); *Praworządność* (1985); *Przestępstwa gospodarcze. Komentarz* (1960); *Prawo do wolność słowa* (1988).

[13] See Bafia et el.: *Normy*, pp. 13–14.

[14] Bafia: *Urzeczywistnienie*, p. 3.

also in numerous acts. The Polish legal system included legal solutions that were much more precise than those in the *International Covenant on Civil and Political Rights* on issues such as the right to work, family protection, universal medical assistance, and the prohibition of child labour or work in safe conditions. Consequently, this means that Poland's ratification of the pacts was not caused by the need to look for new legal solutions. His opinion is not surprising because, as the Minister of Justice, his task was to emphasise the advantages of the legal system of both Poland and the entire Eastern Bloc. However, he saw the positive sides of the ratification of the *International Covenant on Civil and Political Rights*, stating that this legal act would constitute the basis for "formulating criteria for further improvement of the Polish legal system and legal practice to most fully reflect the convergence of the goals and policies of the socialist state with the intentions that guided the international community when adopting the Covenants"[15].

Similarly to Bafia, Professor Adam Łopatka[16] was, in the then very popular weekly *Prawo i Życie* (*Law and Life*), a critical voice regarding introducing new legal regulations related to protecting human rights into the legal order. This lawyer analysed Polish legal solutions regarding citizens' broadly understood rights and obligations arising from the *Constitution of the Polish People's Republic* of July 22, 1952,[17] and the *Act of February 10, 1976, amending the Constitution of the Polish People's Republic*[18]. In his

[15] Bafia et el.: *Normy*, p. 14.

[16] Adam Łopatka (1928 – 2003) – professor of law working at the Faculty of Law and Administration of the Adam Mickiewicz University in Poznań. In the years 1969–87, he was the director of the Institute of Legal Sciences of the Polish Academy of Sciences, contributing to the development of this unit. From 1987 to 1990, he was the first president of the Supreme Court (and ex officio of the State Tribunal). Moreover, from 1982 to 1987, he was the minister-head of the Office for Religious Affairs. Politically associated with the Polish United Workers' Party. He represented Poland in the UN Human Rights Committee, being responsible for cooperation with the Convention on the Rights of the Child. Author of numerous works on the theory and philosophy of law and human rights: *Demokracja i kierownicza rola PZPR* (1969), *Podstawowe prawa i obowiązki obywateli PRL w okresie budowy rozwiniętego społeczeństwa socjalistycznego* (1976), *Prawotwórstwo socjalistyczne* (1979), *Prawa człowieka w Polsce* (1980), *Zasady polityki wyznaniowej Polskiej Rzeczypospolitej Ludowej* (1987).

[17] *Konstytucja*.

[18] *Ustawa z dnia 10 lutego 1976 r*.

opinion, "further enrichment of the constitutional catalogue of rights and obligations is neither possible nor necessary".[19] He considered ensuring the broadest possible use of existing constitutional regulations as a key solution. He regarded Poland as a country that could serve the international community with its experience in the promotion, implementation and protection of human rights.[20]

Stanisław Podemski[21] spoke in a similar tone. He also emphasised that many of the provisions of the *International Covenant on Civil and Political Rights* were already in force in the Polish legal system. However, he pointed out a significant problem that may arise during the translation of this act. He even used the phrase: "fighting for the meaning of the words used". This indicates that he had noted that the Polish authorities might resist incorporating some of its provisions into the Polish legal system. He also added that the *International Covenant on Civil and Political Rights* constitutes a coherent whole, with no "better or worse laws" in it.[22] Its importance was demonstrated by the fact that it was ratified by many countries in different parts of the world.

One of the scholars who dealt with international law related to the prohibition of torture was Wojciech Michalski. In an article published in *Sprawy Międzynarodowe* (*International Affairs*), he stated that the prohibition of torture, which was already sanctioned in Article 5 of the *Universal Declaration of Human Rights*, only had a symbolic meaning.[23] Examples of this ban being ignored included the war in Vietnam, attempts to liquidate national liberation movements in South America and Africa, and the policy of violence pursued by Salazar in Portugal or General Francisco Franco in Spain. However, he recognised that the signing of the *International Covenant on Civil and Political Rights* in 1966 contributed to the creation of subsequent acts and declarations, and the very definition of torture. It is worth

[19] Łopatka: *Co dalej z prawami człowieka?*, p. 13.

[20] It is worth emphasising that Polish lawyers have always actively participated in creating international order and defended the very essence of international law. See Baranowska: *In defence of international law*, pp. 41–55; Baranowska, *International Organization*, pp. 96–101; Neneman: *Ochrona praw człowieka*, pp. 103–109.

[21] Stanisław Podemski (1929–2011) – lawyer, journalist, columnist, long-serving editor at the weekly *Polityka*. In 1997, awarded The Order of Polonia Restituta.

[22] Podemski: *Karta Praw Człowieka*, p. 4.

[23] Michalski: *Potępianie tortur*, pp. 166–171.

paying attention to the definition from the World Medical Association document, which defines torture in its preamble thus: "torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason."[24] As Michalski pointed out, an important act adopted by the UN was the *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted on 9 December 1975, by General Assembly resolution 3452 (XXX). This legal act defines torture in Article 1, following the definition of the World Medical Association: "1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners. 2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment."[25]

According to Michalski, this legal act containing the definition of torture was a perfect complement to the *International Covenant on Civil and Political Rights*. An essential element introduced into this resolution was the guaranteed standards, which included the right to file a complaint, the obligation to investigate a case of torture without the need to file a complaint, and the obligation to initiate criminal proceedings. Moreover, the injured party has the right to compensation, and testimony obtained under torture cannot constitute evidence in legal proceedings.[26]

In Wojciech Michalski's opinion, despite the increasingly developed system of human rights protection, especially protection against torture, there was a very significant shortcoming in terms of a lack of control over their observance. For example, the Pinochet junta, without hiding from the

[24] *WMA Declaration of Tokyo*.

[25] *Declaration on the Protection*.

[26] Michalski: *Potępianie tortur*, p. 170.

international community, used brutal methods of action against its political opponents. While the actions taken by the UN to prevent torture deserved recognition, the Polish researcher believed the opinions about the powerlessness of this organisation and the creation of only theoretical solutions to this problem to be fully justified.[27]

One of the leading scholars of public international law during the Polish People's Republic was Professor Janusz Symonides.[28] In his book *Międzynarodowa ochrona praw człowieka* (*International Protection of Human Rights*) published in 1977, he divided the *International Covenant on Civil and Political Rights* into five parts: 1. covering only Art. 1 regarding the right to self-determination of nations, 2. general provisions (Articles 2–5), 3. economic, social, cultural, civil and political rights (Articles 6–15), 4. international control (Articles 16–25 and Articles 28–47) and 5. final provisions (Articles 26–31 and Articles 48–53).[29] The presented taxonomy shows that he considered the prohibition of torture (Article 7) to be an economic, social, cultural, civil and political right. He also emphasised that an inherent element of human rights is a person's duties towards other people, society and the state. Moreover, the *International Covenant on Civil and Political Rights* includes not only rights and obligations but also the possibility of limiting rights under Article 4.[30] In Polish literature, Janusz Symonides was the only lawyer at that time to point out the "other side" of this act, i.e. obligations and the possibility of limiting rights.

Another Polish lawyer, Anna Michalska,[31] in the article *Prawa człowieka w systemie organizacji państw amerykańskich* (*Human rights in the system*

[27] Ibidem.

[28] Janusz Symonides (1938–2020) – professor of law, from 1959 employed at the Faculty of Law of the Nicolaus Copernicus University in Toruń. In the years 1969–73, vice-rector of the Nicolaus Copernicus University. From 1973 to 1980, he served as deputy director of the Polish Institute of International Affairs. Together with Prof. Remigiusz Bierzanek, he wrote the academic textbook *Prawo międzynarodowe publiczne* (*Public International Law*), which had nine editions from 1985 to 2009. The most important works include: *Kontrola międzynarodowa* (1964); *Human Rights: New Dimensions and Challenges* (2000); *The New Law of the Sea* (1988).

[29] Symonides: *Międzynarodowa ochrona*, p. 44.

[30] Ibidem, p. 55.

[31] Anna Michalska (1940–2001) – law professor, worked at the Faculty of Law and Administration of the Adam Mickiewicz University in Poznań. Editor of the scholarly quarterly *Ruch Prawniczy, Ekonomiczny i Socjologiczny*. The most significant publications

of organising American states), published in *Ruch Prawniczy Ekonomiczny i Socjologiczny* (*Poznań Journal of Law, Economics and Sociology*) in 1980, pointed out that the *International Covenant on Civil and Political Rights* was also important for developing legal protection of human rights regionally.[32] For example, in June 1978, the 1969 *American Convention on Human Rights* entered into force and included South American countries.[33] Article 5 specifically referred to the prohibition of torture.[34]

It should be added that during this period, the monthly *Państwo i Prawo* (*State and Law*) published an article by the Soviet author Władimir Aleksiejewicz Kartashkin,[35] *Pakty praw człowieka a ustawodawstwo radzieckie* (*Human rights pacts and Soviet legislation*).[36] This was quite paradoxical because it is difficult to find respect for human rights in the legal system of one of the largest totalitarian states. Adding that there was no mention of the prohibition of torture in this text.

Not only in legal journals but also in officially published Catholic periodicals at that time, such as *Więź* (*Bond*)[37] or *Chrześcijanin na Świecie* (*Christian in the World*),[38] articles by lawyers, philosophers, sociologists

are: *Podstawowe prawa człowieka w prawie wewnętrznym a Pakty Praw Człowieka* (1974); *Komitet Praw Człowieka. Kompetencje, funkcjonowanie, orzecznictwo* (1994); *Prawa Człowieka w systemie norm międzynarodowych* (1982).

[32] Michalska: *Prawa człowieka*, pp. 78–79.

[33] *Multilateral American Convention on Human Rights*.

[34] Ibidem: "Article 5. Right to humane treatment. 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. 3. Punishment shall not be extended to any person other than the criminal."

[35] Władimir Aleksiejewicz Kartashkin (born March 4, 1934, in Moscow) graduated from the Faculty of Law of Moscow State University. Already during the USSR period, he devoted his academic work to the issue of human rights. In the years 1992–2002, adviser on human rights at the Human Rights Commission of the President of the Russian Federation. He also worked at the United Nations, dealing with human rights issues.

[36] Kartaszkin: *Pakty praw człowieka*, pp. 29–39. It is worth adding that in the period we are interested in, a collection edited by Boris Ivanov was published, entitled *Prawda o prawach człowieka* (1978), containing (as described) a collection of texts by representatives of Soviet culture on human rights, in which it is difficult to find a critical word about torture.

[37] *Więź* is a Catholic socio-cultural magazine published since 1958. In the years 1958–1981, the editor-in-chief was Tadeusz Mazowiecki.

[38] *Chrześcijanin na Świecie. Notebooks published by the Center for Documentation and Social Studies*. The magazine was published in 1969–1997.

and theologians were published, referring to the prohibition of torture and Article 7 of the *International Covenant on Civil and Political Rights*.

Hanna Waśkiewicz[39] was a lawyer who dealt with human rights. In the article *Prawa człowieka, pojęcie, historia* (*Human rights, concept, history*) published in 1978 in the magazine *Chrześcijanin na Świecie*, analysing acts of international law, including the *International Covenant on Civil and Political Rights*, she pointed to the division between human and civil rights, including the prohibition of torture among the latter.[40] She pointed out that the situation in which the state protects people against other people's actions is obvious. However, the legal protection of citizens against the state itself (or people acting on its behalf) is, in her opinion, paradoxical. Hanna Waśkiewicz believed that the effectiveness of such regulations is poor.

Waśkiewicz distinguished three trends in the process of sanctioning and regulating human rights. The first concerned international law and developed in the post-war period. It was characterised by the creation of international legal regulations sanctioning human rights (very often on the initiative of the UN). The second trend, also related to the post-war period, was defined as constitutional. It concerned introducing regulations regarding human rights into the constitutions of various countries. The difference between the first and second trends was that the constitutional trend was also associated with a simultaneous emphasis on human responsibility. In turn, the third trend was defined as ecclesiastical and was related to the Catholic Church's activity in human rights protection.

Waśkiewicz included the prohibition of torture among the relative rights of citizens that can be acquired upon obtaining citizenship. In the case of this right, the state is obliged to take specific actions for citizens so that torture is not used, and at the same time, the state is obliged not to take specific actions, i.e. not to use torture itself.

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[39] Hanna Waśkiewicz (1912–1993) – law professor, worked at the University of Warsaw. In 1949, she was employed at the Catholic University of Lublin, where, as of 1958, she was the Head of the Department of Philosophy of Law. Her research focused mainly on human rights. She cooperated with the Helsinki Foundation for Human Rights. The most significant publications are *Powszechność prawa naturalnego* (1968); *Historia filozofii prawa. Filozofia prawa starożytnego prawa pogańskiego* (1960). Some of her works were suspended by censorship, especially from the Warsaw period, and have not been published to this day. See Motyka: *Sylwetka naukowa profesor Hanny Waśkiewicz*, pp. 5–7.

[40] Waśkiewicz: *Prawa człowieka*, pp. 13–48.

A philosopher and theologian who addressed human rights and the prohibition of torture was Joachim Kondziela.[41] In the article *Chrześcijańskie ujęcie praw człowieka* (*Christian Approach to Human Rights*) published in *Chrześcijanin na* Świecie, he analysed new legal regulations regarding citizens' rights and referred to the Christian doctrine of Man.[42] He drew attention to two elements that constitute the inalienable dignity of Man: the truth that Man was created in the image of God and Man's redemption. The development of human rights requires a more active attitude on the part of the Catholic Church, consisting of the so-called pastoral care of stigmatisation. This should be understood as prophetic pastoral care, i.e. pastoral care aimed at educating people with respect for human rights. Moreover, the Church is to treat human rights as a single, indivisible whole. This would mean that striving to prohibit torture should be accompanied by the simultaneous glorification of, for example, the principle of equality before the law or freedom of thought and conscience. First of all, the Church should act for the benefit of the poor, starving and exploited.

Zygmunt Drozdek,[43] also in *Chrześcijanin na Świecie*, in the article *Prawa człowieka a rozwój społeczno-gospodarczy* (*Human rights and socio-economic development*), stated that the implementation of human rights should override the socio-economic and political system. When there is a contradiction between human rights and the political system, the political system should be reformed, not human rights.[44]

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[41] Joachim Kondziela (1932–92) – Catholic priest, philosopher. He studied philosophy and theology at the Faculty of Theology of the Jagiellonian University and the Catholic University of Lublin, where he later worked. In his scientific work, he dealt with Catholic social teaching and international relations (in particular with Austria and the Federal Republic of Germany). He organised Polish–German academic seminars. Author: *Badania nad pokojem. Teoria i jej zastosowanie* (1975); *Osoba we wspólnocie. Z zagadnień etyki społecznej, gospodarczej i międzynarodowej* (1987); *Pokój w nauce Kościoła. Pius XII – Jan Paweł II* (1992).

[42] Kondziela: *Chrześcijańskie ujęcie praw człowieka*, pp. 49–59.

[43] Zygmunt Drozdek (1928–2015) – lecturer at the Catholic University of Lublin. In the 1950s, he was a PAX and Catholic Intelligentsia Club member. In 1967, he co-founded the Center for Documentation and Social Studies, whose task was to disseminate Catholic social teaching. Additionally, as part of the Center's work, it published the periodical *Christian in the World* and organised numerous academic meetings with German scholars.

[44] Drozdek: *Praw człowieka*, p. 79.

It is also worth paying attention to Jakub Karpiński's[45] article *Pojęcia praw człowieka w rozumieniu świeckim i chrześcijańskim* (*The Concept of Human Rights in the Secular and Christian Meaning*) published in 1978 in *Więź*.[46] In this article, the author does not directly refer to the *International Covenant on Civil and Political Rights* or any other specific legal act, but he discusses the problem of human rights in Catholic social teaching. A breakthrough in this respect was the encyclical *Pacem in Terris* of 1963, in which John XXIII stated that man has inalienable rights and obligations arising directly from his nature. In the article, Karpiński also cited the position of the Pontifical Commission Justita et Pax, which in 1974 announced a document entitled *The Church and Human Rights*, in which the existence of natural rights was also confirmed. Although a significant part of Jakub Karpiński's text concerned general considerations on the essence of human rights, it is worth quoting his comments regarding the attempt to sanction human rights and capture their essence in the letter of law: "if the study of law is limited to the study of texts, many matters are omitted. When examining texts, the legal experiences of people to whom the law is to apply, including those who apply the law, are ignored. A particular type of legal experience is that related to the interpretation of statutory law. The functioning of the law depends on how it is interpreted by those who apply it."[47]

[45] Jakub Świętopełek Karpiński (1940–2003) – a well-known opposition activist who participated in the student strikes of 1968 (on 31 May 1968, he was arrested and detained without trial until September 1968). He collaborated with the Paris Literary Institute, publishing, e.g., *Ewolucja czy rewolucja* (1975); *Niezależność, solidarność, porozumienie obywateli* (1977); *Niepodległość od wewnątrz* (1978). In 1974, he was sentenced to 4 years in the so-called case of the mountaineers, i.e. people associated with the Paris Literary Institute, who distributed illegal publications along the mountain trail in the Tatra Mountains (as a result of the amnesty, the sentence was reduced to 2 years and eight months). In 1976, he signed so-called Letter 14, in which he supported the workers' strike in Radom. In 1978, he defended his PhD dissertation in sociology and the same year, he left for New York and London. He published very often in the Polish underground press. See Kaliski: *Kurierzy wolnego słowa*.

[46] Karpiński: *Pojęcia praw człowieka*, pp. 30–69.

[47] Ibidem, p. 31.

2. *Obywatel a Służba Bezpieczeństwa* by Jan Olszewski

When analysing the legal discourse on the prohibition of torture, one should also pay attention to a short (20-page) guide published anonymously by Jan Olszewski[48] in 1977 under the title *Obywatel a Służba Bezpieczeństwa* (*The Citizen and the Security Service*)[49]. At that time, he was active in the Polish Independence Agreement (*Polskie Porozumienie Niepodległościowe*), an opposition organisation founded by Zdzisław Najder.[50] Olszewski wrote *Obywatel a Służba Bezpieczeństwa* as a guide for opposition activists, in which he included information on how to act when summoned, detained or interrogated by communist law enforcement agencies. In the guide, Olszewski included the following comments: "In the Security Office, all methods are allowed in relations with citizens"[51]; "let us come to terms with the fact that there are no guarantees and there will be none […] None of

[48] Jan Ferdynand Olszewski (1930–2019) – lawyer. From 1956 to 1957, he served on the editorial board of the magazine *Po Prostu*. He was active in the KOR environment and then in NSZZ "Solidarność". During the Polish People's Republic, Olszewski was known as a lawyer defending opposition activists and people harmed by the communist system (he defended Melchior Wańkowicz, Jacek Kuroń and Karol Modzelewski, Janusz Szpotański and Wojciech Ziembiński, an activist of the KOR, and in the 1980s, Lech Wałęsa, Zbigniew Romaszewski, Zbigniew Bujak). He was also an auxiliary prosecutor authorised by the Episcopate in the "Toruń trial" of the murderers of Fr. Jerzy Popiełuszko. After 1989, he became involved in politics, and in 1991–92 he served as the Prime Minister. See Olszewski et al.: *Prosto w oczy*; Fiktus: *Działalność*, pp. 195–207; Błażejowska: *Jan Olszewski*. It should be added that Jan Olszewski's guide was reprinted many times by underground publishing houses. Moreover, it inspired the booklet *Mały Konspirator*, written by Czesław Bielecki and Jan Krzysztof and published in 1983 by the underground publishing house CDN. See Błażejowska: *Papierowa rewolucja*, p. 260.

[49] For the purposes of this article, we used the samizdat study published under the double title *Obywatel i Prawo* and *Obywatel a Służba Bezpieczeństwa*.

[50] Polskie Porozumienie Niepodległościowe (Polish Independence Agreement) – an opposition organisation operating in 1975–76. Zdzisław Najder (1930–2021) – a literary historian, lectured, among others, at the Universities of Yale and Oxford. When martial law was introduced, he was in Oxford, and in 1983, he was sentenced to death *in absentia* for alleged espionage for the United States. The main goal of the Polish Independence Agreement was to regain independence by Poland, withdraw from the Warsaw Pact and introduce a democratic system. It also postulated the need for Lithuania, Belarus and Ukraine to regain independence. The organisation belonged to, among others, Wojciech Karpiński – brother of Jakub Karpiński, quoted in this article. See Bertram: *PPN*.

[51] Olszewski: *Obywatel*, p. 7.

our good is safe once and for all."[52] These words clearly show that Olszewski believed that the Security Service was not bound by the law and used all means, including torture. He included torture in the "catalogue of fundamental rights"[53], i.e., those rights relating to the state's and citizens' essential rights.

In the guide, Jan Olszewski cited Art. 157 § 2 of the then-applicable *Act of April 19, 1969, Code of Criminal Procedure*,[54] according to which explanations, testimonies or statements made in conditions excluding the possibility of free expression cannot constitute evidence. Referring to the comment of Professor Alfred Kaftal,[55] he stated that the phrase "conditions excluding the possibility of free expression" has a very broad meaning that can also be applied to torture. In the case of the cited fragment of Art. 157 § 2 of the *Code of Criminal Procedure*, one should consider the testimony or statements obtained, e.g. using threats or measures that remove or hinder the ability to express one's will freely. In his opinion, efforts should be made to undermine the evidentiary value of any testimony in which the interrogated person did not have the opportunity to speak freely. He commented on this postulate: "No one is under the illusion that the proposed solution will change the current form of interrogations into a polite conversation."[56] However, modifying the criminal procedure will indicate what the investigative authorities are allowed to do, what they are not, and what the consequences are.

It should be added that the analysis of court judgments in the period we are interested in allows us to conclude that the courts openly discussed the issue of abuse and forcing testimony during interrogations. An example is the judgment of the Supreme Court of October 29, 1980, which stated that, since the defendants invoked the lack of freedom to give explanations,

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[52] Ibidem, p. 21.

[53] On fundamental rights see Michalska: *O pojęciu praw człowieka*, pp. 3–13.

[54] *Ustawa z dnia 19 kwietnia 1969 r.*

[55] Unfortunately, Jan Olszewski did not specify when Prof. Alfred Kaftel presented this remark, only mentioning: "in the course of work on the reform of Polish criminal procedure". Olszewski: *Obywatel*, p. 50. Alfred Kaftel (1931–95) – law professor specialising in criminal law and criminal proceedings. Since 1980, he has been associated with the Solidarity Center for Civic Legislative Initiatives. He worked at the Faculty of Law and Administration of the University of Warsaw. See Fajst: *Alfred Ludwik Kaftal*, p. 298–299.

[56] Olszewski: *Obywatel*, p. 50.

it was the duty of the Provincial Court to assess and determine whether this was the case.[57] If it was established that the accused did not have the freedom to provide explanations, it was necessary, under Art. 157 § 2 of the *Code of Criminal Procedure*, ignore this evidence and make factual findings solely based on other evidence. However, the description of the facts included the following phrase: "This allegation [i.e., regarding free speech] is justified in that neither the authority conducting the investigation nor the Provincial Court responded to this issue, even though the defendants, and in particular K.T. and A.L. specifically pointed to the exceptionally drastic measures used by the Citizens' Militia officers who interrogated them and that it was under the influence of these measures that they forced false explanations from them, which the Provincial Court found to be accurate and made factual findings on their basis."[58]

Conclusions

This article focuses on the discourse on Polish legal and philosophical thought from 1977 to 1980 on the subject of Article 7 of International Covenant on Civil and Political Rights (ICCPR). The legal act we are discussing was part of the emerging system of public international law after World War II, which (at least theoretically) guaranteed human rights even in communist states. Examples include the International Covenant on Economic, Social and Cultural Rights of 1966 and the Helsinki Final Act of the Conference on Security and Co-operation in Europe (CSCE) held in Helsinki, Finland, 1975. Unfortunately, it did not have as far-reaching an impact as the Helsinki Final Act, whose adoption by Czechoslovakia became one of the foundations for the establishment of Charter 77 under the chairmanship of Václav Havel. Nevertheless, it attracted considerable interest from the Polish legal community.

To fully present this research topic, it is also necessary to refer to the general study of human rights in the Polish People's Republic. First of all, the legal acquis developed before 1945 in Western European countries was rejected. The leading role of the USSR as a guarantor of human rights pro-

[57] *Wyrok Sądu Najwyższego z dnia 29 października 1980 r.*

[58] Ebenda.

tection was emphasised, particularly in opposition to Western European and American imperialism. In this case, any substantive analysis is impossible to speak of. Emotional examples were often used, intended to evoke a specific reaction in the reader. Human rights, understood in the context of the right to self-determination, were particularly emphasised, as was the importance of the decolonisation process. The policy of racial segregation pursued in the United States was also criticised. In 1946, the National League for Combating Racism was established to combat all forms of racism.

The fundamental feature of the "socialist concept of human rights" lies in the recognition of socio-economic rights over civil liberties and political rights. Traditional utility rights were also rejected. It was recognised that all human rights and obligations stemmed solely and exclusively from statutory law, which expressed the will of the sovereign. Defining the sovereign, pointing to the working people of cities and villages, emphasised the consequences of the communist party as the expresser of the will of the sovereign[59].

Law constitutes one challenge to actions for the realisation of the public interest by the state and its bodies. The "socialist concept of human rights" emphasised the importance of, and in the background, listed the legal characteristics of the individual. As Wiktor Osiatyński aptly stated, "when the law was enforced, it corresponded to some law. If someone has a right, someone else has it"[60]. An example of this application of law can be found in the side effects of socialist law. The sanction for a citizen evading this obligation was ostracism, which consisted of deeming a person a social parasite, or mandatory control of a person to perform work (often against his will and life situation)[61].

Academic discourse at the time primarily focused on reporting, unemotionally enumerating the most important legal acts concerning human rights. An example is the work by the Poznań-based scholar of international law, Alfred Klafkowski, entitled *Prawo międzynarodowe publiczne* (*Public International Law*), in which he listed the most important legal

[59] See Wieruszyński: *Podstawowe obowiązki obywateli PRL*; Wieruszyński (ed.): *Prawa człowieka*; Osiatyński: *Prawa człowieka i ich granice*.

[60] Osiatyński: *Prawa człowieka i ich granice*, p. 75.

[61] Examples of legal acts implementing such assumptions are: *Ustawa z dnia 7 marca 1950*; *Rozporządzenie Rady Ministrów z dnia 17 kwietnia 1950*. Another example is the assignment of medical staff to designated places of employment. See Fiktus: *Prawno-społeczna pozycja felczera w Polsce*, p. 129–130.

acts concerning human rights[62]. A similar analysis of human rights was presented in the book by the Warsaw scholar Professor Cezary Berezowski, who focused on listing the most important legal acts and citing their most essential theses[63].

The answer to the research question of whether the ratification of the *International Covenant on Civil and Political Rights* had any significance for the legal and philosophical discourse on torture is affirmative. The ratification itself did not have a direct and revolutionary impact on citizens' daily lives. However, it became an excuse for lawyers and social philosophers to speak on the subject. Everyone recognised the prohibition of torture as a fundamental right of the citizen – as an obvious standard that should apply in Poland. However, the ban on torture was only theoretical, and most people knew that this law was being violated, especially against opposition activists. However, it was not possible to discuss this directly. For this reason, opinions about *International Covenant on Civil and Political Rights* were quite general, and no broader scientific studies were published on this topic from 1977 to 1980. It is worth emphasising that, in the legal discourse, not only is the prohibition of torture recognised from an individual perspective as a human right, but so too is the social and political dimension of the prohibition of torture emphasised. An example is the division of civil and political rights by Simonides, who included the ban on torture regarding economic, social, cultural, civil and political rights. Torture is aimed at exclusion from the human, social and political community through inhumane treatment, depriving a person of dignity and any rights.

Many comments on human and civil rights were published in Catholic periodicals, which can be considered "gentle opposition" officially admitted to public debate. In this way, an attempt was made to raise the issue of human and civil rights in the official discourse. Only such voices were possible at that time.

Probably the only publication that directly talked at that time about breaking the law, including the prohibition of torture, was published anonymously in the so-called second circulation *Obywatel a Służba Bezpieczeństwa*. It was also the voice of a lawyer, Jan Olszewski, who advised dealing with illegal activities for security purposes. To sum up, it was clear

[62] Klafkowski: *Prawo międzynarodowe publiczne*, pp. 192–198.

[63] Berezowski: *Prawo międzynarodowe publiczne*, pp. 59–79.

that the Polish People's Republic strived to belong to the international legal community, and appearances were important. Although the practice has changed little, the ratification of the *International Covenant on Civil and Political Rights* gave some impetus to raising the topic of human and civil rights in public discourse, which gradually changed legal awareness among the citizens of Poland.

Międzynarodowy Pakt Praw Obywatelskich i Politycznych z 1966 jako przyczynek do debat o torturach w polskiej publicystyce prawno-filozoficznej lat 1977–1980

Streszczenie

Artykuł analizuje dyskurs w polskiej myśli prawnej i filozoficznej w latach 1977–1980 dotyczący zakazu tortur, ujętego w Artykule 7 *Międzynarodowego Paktu Praw Obywatelskich i Politycznych* z 1966 roku. Choć praktyka stosowania tortur w PRL nie uległa istotnej zmianie, ratyfikacja aktu prawnego stała się impulsem do podjęcia tematu praw człowieka w oficjalnym dyskursie, co stopniowo zmieniało świadomość prawną Polaków. Autorzy koncentrują się na analizie publikacji naukowych i publicystycznych, wskazując, że zakaz tortur był postrzegany jako fundamentalne prawo obywatelskie, choć jego przestrzeganie pozostawało w dużej mierze deklaratywne.

Der *Internationale Pakt über bürgerliche und politische Rechte* von 1966 als Beitrag zu den Debatten über Folter in der polnischen rechtsphilosophischen Publizistik der Jahre 1977–1980

Zusammenfassung

Der Artikel analysiert den Diskurs in der polnischen rechtswissenschaftlichen und philosophischen Gedankenwelt in den Jahren 1977–1980 über das Folterverbot gemäß Artikel 7 des *Internationalen Pakts über bürgerliche und politische Rechte* von 1966. Obwohl sich die Praxis der Folter in der Volksrepublik Polen kaum änderte, wurde die Ratifizierung dieses Rechtsakts zum Impuls, das Thema der Menschenrechte im offiziellen Diskurs aufzugreifen, was allmählich das Rechtsbewusstsein der polnischen Gesellschaft veränderte. Die Autoren konzentrieren sich auf die Analyse wissenschaftlicher und publizistischer Veröffentlichungen und zeigen, dass das Folterverbot als fundamentales Bürgerrecht verstanden wurde, dessen Einhaltung jedoch weitgehend deklarativ blieb.

Übersetzt von
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The International Covenant on Civil and Political Rights of 1966 as a Contribution to Debates on Torture in Polish Legal and Philosophical Publications in 1977–1980

Summary

The article analyzes the discourse in Polish legal and philosophical thought between 1977 and 1980 concerning the prohibition of torture, as outlined in Article 7 of the *International Covenant on Civil and Political Rights* of 1966. Although the practice of torture in the Polish People›s Republic did not significantly change, the ratification of this legal act became a stimulus for addressing human rights in official discourse, gradually influencing the legal awareness of Polish society. The authors focus on the analysis of scholarly and journalistic publications, showing that the prohibition of torture was regarded as a fundamental civil right, although its observance remained largely declarative.

Słowa kluczowe / Schlagworte / Keywords

- *Międzynarodowy pakt praw obywatelskich i politycznych* z 1966 roku; tortury; Polska Rzeczpospolita Ludowa; prawo międzynarodowe; Jan Olszewski (1930–2019)
- *Internationaler Pakt über bürgerliche und politische Rechte* von 1966; Folter; Polnische Volksrepublik; Völkerrecht; Jan Olszewski (1930–2019)
- *The International Covenant on Civil and Political Rights* of 1966; torture; Polish People's Republic; international law; Jan Olszewski (1930–2019)

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