

**SOCIAL, ECONOMIC AND CULTURAL RIGHTS  
AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS  
AND FUNDAMENTAL FREEDOMS**



Katarzyna Łasak

**SOCIAL, ECONOMIC AND CULTURAL RIGHTS  
AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS  
AND FUNDAMENTAL FREEDOMS**

Gdańsk University Press  
Gdańsk 2024

Reviewer  
prof. dr hab. Tadeusz Gadkowski

Proofreading  
Stephen Dersley

Technical Editor  
Katarzyna Ambroziak

Cover and Title Pages Design  
Weronika Dziurdziewicz

Typesetting and Page Layout  
Maksymilian Biniakiewicz

The book is financed by Vice-Rector for Research of the University of Gdańsk,  
Faculty of Law and Administration of the University of Gdańsk

© Copyright by Uniwersytet Gdański, 2024  
Wydawnictwo Uniwersytetu Gdańskiego

ISBN 978-83-8206-694-4

Gdańsk University Press  
ul. Armii Krajowej 119/121, 81-824 Sopot  
tel. +48 58 523 11 37, tel. kom. +48 725 991 206  
e-mail: [wydawnictwo@ug.edu.pl](mailto:wydawnictwo@ug.edu.pl)  
[wydawnictwo.ug.edu.pl](http://wydawnictwo.ug.edu.pl)

Online bookstore: [wydawnictwo.ug.edu.pl/sklep/](http://wydawnictwo.ug.edu.pl/sklep/)

Printed and bound by  
Zakład Poligrafii Uniwersytetu Gdańskiego  
ul. Armii Krajowej 119/121, 81-824 Sopot  
tel. +48 58 523 14 49

# TABLE OF CONTENTS



ABBREVIATIONS	9
---------------	---

INTRODUCTION	13
--------------	----

## PART I

### THE CONCEPTUAL SETTINGS FOR SOCIAL, ECONOMIC AND CULTURAL RIGHTS

#### CHAPTER 1

THE LEGAL AND EXTRA-LEGAL CONSIDERATIONS	23
--	----

1. The Principles of the Convention	23
-------------------------------------	----

2. The Trends in and Principles of Case Law	37
---	----

3. The Normative Construction of Social, Economic and Cultural Rights	49
---	----

3.1. The Right-Holder	50
-----------------------	----

3.2. The Duty-Bearer	53
----------------------	----

3.3. The Object (Content)	56
---------------------------	----

3.4. Implementation	60
---------------------	----

## PART II

### THE SCOPE OF SOCIAL, ECONOMIC AND CULTURAL RIGHTS

#### CHAPTER 2

THE SCOPE OF THE RIGHT TO WORK AND RIGHTS IN WORK	67
---	----

1. Employment-Related Rights	69
------------------------------	----

1.1. Freedom to Work	69
----------------------	----

1.2. Protecting Access to Employment	70
--------------------------------------	----

1.3. The Prohibition of Slavery, Servitude and Forced or Compulsory Labour	74
1.4. The Right to Employment Protection	81
2. Derivative Rights	87
2.1. The Right to a Fair Remuneration	87
2.2. The Right to Social Security	92
2.2.1. The Right to Social Security and the Right to a Fair Trial	94
2.2.2. The Right to Social Security and the Right to Respect for Private and Family Life	97
2.2.3. The Right to Social Security and the Right to Protection of Property	99
2.2.3.1. Social Security Benefits as a Category of Property	99
2.2.3.2. The Prohibition of Discrimination in the Enjoyment of Social Security Benefits as a Category of Property	103
2.2.3.3. Interference with the Use of Social Security Benefits as a Category of Property	106
3. Instrumental Rights	109
3.1. Freedom of Expression	110
3.2. Freedom of Assembly	114
3.3. Freedom of Association	117
3.4. The Right to Form and Join Trade Unions	119
CHAPTER 3	
THE SCOPE OF THE RIGHT TO HEALTH	125
1. The Admissibility of 'Claims' Concerning Health Protection	127
2. Deprivation of Liberty on Medical Grounds	132
3. Health Protection for Special Categories of People	136
4. The Environmental Aspect of Health	144
5. The Right to Information about Health	148
CHAPTER 4	
THE SCOPE OF THE RIGHT TO HOUSING	155
1. The Admissibility of a 'Claim' for Access to Housing	156
2. Protection of Access to Housing	160
2.1. The Prohibition of Discrimination	160
2.2. Interference in Order to Compensate for Social Inequalities	163
2.3. Forced Evictions – Justifications and the Scope of Interference	167
CHAPTER 5	
THE SCOPE OF THE RIGHT TO EDUCATION	175
1. Access to Education	176
2. Respect for the Religious and Philosophical Beliefs of Parents	182

---

PART III  
THE PROGRESS OF SOCIAL, ECONOMIC AND CULTURAL  
RIGHTS – AN ATTEMPT AT A SYNTHESIS

CHAPTER 6	
THE DEVELOPMENT OF IMPLICATIONS OF SOCIAL, ECONOMIC AND CULTURAL RIGHTS	193
1. An Evaluation of the Conceptualization of Social, Economic and Cultural Rights	194
2. The Assessment of Access to and Exercise of Social, Economic and Cultural Rights	212
2.1. The Competence of the ECtHR	212
2.2. Admissibility of Applications	220
2.3. The Evaluation of Remedial Measures for the Implementation of Social, Economic and Cultural Rights	227
2.3.1. Just Satisfaction	228
2.3.2. Individual Measures	229
2.3.3. General Measures	233
3. Evaluating the Legitimacy of the Implementation of Social, Economic and Cultural Rights	237
4. The Right to Environmental Protection – a Unique Example of the Developmental Implications of Social, Economic and Cultural Rights in the Convention	259
LIST OF CASES	269
BIBLIOGRAPHY	289
INDEX OF INTERNATIONAL DOCUMENTS	297





## ABBREVIATIONS



ABC	Dom Wydawniczy ABC (ABC Publishing)
BBIRE	Biuletyn Biura Informacji Rady Europy (Bulletin of Council of Europe Information Office)
BYIL	Baltic Yearbook of International Law
CE	Council of Europe
CEP	Council of Europe Publishing
CETS	Council of Europe Treaty Series
CHV	Carl Heymanns Verlag
CM	Committee of Ministers of the Council of Europe
Convention	Convention for the Protection of Human Rights and Fundamental Freedoms, 1950
CP	Clarendon Press
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CUP	Cambridge University Press
DV	Dike Verlag
ECnHR	European Commission on Human Rights
ECtHR	European Court of Human Rights
EHRLR	European Human Rights Law Review
EJIL	European Journal of International Law
EP	Instytut Wydawniczy EuroPrawo (EuroPrawo Publishing)
EPS	Europejski Przegląd Sądowy (European Judiciary Review)
ESC	European Social Charter
ETS	European Treaty Series

---

EU	European Union
FRUG	Fundacja Rozwoju Uniwersytetu Gdańskiego (Foundation for the Development of the University of Gdańsk)
GSP	Gdańskie Studia Prawnicze (Gdańsk Legal Studies)
GSP-PO	Gdańskie Studia Prawnicze – Przegląd Orzecznictwa (Gdańsk Law Studies – Case Law Review)
HFPC	Helsińska Fundacja Praw Człowieka (Helsinki Foundation for Human Rights)
HHR	Health and Human Rights
HLR	Harvard Law Review
HP	Hart Publishing
HRLJ	Human Rights Law Journal
HRLP	Human Rights Law and Practice
HRLR	Human Rights Law Review
HRQ	Human Rights Quarterly
HUP	Harvard University Press
ICESCR	International Covenant on Economic, Social and Cultural Rights of 1966
ILO	International Labour Organisation
KAP	Kluwer Academic Publishers
LCP	Law and Contemporary Problems
LN	Wydawnictwo Prawnicze Lexis Nexis (Lexis Nexis Publishers)
MNP	Martinus Nijhoff Publishers
MUP	Manchester University Press
NJIL	Nordic Journal of International Law
OAS	Organisation of American States
OJLS	Oxford Journal of Legal Studies
OUP	Oxford University Press
P-1	Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1952
P-4	Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, 1963
P-6	Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, 1983

---

P-7	Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1985
P-11	Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, 1994
P-12	Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 2000
P-13	Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances, 2002
P-14	Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, 2004
P-16	Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 2013
PCIJ	Permanent Court of International Justice
PiP	Państwo i Prawo (The State and the Law)
PULP	Pretoria University Law Press
PWN	Państwowe Wydawnictwo Naukowe (National Scientific Publishers)
RP	Radca Prawny (Legal Counsel. Scientific Gazettes)
RPEiS	Ruch Prawniczy Ekonomiczny i Socjologiczny (Poznań Journal of Law, Economics and Sociology)
RTDH	Revue Trimestrelle des Droits de l'Homme
SE	Studia Europejskie (Studies in European Affairs)
SMPFSM	Studia i Materiały Polskiej Fundacji Spraw Międzynarodowych (Studies and Materials of Polish Foundation for Legal Affairs)
Social rights	Social, economic and cultural rights
SP	Studia Prawnicze (Legal Studies)
TNOiK	Towarzystwo Naukowe Organizacji i Kierownictwa (Law Society for Organisation and Management)
TRNC	Turkish Republic of Northern Cyprus
TRPCiP	Toruński Rocznik Praw Człowieka i Pokoju (Toruń Yearbook of Human Rights and Peace)
UDHR	Universal Declaration of Human Rights
UNLP	University of North London Press
UNTS	United Nations Treaty Series
VCLT	Vienna Convention on the Law of Treaties, 1969

WAM	Wydawnictwo Adam Marszałek (Adam Marszałek Publishing)
WN UAM	Wydawnictwo Naukowe Uniwersytetu im. Adama Mickiewicza w Poznaniu (Adam Mickiewicz University Press)
WP	Wydawnictwo Prawnicze (Law Publishing)
WUMK	Wydawnictwo Uniwersytetu Mikołaja Kopernika (Mikołaj Kopernik University Press)
YPA	Yugoslav People's Army

# INTRODUCTION



Human rights violations do not occur in a vacuum. In many cases, human rights violations are not just irregularities in the functioning of systems or institutions which are generally viewed as acting rationally and properly. They should rather be considered as a logical consequence of systems built on injustice and inequality, which are consciously created and strengthened by the implementation of social, economic and general policies, and which concern the overall situation of the State<sup>1</sup>.

Under no circumstances should the discussion of human rights – if the discussion is to be in any way meaningful – be separated from the realities of everyday life, which involve people suffering persecution due to political beliefs, religious differences, race and cultural identity; people struggling to survive at the most elementary biological level because of high unemployment, the inefficiency of the social security system, inadequate medical care, and insufficient legal protection of the right to adequate housing.

The model of reality considered in the context of human rights should be the Rubik's cube, where omitting one component, regardless of whether it falls into categories of politics, economy, culture or social affairs, leads to distorted final conclusions, or prevents the achievement of the desired objective. In order to be understood, the definition, conception, establishment and exercise of human rights, which comprise part of human reality, remain entirely dependent on the will and ability of the people who create them.

---

<sup>1</sup> United Nations, Doc. E/CN.4/1488 of 31.12.1981, § 13.

In the average, contemporary European's view of reality, human rights constitute one of the main principles underlying the organization of society, as well as a more or less precisely defined common good. The value in question, which is currently designated by the term *human rights*, was not always defined in this way during the course of its development.

The concept of human rights does not exist in the Constitution of the International Labor Organization of 1919<sup>2</sup>, despite the fact that the reason this organization was created was the need to engage in their protection. Human rights developed in two ways: in national forums, and with the institutionalization of cooperation between States on the international level. Human rights were initially the rights of citizens, then the rights of all people. Before the League of Nations era came to an end, they were uniquely granted the status of subjective rights. In the early stages of development there were collective guarantees of human rights protection. At the beginning of World War II, beliefs about the objective scope of human rights crystallized. Legal regulations that were adopted during the inter-war period indicate that human rights guaranteed participation in political, civil, economic, social and cultural life. At the same time, the legal solutions introduced cannot be categorized from the perspective of the type of rights stipulated.

Europeans resumed the debate on human rights in 1945. The German and Soviet totalitarian state systems, united in their attempts to conquer the world, both emerged as a result of unimaginable social frustration caused by deep economic crisis and accompanying phenomena such as unemployment, poverty and rising crime, which affected every member of society to varying degrees. In the post-war period, the attitude that countries adopted with regard to human rights became a key indicator of the newly divided world, and a positive vision of the unity of nations based on the principle of their unconditional adherence to these rights was ruled out.

When gathered under the auspices of the Council of Europe (CE), Europe treated the Universal Declaration of Human Rights of 1948<sup>3</sup> (UDHR) as an intellectual impetus for the discussion of its own legal instruments concerning human rights. The debaters were fully aware that the organization's first and most important document – because of its function – must be legally binding.

---

<sup>2</sup> [https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO) [accessed: 25.07.2019].

<sup>3</sup> Z. Kędzia (ed.), *Prawa człowieka. Dokumenty*, Warszawa–Wrocław: Ossolineum, 1989, pp. 24–31.

Its substantive and procedural standards were to influence the quality of life of millions of people.

The fundamental principle underlying the conception of human rights was based on key assumptions concerning the relation between the individual and the state, and these formed the basis for creating a means of collectively observing the rights stipulated in the treaty. In fact, the substantive scope of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms<sup>4</sup> (the Convention) was a contentious issue. The full title of the treaty suggests that the ambition of its creators was to include human rights and fundamental freedoms in its content, without substantive categorization or specification of the number.

From the perspective of the community making up the society or the nation, all aspects of human life should be considered equally important and therefore fundamental. People simply want the freedom of parliamentary elections as well as the freedom to do business, to earn a living independently by doing freely-chosen work, to read a certain kind of newspaper, to raise children in their own religion, to study in their national language, and to have access to decent medical care. For human beings to function in a satisfactory manner, they require the opportunity to act in political, economic, social and cultural spheres.

However, the range and multidimensionality of areas of human existence may require an understanding of *fundamental* concepts, through the demarcation of which the importance of one need can be given priority over another. Accordingly, in the political sphere the certainty that a person will not face the death penalty for political activity is undoubtedly more important to them than the right to choose the head of state. In the economic sphere, the possibility of working for a fair wage has to be of the greatest importance, since this is necessary for satisfying the majority of other needs. Priority can be given to the need to combat hunger over solving housing problems. In the field of culture, people tend to want an education first and foremost, and only subsequently to participate in the cultural life of the country. Giving priority to the protection of the specific needs of an individual in the shape of human rights and freedoms results from the intent of the legislator.

It has to be acknowledged that an exhaustive enumeration of all the rights and freedoms necessary for Europeans would absorb many years of study, practice and negotiation, without much hope of success. A comprehensive approach to regulation was therefore abandoned, in favour of adopting a minimum, which

---

<sup>4</sup> European Treaty Series (ETS) No. 005.

consisted of several rights of fundamental importance for the democratic model of organizing societies, and which states could guarantee to all people in a short time<sup>5</sup>.

The third reason for the selection of human rights and freedoms included in the treaty was the urgent need for protection in the international order, given the circumstances of the time and place. The Convention, by virtue of its content, stipulates rights and freedoms in the language of politics, law and doctrine from 1966, and thus has an unquestionably political nature<sup>6</sup>. The view that the treaty does not provide for second generation human rights has become widespread. The social, economic and cultural dimensions of human life are protected by the social rights<sup>7</sup> enshrined in other instruments of international law, which are also adopted under the Council of Europe and national law.

Europe did not suppress its own economic, social and cultural heritage in the discussion concerning the original legal document in the field of human rights. Nevertheless, it was considered acceptable to postpone formulating the social needs of individuals in terms of human rights to a later time, and to support their development through weaker measures of control and pressure, despite the declared respect for the formal and moral value of the UDHR and, most importantly, to draw attention to the necessity of avoiding discrepancies between the European and the global legal orders that seemed to be outlined in the key document for discussion. This did not change the fact that in Europe, which was being rebuilt, social rights were considered, in both in the literal and ideological sense, as part of its organizational system. The European Social Charter (ESC) gave social gains that had mainly been developed in the national sphere the form of human rights belonging to the second generation.

The nature of changes in the economic doctrine that took place in the 1970s did not leave any doubts as to the radical nature of the changes that were yet to take place. The new economic trends have not only rocked the foundations of

---

<sup>5</sup> Conseil de l'Europe, *Cour Européenne des Droits de l'Homme, Travaux préparatoires de l'article 1er de la Convention européenne des Droits de l'Homme*, Strasbourg: CEP, 1977, pp. 9 and 21.

<sup>6</sup> See, for example, S. Bagshaw, *Protection of Human Rights in Europe: The Role of the European Convention on Human Rights*, London: UNLP, 1994.

<sup>7</sup> In this work, I use the term *social rights* not only as a term of juristic language, but also mainly as a term from the legal language used in the official version of the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR – United Nation, Treaty Series – UNTS, vol. 993, p. 3) and the European Social Charter of 1961 (ESC – ETS No. 035). At the same time, I acknowledge that the term encompasses economic, social and cultural rights as a whole.



the global and national economies, but have also threatened the validity of the concept of nation states.

The ESC has evolved too slowly in terms of formal guarantees to prevent the erosion of values protecting the social, economic and cultural dimensions of human existence. This led to the paradox that Europeans were unable to avail themselves of the vast jurisprudence related to the ESC in cases in which they were gradually denied the right to satisfy the basic social needs guaranteed by the regime of international law, but which were questioned in national law and practice.

The situation significantly deteriorated in the course of the following decades, when Europe entered a period of overall transformation: political, economic, social and cultural. The causes of the phenomenon could be found in Europe itself, but they have been intensified by global competition, economic liberalization and the development and dissemination of information technologies that have radically transformed the economic and social situation of each and every European.

The changes revealed the structural inefficiency of the economy, social susceptibility to their negative consequences, limited possibilities of state budgets to incur expenditures necessary for ensuring welfare for all social groups, and the lack of ability to build an environment conducive to individual entrepreneurs and thus create employment opportunities<sup>8</sup>. Factors independent of the will of individuals, and even those beyond the control of the public authorities, have transformed human civilization, changed the framework of the discussion, and forced re-evaluation of the implications of the previously adopted principles<sup>9</sup>.

The implementation of the Convention is also a platform for discussion concerning human rights in a changing world. This specific forum for the exchange of ideas and opinions can and should take into account new trends and views, and serve to test developing ideas and postulates in the context of the current principles defined in the text of the Convention and clarified in relation to its interpretation, thus contributing to the clarification of many issues, indicating directions for possible solutions through successive but continual modification of ways of employing human rights to protect the basic values of today's societies. How this results in acceptance – as well as the creation of new or forgotten concepts, being the result of awareness of the functioning of the Convention,

---

<sup>8</sup> International Labour Office, *Fifth European Regional Conference (Warsaw 1995)*, Report of the Director-General, Geneva: ILO, 1995, p. 6.

<sup>9</sup> International Labour Office, *Human Rights. A Common Responsibility*, Report of the Director-General, Geneva: ILO, 1998, pp. 13–14.

which in fact has certain evolving parameters, including in its social, economic and cultural aspects – is illustrated by the constantly evolving case law.

In the jurisprudence regarding the Convention, the interdependence of political, civil, social, economic and cultural values was considered paradigmatic. Acceptance of the feedback relationship necessarily led to the adoption of the thesis on the indivisibility of these values, thus significantly preceding the concept as it was to be expressed in the 1993 Vienna Declaration and Programme of Action<sup>10</sup>.

In the context outlined above, the present work engages in the discussion on social rights based on an analysis of the most representative judgments of the European Court of Human Rights (ECtHR). The work is divided into three parts, which thus determines its structure (Part I: The Conceptual Settings for Social, Economic and Cultural Rights; Part II: The Scope of Social, Economic and Cultural Rights; Part III: The Progress of Social, Economic and Cultural Rights – an Attempt at a Synthesis).

The overarching initial hypothesis of the study is the conviction that the protection of social rights as an indispensable and distinctive element of European civilisation, which is justified by and rooted in historical tradition. For moral, humanitarian, political, economic and social reasons, as an institution of law social rights must be constantly strengthened and developed, in a constant search for acceptable conceptual solutions. The process of improving the normative standard of social rights should take into account the realities of their application, contributing in the most effective way to improving the quality of life of individuals in practice. The initial assumptions of the study required the presentation in Part I of the meaning and principles of protection of social rights developed by the international community and the Council of Europe (CE), as well as the identification of the normative structure of social rights (Chapter I).

Part II provides an analysis of the directions of and methods for using the substantive provisions of the Convention and its additional protocols to grant protection to social rights. The methodology of analytical considerations has been subordinated to the catalogue of the basic social, economic and cultural needs of people protected by notional human rights instruments that are universally recognised in international law and doctrine. At the same time, this catalogue was contrasted with and adapted to the structure of substantive guarantees and the jurisprudence developed as a result of their implementation, which included decisions concerning rights considered to be social in their essence and provided

---

<sup>10</sup> A/CONF.157/23.

for in the Convention, and which included some elements of social rights provided for in other acts of international law – ones which are generally considered to only concern second-generation human rights. Accordingly, Part II of the study discusses: the right to work and rights related to work (Chapter 2), the right to health (Chapter 3), the right to adequate housing (Chapter 4), and the right to education (Chapter 5).

An analysis of the case law made in Part II enables assessment of the actual, real dynamics of social rights in the Convention in the last part of the study, in both conceptual terms and with regard to execution. The synthesis of analytical material, which is the essence of Part III, is complemented by considerations concerning the legitimacy and possibility of the process of adjudicating social rights under the Convention (Chapter 6).

The present work mainly uses the jurisprudence of the ECtHR, drawing on both judgments and decisions on the admissibility of applications, which by negating specific ‘claims’<sup>11</sup> set the principles for the interpretation of the Convention with regard to social rights. The study also takes into account the case law of the European Commission on Human Rights (ECnHR) to the extent that it reflects the initial trends in the interpretation of the Convention in the field of social rights, and this case law is contrasted with ECtHR decisions if there is a different understanding of the issue under consideration. Due to the vast scope of the case law, the factual circumstances are summarised, yet at the same time enough detail is provided to explain the essence of the issue. The source database of the study is supplemented by documents of universal and regional international organizations, including the jurisprudence of international human rights control bodies. Doctrinal studies were also used in the work.

---

<sup>11</sup> In this work, the term *claim* is used in a broader sense than as a category of private law. In international law, it is permissible to use the term as covering demands, applications or requests to supervisory bodies, which concern various aspects of human rights in the legal and public sphere.