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The European Committee of Social Rights as a Monitoring Body in the System of the European Social Charter¹

Introduction

International human rights law is the field of international law which has undergone the greatest developments in the past few decades. Not only is it a field that has emerged relatively recently, but it is also marked by its distinctiveness among other fields of international law. This field of international law abounds in *self-executing* rights, i.e. those applicable directly to individuals. Such rights undoubtedly set new trends for future developments with regard to who are the subjects of international law. In no other field of international law is the status of an individual as high as in international human rights law. It empowers individuals to invoke their rights before international authorities, including judicial bodies. The way to achieve this is through the right to formulate and submit complaints against a state that violates its obligations under treaties it is signatory to.

The development of international human rights law has taken place over a relatively short period of time, albeit in a very dynamic manner. The current landscape of international human rights law has been shaped in the course of particularly large-scale international cooperation, on both the global and regional level, between states and numerous international organisations. Such cooperation resulted in building up a very extensive system of international human rights law encompassing both universal and regional regulations. The former ones were adopted and are in place within the framework of the United Nations, whereas the latter – within the framework of other international authorities which are regional in their outreach. The universal vs. regional distinction in relation to international human rights protection occurs naturally. Regional regulations naturally reflect the international cooperation for international human rights protection, hence supplementing and enhancing the regulations set out in universal treaties. Regional regulations can undoubt-

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edly be better tailored to the specific political, economic and social conditions of particular geographic regions, due to their individual characteristics. Moreover, it is easier to create a more effective legal and monitoring system within the bounds of a geographic region due to the naturally occurring collective interests and cultural legacy. Finally, we need to consider the fact that the international community is deeply divided. Therefore, the collective interests of a regional community are the driving force for more dynamic developments of law in these areas of cooperation which are prioritised by countries in each geographic region. In view of this, it needs to be noted that the regional systems of human rights protection in the field of international human rights law have played a very important role and will continue to do so in the future. In practice, the protection of fundamental rights and freedoms appears to be even stronger in particular regional systems within the framework of international human rights law. The *acquis* of the Council of Europe is the best example of such detailed regional treaty regulations within the framework of international human rights protection. This article discusses the part of the Council of Europe's *acquis* which relates to the monitoring role of the European Committee of Social Rights.

The Council of Europe's *acquis* comprises more than 200 conventions. Those relating to international human rights law are of particular importance. The most crucially important of these is undoubtedly the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.² This convention, along with its additional protocols, which were undoubtedly inspired by the provisions of the Universal Declaration of Human Rights, constitutes the most advanced system of regional protection of human rights. This system is equipped with effective international monitoring mechanisms, including judicial procedures in the European Court of Human Rights.³ These procedures will not be discussed in this article, though. The Council of Europe's *acquis* with respect to the so-called second-generation human rights as well the monitoring mechanisms will be discussed at length. This body of law is referred to as the system of the European Social Charter and consists in particular of the two following Council of Europe conventions: the European Social Charter and the Revised European Social Charter. The European Social Charter was signed in Turin on October 18, 1961. It came into force on February 26, 1965.⁴ Currently 27 member states of the Council of Europe are parties to the Charter.⁵ Poland ratified the Charter on June 25, 1997, and it came into force in Poland on July 25, 1997.⁶ The Revised European Social Charter was signed in Strasbourg on May 3, 1996 and came into force on July 1, 1997.⁷ Currently 34 member states of the Council of Europe are parties to the

2 European Treaty Series ("ETS") no. 005.

3 M. A. Nowicki, *Wokół Konwencji Europejskiej*, Warszawa 2009.

4 ETS no. 035.

5 Treaty Office of the Council of Europe, <http://www.coe.int/en/web/conventions>.

6 ETS no. 035. Analysis of the provisions of the Charter, vid. e.g. A. Świątkowski, *Prawo socjalne Rady Europy*, Kraków 2006, pp. 12 et seq.

7 ETS no. 163.

Revised Charter.⁸ Poland has not ratified it so far. Two additional protocols and one amending protocol also form part of the system of the European Social Charter: the Additional Protocol of May 5, 1988, which came into force on September 4, 1992,⁹ and which was adopted following the earlier adoption of the Declaration on Human Rights by the Council of Europe on April 27, 1978,¹⁰ the Additional Protocol of November 9, 1995, which came into force on July 1, 1998,¹¹; and the Protocol amending the European Social Charter of October 21, 1991, which coincided with the 30th anniversary of signing of the Charter.¹² There are also 4 important conventions drafted and adopted by the Council of Europe which also form part of the system of the European Social Charter: the European Code of Social Security of April 16, 1964¹³, drafted in cooperation with the International Labour Organization, revised on November 6, 1990¹⁴; the European Convention on Social Security of December 14, 1972¹⁵; the European Convention on Social and Medical Assistance of December 11, 1953¹⁶; and the European Convention on the Legal Status of Migrant Workers of November 24, 1977.¹⁷ The system of the European Social Charter provides for a particular monitoring system in which the European Committee of Social Rights plays a crucial role.

The European Committee of Social Rights as a Specific Human Rights Treaty Body

The effective application of the legal regulations of international human rights law depends to a large extent on the effectiveness of the monitoring system provided therein. In general, universal treaties on international human rights law provide for two monitoring systems. The first one of these, referred to as the political system, is based on the

8 Treaty Office of the Council of Europe, <http://www.coe.int/en/web/conventions>.

9 ETS no. 128.

10 A. Świątkowski, *Karty Społeczne Rady Europy*, "Państwo i Prawo" 2003, no. 8, p. 38. Currently 13 member states of the Council of Europe are parties to the Protocol. Poland has not yet ratified the Protocol.

11 ETS no. 158. Currently 13 states are parties to the protocol. Poland has not yet ratified the Protocol.

12 ETS no. 142. This protocol has not come into force yet. 23 states parties of the European Social Charter are parties to the Protocol. In accordance with art. 8, it will come into force only once it has been ratified by all states parties to the Charter. Poland ratified the Protocol on June 25, 1997.

13 ETS no. 048. The protocol came into force on March 17, 1968. Poland is not party to the protocol.

14 ETS no. 139. The Protocol has not come into force yet. Poland is not party to the protocol.

15 ETS no. 078 Convention came into force on March 1, 1977. Poland is not party to the Convention.

16 ETS no. 014. The Convention came into force on July 1, 1954. Poland is not party to the Convention.

17 ETS no. 093. The Convention came into force on May 1, 1983. Poland is not party to the Convention.

United Nations Charter. In this system the United Nations Human Rights Council has been the monitoring body since 2006, replacing the United Nations Commission on Human Rights (established in 1946), both being subsidiary bodies of the UN General Assembly.¹⁸ The second system, known as the treaty system, is composed of monitoring bodies established in the universal treaties adopted within the United Nations framework.¹⁹ This system operates within the framework of the two International Covenants of Human Rights (ICCPR and ICESCR) as well as other international human rights treaties.²⁰ In this system it is the specific treaty bodies that serve the monitoring function.

In the European Council system, which constitutes a European regional system of international human rights protection, there are monitoring bodies that in their nature can be considered as “treaty bodies”. It should be noted, however, that the monitoring bodies established in the two above-mentioned major Council of Europe conventions are very distinct from each other.

The Convention for the Protection of Human Rights and Fundamental Freedoms, which is the most fundamental Council of Europe treaty with regard to international human rights law, has developed its own specific monitoring system, which is very effective. According to the original provisions of the Convention, the monitoring functions were exercised by three institutions, namely: the European Commission on Human Rights established in 1954, the European Court of Human Rights established in 1959, and the Committee of Ministers of the Council of Europe. This monitoring system was significantly changed under the provisions of Protocol 11 concerning the transformation of the monitoring mechanisms established by the Convention. It was signed on May 11, 1994, and came into force on November 1, 1998.²¹ Poland ratified this Protocol on May 20, 1997. Most importantly, the Protocol abolished the European Commission of Human Rights and reformed the European Court of Human Rights, which had hitherto not been a permanent court, into a full-time institution. The evolution of the Convention’s monitoring system also triggered a change in the role of the Committee of the Council of Ministers in the monitoring process.²² Currently in the system of the Convention the European Court of Human Rights is a treaty body. Protocol 14 and Protocol

18 A/RES/60/251.

19 R. Wieruszewski, *ONZ-owski system ochrony praw człowieka*, in: *System ochrony praw człowieka*, B. Banaszak, A. Bisztyga, K. Complak, M. Jabłoński, R. Wieruszewski, K. Wójtowicz, Kraków 2005, pp. 61 et seq.

20 A. Gadowski, *Europejski Komitet Praw Społecznych w systemie organów traktatowych międzynarodowej ochrony praw człowieka*, “Adam Mickiewicz University Law Review” 2014, vol. 3, pp. 71 et seq.

21 ETS no. 155.

22 M. Balcerzak, *Procedury ochrony praw człowieka i kontroli wykonywania zobowiązań przez państwa*, in: *Prawa człowieka i ich ochrona*, B. Gronowska, T. Jasudowicz, M. Balcerzak, M. Lubiszewski, R. Mizerski, Toruń 2010, pp. 170 et seq.

14bis to the Convention introduced further changes to the claims processing system, especially with regard to the claims admissibility procedure. These protocols reformed the Convention's monitoring system to facilitate and simplify complaint processing.²³

It needs to be noted that the status of the ECHR is markedly different than that of other treaty bodies serving a monitoring function, both in the UN system and in the system of the European Social Charter. The ECHR is a judicial treaty body which handles two types of complaints: individual and inter-State complaints.²⁴ Art. 32 of the Convention defines the ECHR's jurisdiction, which is to hear and determine all cases related to interpretation and application of the Convention and its protocols, which are submitted to the ECHR in accordance with articles 33, 34 and 47. The complaint system and its functioning within the framework of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is the subject of extensive literature, will not be discussed in detail in this article.²⁵ It has been mentioned only in the context of the role of treaty bodies in the process of implementing international human rights law in the UN system, and of other treaty bodies in the system of the Council of Europe, in particular the European Committee of Social Rights.

The second fundamental normative regulation of the Council of Europe in the field of international human rights law is the European Social Charter. It also operates its own monitoring system which has evolved significantly. Its original monitoring system was set out in Part IV of the Charter of 1961. These provisions established a mechanism supervising the compliance with the Charter. They provided for the obligation of states to submit reports and defined the status of the Committee of Experts as a monitoring body. The Committee had to submit its findings with respect to its monitoring function on the application of the Charter's provisions to a special Governmental Social Committee, which in turn had to submit reports to the Council of Europe's Committee of Ministers, together with recommendations for states which in its view failed to comply with the provisions of the Charter. The Amending Protocol of 1991 reformed the Charter's supervisory machinery. The Protocol instituted a Committee of Independent Experts, a new treaty body granted the exclusive right to interpret and apply the provisions of the Charter. The protocol also granted the Committee the right to submit requests for

23 Protocol 14, signed on May 13, 2004, came into force on June 1, 2010. (ETS no. 194). Poland ratified the Protocol on October 12, 2006. Protocol 14 bis, signed on May 27, 2009, came into force on October 1, 2009. (ETS no. 204). Poland has not ratified it so far.

24 M. A. Nowicki, *Reforma systemu kontroli przestrzegania Europejskiej Konwencji Praw Człowieka*, *Biuletyn Centrum Europejskiego Uniwersytetu Warszawskiego* 1998, Nos. 3–4.

25 Examples of papers on the topic: A. Bisztyga, *Europejski system ochrony praw człowieka*, in: *Prawa i wolności obywatelskie w Konstytucji RP*, eds. B. Banaszak, A. Preisner, Warszawa 2002, pp. 810 et seq. and R. Hliwa, *Model ochrony praw człowieka w systemie Rady Europy. Mechanizmy Europejskiej Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności*, in: *Ochrona praw człowieka w świecie*, ed. L. Wiśniewski, Bydgoszcz-Poznań 2000, pp. 197 et seq.

relevant information directly to the authorities in the Contracting Parties. The Protocol also gave the Committee the right to hold meetings with representatives of the authorities of the Member States or regional groups from those countries. Moreover, national organisations which were members of the international organisations of employers and trade unions were invited to meetings of a sub-committee of the Governmental Social Committee. Furthermore, the Protocol diminished the role of the Parliamentary Assembly and other Council of Europe institutions in the process of supervising the application of the Charter.²⁶ In 1998 the Committee was renamed the European Committee of Social Rights,²⁷ which is its current name.

The most extensive reform of the supervisory machinery of the European Social Charter was introduced by the Additional Protocol of 1995 which provided for a system of collective complaints. It is worth noting that by introducing this mechanism, the Protocol granted the right of international organisations of employers and trade unions, as well as other international non-governmental organisations, to submit complaints alleging unsatisfactory application of the Charter by the Contracting states-parties to the Charter and Protocol. Such organisations are free to exercise this right should the state be non-compliant with the standards set out by the Charter.²⁸ Some authors emphasize that because the Committee was granted the right to examine collective complaints in a specially prescribed procedure, this subsequently means it was raised to the status of a quasi-judicial treaty body.²⁹ Part IV of the Revised European Social Charter sets out further regulations related to the monitoring system. Even though at the substantive-law level the Revised Charter is very novel, its monitoring system still makes use of the institutions and mechanisms established earlier, particularly in the 1961 Charter and the Additional Protocol of 1995.

In most general terms, the European Committee of Social Rights can be described as the counterpart of the Committee on Economic, Social and Cultural Rights in the system of the International Covenant on Economic, Social and Cultural Rights. Using a certain degree of simplification, it could also be said that due to its quasi-judicial functions it could be perceived as the counterpart of the European Court of Human Rights in the system of the Convention for the Protection of Human Rights and Fundamental Freedoms.

26 A. Świątkowski, *Karty Społeczne Rady Europy...*, op. cit., pp. 39–40.

27 Ibidem, p. 38.

28 A. Gadkowski, op. cit., pp. 71 et seq.

29 A. Brillat, *A New Protocol to the European Social Charter Providing for the Collective Complaints*, "European Human Rights Law Review" 1996, no. 1, pp. 52 et seq., M. Jager, *The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints*, "Leyden Journal of International Law" 1997, no. 10, pp. 69 et seq. and A. Świątkowski, *Quasi-jurysdykcyjna funkcja Komitetu Praw Społecznych Rady Europy*, "Państwo i Prawo" 2004, no. 9, pp. 46 et seq.

The most important functions of the European Committee of Social Rights are listed below. As a treaty body the Committee:

- supervises the compliance of Member States with the provisions of the treaties constituting the system of the European Social Charter; in this capacity the Committee sets out the European standards of labour law, social security and social policy;
- examines the reports prepared and submitted by Member States, decides whether the national regulations are compliant with the standards set out in the Charter; and then formulates conclusions which must be respected by the states, even if they are not directly enforceable; such conclusions are then submitted to the Governmental Committee, and finally to the Committee of Ministers of the Council of Europe;
- examines collective complaints lodged by entitled entities against states violating the obligations imposed on them by the European Social Charter, prepares final reports on specific complaints, on the basis of which the Committee of Ministers of the Council of Europe issues a relevant resolution or recommendation.

The fact that the Committee examines reports and reviews complaints makes it similar to other treaty bodies in the process of implementing international human rights law. The status of the Committee in relation to other treaty bodies is distinct, though. It acts as a quasi-judicial body whilst reviewing the collective complaints. However, this function does not yet warrant its classification as a judicial treaty body.

The Special Role of the European Committee of Social Rights in the Process of Reviewing Collective Complaints

In principle, the European Committee of Social Rights, as a treaty body in the European Council system of international protection of human rights, is not a judicial body. Therefore, it does not handle individual complaints regarding violations of treaty obligations by states-parties of the European Social Charter. The Committee is not composed of judges but a panel of 15 independent experts. The Committee's competence in reviewing collective complaints is crucial for understanding its special role as a monitoring body in the system of the European Social Charter.

In the monitoring systems under specific international human rights law treaties, complaints may be lodged with both judicial treaty bodies and non-judicial treaty bodies. In the UN system there is a clear distinction between two types of complaints: individual and inter-State complaints. A similar distinction can be found in the monitoring system of the Council of Europe within the framework of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In this context, it should be emphasized that the monitoring system of the European Social Charter is significantly different than these standard solutions. This is due to the fact that Art. 1 of the 1995 Additional Protocol granted the following organisations the right to submit collective complaints: international organizations of employers and trade unions referred to in paragraph 2 of Article 27 of the Charter; other international non-governmental organizations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee; representative national organizations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.

Such complaints may be submitted in the event of alleged unsatisfactory fulfilment of treaty obligations related to social rights by the Contracting Parties. This clearly defines collective complaints against the backdrop of the standard distinction between individual and inter-State complaints, because the *locus standi* of entities entitled to submit collective complaints is markedly different than in the case of individual and inter-State complaints. Moreover, the Committee notifies the international organisations of employers and trade unions, specified in Art. 27 of the European Social Charter, through the Secretary General of the Council of Europe, about the proceedings in order to enable them to submit their observations on the matter. This implies that they may serve as *amici curiae* in particular cases. Despite the fact that such collective complaints are not lodged by states, the features described above liken them to *actio popularis*, which in turn is characteristic of inter-State complaints and not individual ones.³⁰ Collective complaints may be lodged in the common interest of all people and not only in the interest of employees or other insured entities under the authority of a state-party in the system of the European Social Charter. Therefore, as pointed out by A. Świątkowski, collective complaints may be lodged to protect the interests and rights of a specific group of individuals, and not individuals on their own.³¹

In principle, The European Committee of Social Rights is not a judicial treaty body. However, as can be seen in the rules governing the procedure of handling collective complaints, in practice its competence is that of a quasi-judicial body. The collective complaints proceedings before the Committee are adversarial. Pursuant to Art. 7 of the 1995 Additional Protocol, both parties are required to submit their claims in writing, substantiated by evidence supporting their allegations included both in the complaint itself and in the response to the complaint. The European Committee of Social Rights issues decisions which terminate the proceedings. They must be respected by the States concerned; however, they are not enforceable in the domestic legal system. In practice, this means that when the Committee rules that the situation in a country is not in

30 J. M. Belorgey, *La Charte sociale en pratique: la jurisprudence du Comité européen des Droits sociaux*, "Revista Europea de Derechos Fundamentales" 2009, no. 13, pp. 245 et seq.

31 A. Świątkowski, *Prawo socjalne Rady Europy...*, op. cit., pp. 255–256.

compliance with the Charter system, the complainant organisation cannot require the Committee's decision to be enforced in domestic law as would be the case with a ruling by a court in the State concerned. The decisions are declaratory, which means that they set out the law. On this basis, national authorities are required to take measures to give them effect under domestic law.³² The collective complaints procedure has undoubtedly strengthened the role of the social partners and non-governmental organisations by enabling them to directly apply to the Committee for rulings on possible non-implementation of the Charter in the countries concerned, namely those States which have accepted its provisions and the complaints procedure.

Other characteristics of collective complaints in the European Social Charter system are equally interesting. Collective complaints may be lodged even if the case is pending with another authority or has already been decided by another authority (*res iudicata*); none of these grounds constitute a formal obstacle to lodging a collective complaint with the Committee. The rule of *ne bis in idem*, according to which no legal action can be instituted twice for the same cause, also does not apply in the collective complaints procedure. For example, complaints about violations of freedom of association are examined both by the Committee on Freedom of Association of the International Labour Association and the European Committee of Social Rights. In view of this, the fact that an organisation has lodged a complaint with one of the monitoring bodies does not preclude its right to seek interpretation and legal opinion on the compliance of domestic collective labour law with the regulations of ILO Convention no. 87 of June 17, 1948 on Freedom of Association and Protection of the Right to Organise, as well as with the provisions of the European Social Charter and its system.³³ Similarly, examination of the case by the European Committee of Social Rights as part of its reporting procedure does not preclude the right to lodge a complaint on the same matter to the Committee by entitled entities.³⁴ In addition, there is no limitation period for submitting a complaint. What is also an interesting feature of collective complaints is that they can be lodged without domestic remedies having been exhausted, i.e. the principle of subsidiarity does not need to be satisfied.³⁵

The above-mentioned characteristics of collective complaints and some of the procedural rules which govern the handling of such complaints indicate that to a certain extent the European Committee of Social Rights, being a treaty body within the frame-

32 *Collective Complaints Procedure*, Council of Europe, Strasbourg 2016, p. 5, www.coe.int.

33 UNTS vol. 1218, p. 87.

34 A. Świątkowski, *Prawo socjalne Rady Europy...*, op. cit., pp. 256 et seq.

35 A. Gadkowski, *Charakterystyka quasi-sądowych funkcji Europejskiego Komitetu Praw Społecznych w procesie rozpatrywania skarg zbiorowych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2016, vol. LXXVIII (3), pp. 42 et seq.

work of the European Social Charter, acts as a quasi-judicial body as it is competent in reviewing collective complaints and setting out the relevant procedures therefor.

Concluding Remarks

The European Social Charter, or rather the treaties which constitute the Charter system, are distinct from other international human rights treaties. One of the distinguishing elements of the European Social Charter system is the fact that it operates its own special monitoring mechanism overseeing the application of the treaty provisions. The European Committee of Social Rights is undoubtedly the most important monitoring body in the European Social Charter system. On the one hand, the Committee is one of numerous treaty bodies which operate both in the universal system of international protection of human rights and in regional systems. Similar to other treaty bodies, the Committee serves the traditional monitoring function. In this capacity its main task is to examine the reports of states-parties of the Charter. However, its position within the system is special as it reviews collective complaints which is an important monitoring instrument. In the preamble to the 1995 Additional Protocol, which introduced collective complaints to the monitoring system of the European Social Charter, collective complaints are defined as “new measures to improve the effective enforcement of the social rights guaranteed by the Charter”. In addition, their role was to strengthen the participation of management, labour and non-governmental organizations in the monitoring system of the European Social Charter. Ever since the collective complaints procedure was established more than 20 years ago, it has grown to be one of the most important mechanisms in the monitoring system of the European Social Charter.

Over the period from 1998 to 2016, 140 collective complaints were lodged with the European Committee of Social Rights. The Committee handed down 221 decisions as follows: 112 decisions on admissibility including 5 decisions on inadmissibility, 94 decisions on the merits, 8 decisions on both admissibility and the merits, 5 decisions on immediate measures including 1 decision on admissibility and immediate measures and 2 decisions to strike out a complaint. 21 new complaints were lodged in 2016. During the seven sessions it held in 2016, the European Committee of Social Rights adopted 5 decisions on the merits, 3 on admissibility and 3 on both admissibility and the merits.³⁶

Despite the prevailing positive opinion about the monitoring system of the European Social Charter, including the collective complaints procedure of the European Committee of Social Rights, the system does have certain drawbacks. Most notably, only 13 countries have ratified the 1995 Additional Protocol, which is not a significant num-

³⁶ *European Committee of Social Rights Activity Report 2016*, Council of Europe, Strasbourg 2017, p. 19.

ber compared to the total number of Contracting Parties to the Charter and the Revised Charter. Therefore, it appears natural to postulate that the subjective scope of the 1995 Additional Protocol is extended. This will not be easy to implement, given that in the last six years no member state of the Council of Europe has ratified this document. Some countries explicitly declare their lack of interest in ratifying the Protocol. At the same time, they emphasize that in their opinion collective complaints are not very effective in practice. It has also been proposed that the role of the European Committee of Social Rights and the Committee of Ministers of the European Council in the monitoring process should be strengthened, and similarly this postulate will be a difficult one to implement.

Due to various reasons, especially political ones, it is not always possible to satisfy the rational demands related to the need for the state to ratify a specific international agreement. For many years there has been an ongoing discussion on the need for Poland to ratify the 1995 Additional Protocol.³⁷ Authors discussing this issue often quote the following opinion of the Polish Ministry of Foreign Affairs: “Poland has not ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints because the provisions of the Charter are interpreted too broadly by the European Committee of Social Rights which means that a monitoring body engages in law-making. Moreover, we need to take into account the possible financial ramifications of implementing the Committee’s decisions. The hesitant attitude is due to the past instances of the Committee, being a monitoring body, treating the scope of the complaint in a flexible manner, which enables it to issue a decision regardless of the initial subject of the complaint”.³⁸

Literature

- Balcerzak M., *Procedury ochrony praw człowieka i kontroli wykonywania zobowiązań przez państwa*, in: *Prawa człowieka i ich ochrona*, Gronowska B., Jasudowicz T., Balcerzak M., Lubiszewski M., Mizerski R., Toruń 2010.
- Belorgey J. M., *La Charte sociale en pratique: la jurisprudence du Comité européen des Droits sociaux*, “Revista Europea de Derechos Fundamentales” 2009, no. 13.
- Bisztyga A., *Europejski system ochrony praw człowieka*, in: *Prawa i wolności obywatelskie w Konstytucji RP*, eds. Banaszak B., Preisner A., Warszawa 2002.

37 K. Sękowska-Kozłowska, R. Wieruszewski, *Zaległości ratyfikacyjne Polski w dziedzinie praw człowieka*, „Europejski Przegląd Sądowy” 2013, no. 3, pp. 4 et seq.

38 A. Bodnar, A. Płoszka, *Polska a mechanizmy międzynarodowej kontroli praw gospodarczych, społecznych i kulturalnych, praw dziecka oraz praw osób z niepełnosprawnościami*, “Kwartalnik o Prawach Człowieka” 2014, no. 4 (12), pp. 20–21.

- Bodnar A., Płoszka A., *Polska a mechanizmy międzynarodowej kontroli praw gospodarczych, społecznych i kulturalnych, praw dziecka oraz praw osób z niepełnosprawnościami*, "Kwartalnik o Prawach Człowieka" 2014, no. 4 (12).
- Brillat A., *A New Protocol to the European Social Charter Providing for the Collective Complaints*, "European Human Rights Law Review" 1996, no. 1.
- Gadkowski A., *Charakterystyka quasi-sądowych funkcji Europejskiego Komitetu Praw Społecznych w procesie rozpatrywania skarg zbiorowych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2016, vol. LXXVIII (3).
- Gadkowski A., *Europejski Komitet Praw Społecznych w systemie organów traktatowych międzynarodowej ochrony praw człowieka*, "Adam Mickiewicz University Law Review" 2014, vol. 3.
- Hliwa R., *Model ochrony praw człowieka w systemie Rady Europy. Mechanizmy Europejskiej Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności*, in: *Ochrona praw człowieka w świecie*, ed. Wiśniewski L., Bydgoszcz-Poznań 2000.
- Jager M., *The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints*, "Leyden Journal of International Law" 1997, no. 10.
- Nowicki M. A., *Reforma systemu kontroli przestrzegania Europejskiej Konwencji Praw Człowieka*, Biuletyn Centrum Europejskiego Uniwersytetu Warszawskiego 1998.
- Nowicki M. A., *Wokół Konwencji Europejskiej*, Warszawa 2009.
- Sękowska-Kozłowska K., Wieruszewski R., *Zaległości ratyfikacyjne Polski w dziedzinie praw człowieka*, "Europejski Przegląd Sądowy" 2013, no. 3.
- Świątkowski A., *Karty Społeczne Rady Europy*, "Państwo i Prawo" 2003, no. 8.
- Świątkowski A., *Prawo socjalne Rady Europy*, Kraków 2006.
- Świątkowski A., *Quasi-jurysdykcyjna funkcja Komitetu Praw Społecznych Rady Europy*, "Państwo i Prawo" 2004, no. 9.
- Wieruszewski R., *ONZ-owski system ochrony praw człowieka*, in: *System ochrony praw człowieka*, Banaszak B., Bisztyga A., Complak K., Jabłoński M., Wieruszewski R., Wójtowicz K., Kraków 2005.
- Collective Complaints Procedure*, Council of Europe, Strasbourg 2016.
- European Committee of Social Rights Activity Report 2016*, Council of Europe, Strasbourg 2017.

SUMMARY

The European Committee of Social Rights as a Monitoring Body in the System of the European Social Charter

The aim of this article is to present the European Committee of Social Rights as a monitoring treaty body in the system of the European Social Charter. The author pays particular attention to the mechanism of collective complaints, which was introduced to the Charter's supervisory system on the basis of the 1995 Additional Protocol. In the author's opinion, on the basis of the competence of the European Committee of Social Rights to hear collective complaints, it is arguable that this important treaty body in the system of the European Social Charter performs the function of a quasi-judicial organ in the monitoring process, which distinguishes it from other treaty bodies in the field of the international protection of human rights.

Keywords: international protection of human rights, human rights treaty bodies, European Social Charter system, European Committee of Social Rights, collective complaints

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