PREFACE

Human rights are among the most important guarantees of how individuals function in the modern world. When looking for a clear and concise definition of this concept, it can be stated that it is a concept that concerns protecting individuals and groups against the possibility of abuse by authority.[1] The development of the above-mentioned concept is directly related to the development of cooperation between states through their participation in public international organizations. On the other hand, membership of an international organization implies the necessity to adopt international obligations that modify to a certain extent the internal legal system of a member state.

Participation in international organizations related to the protection of human rights allowed the international community to develop minimum thresholds for safe relations between the state and an individual, which were referred to as "minimum standards".[2] These standards, as norms of international law, are formulated in treaties[3] adopted at the universal (UN) and regional (e.g. Council of Europe, European Union) levels.

A review of international human rights treaties proves that they are joined not only by democratic states with a high degree of the rule of law, but also by states with repressive regimes. Therefore, it is easy to mistakenly believe that the issue of human rights protection is a priority for modern states, even when the overall assessment of their legislation and current policies made through the prism of the rule of law and democracy is low.

Therefore, the doctrine of international law rightly states that signing a treaty is not the correct criterion against which to judge a country's commitment to the protection of human rights. It is indicated that a valuable result can be obtained only when the act of treaty ratification is adopted as the evaluation criterion, be-

[1] Cf. M.A. FREEMAN, *Prawa człowieka*, Warszawa 2007, p. 46, 55.

[2] Ibid.

[3] A treaty means an international agreement between States concluded in writing and governed by international law, whether contained in one document or in two or more documents, and irrespective of its particular denomination (art. 53 of the 1969 Vienna Convention on the Law of Treaties; UNTS vol. 1155, p. 331).

cause it is ratification that determines the formal acceptance of treaty norms by the state.[4] Failure to ratify means that the state is not a party to the treaty, and consequently its provisions are not legally binding for this state. As a result, a treaty is irrelevant to the protection of human rights in the legal system of a given state if it was "only" signed, which in fact should be treated only as a form of non-binding support for the treaty. However, it points out that the ratification of the human rights treaty does not always fully reflect the scope of its protection. The obligations arising from the treaty may be seriously weakened if, by ratifying the treaty, the state raises its reservations. In the doctrine of international law, a reservation is equated with a *veto* function, which deprives larger or smaller parts of a treaty of binding force. At the same time, there is a discussion as to the legality of submitting reservations, which are assessed as "a form of routine security against the necessity to fulfil treaty obligations".[5] The number and subject of reservations is currently such a serious problem that it is becoming more and more common to control the legality of the reservations raised by relevant international bodies.[6]

In addition to the treaties, non-binding *soft law* measures also play an important role in the human rights protection system. The diverse content and form of individual instruments means that each of them has a separate meaning and, despite its seemingly non-binding nature, performs important functions, e.g. makes the subject of a legally non-binding act attract the attention of the international public or initiates a common expectation of conduct by the international community consistent with its content. Far-reaching effects also result from the control mechanisms that are activated in the field of human rights protection through non-binding legal means.

The achievements of international tribunals, in particular the ECtHR and I / ACtHR, are also factors of significant importance for the shape of the contemporary human rights protection system. The jurisprudence of both of these courts significantly contributes to the specification of minimum standards determining the level of human rights protection.

This study presents all of the above-mentioned factors shaping the contemporary system of human rights protection, but it does so to a limited extent. The boundary for the discussed considerations is determined by the special status of a person who is in pre-trial or trial detention, or after a criminal trial, performs a penalty of imprisonment or other isolation measure.

In the following chapters, the authors analyse human rights treaties, the jurisprudence of international tribunals and *soft law* instruments, as well as discuss the

[4] C.M. WADE, *Hard and Soft Commitments to Human Rights Treaties 1966–2001*, Sociological Forum, Vol. 24, No. 3, September 2009, p. 564.

[5] Ibid.

[6] W. CZAPLIŃSKI, A. WYROZUMSKA, *Prawo międzynarodowe publiczne. Zagadnienia systemowe*, Warszawa 2004, p. 429.

functioning of selected bodies whose activities are fully or partially related to the protection of human rights. The remarks formulated here focus primarily on the issue of ensuring optimal conditions for respecting human dignity, in particular, the humane manner of executing the penalty of imprisonment and the prohibition of torture. Against this background, efforts are made to demonstrate faulty and positive regulations.