MASARYK UNIVERSITY
FACULTY OF LAW

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MAKING SENSE OF HUMAN RIGHTS COMMITMENTS:

A STUDY OF TWO EMERGING EUROPEAN DEMOCRACIES

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LIST OF ABBREVIATIONS

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CC	Constitutional Court
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CR	Czech Republic
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSFR	Czech and Slovak Federal Republic
CSR	Czechoslovak Socialist Republic
ECE	European Convention on Extradition
ECHR	European Convention of Human Rights
ECPR	European Consortium for Political Research
ECtHR	European Court of Human Rights
ECTS	European Credit Transfer and Accumulation System
EU	European Union
HR	Human Rights
HZDS	Movement for Democratic Slovakia
ICC	International Criminal Court

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
MOOC	Massive open online course
MPs	Members of Parliament
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
SAC	Supreme Administrative Court
SC	Supreme Court
SR	Slovak Republic
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN GA	United Nations General Assembly
US	The United States
USSR	Union of Soviet Socialist Republics

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This book marks the culmination of a four-year project which started out in a very typically Czech way – in a pub over a beer. A dynamic mix of (at that time) young and enthusiastic lawyers, social scientists, and a statistician with fresh experiences from Berkeley and Oxford involving an interdisciplinary way of approaching research puzzles was discussing the thorny question as to why states adopt international human rights treaties. Soon, we recognized that the question deserves more attention than just a shallow debate based on anecdotes. The matter called for systematic analysis of a substantial data set. With a certain level of satisfaction, we discovered that not only does our underlying question remain unresolved in the Czech Republic and Slovakia, it in fact continues to occupy the minds of a number of scholars worldwide.

When writing the grant application to the Czech Science Foundation, we had not the faintest idea how much work would lie ahead. Thanks to the generous grant, we were able to devote a part of our working time to collecting data, their analysis, and finally presentations of our endeavour at various venues which long have excelled in research on law and politics. The feedback we received has been invaluable through the entire endeavour of disentangling those factors shaping the enigma of what motivates states to commit to international human rights obligations.

Great methodological advice and tools were provided by courses at the European Consortium for Political Research (ECPR) school in methods examining case studies, mixed methods, and Atlas.ti. These courses were conducted under the excellent guidance of Ingo Rohlfing, Max Bergman, and Johannes Starkbaum, respectively.

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Ní Ghráinne). The critical evaluations we received at these events motivated us to make our method more transparent and the arguments more persuasive. Often, we have come to realize that what we take for granted and assume to be applicable worldwide has surprising variations even in our closest neighbourhood.

Our appreciation extends also to the Czech Republic and Slovakia's highest judicial institutions (the Constitutional Court, Supreme Court, and Supreme Administrative Court of the Czech Republic and the Slovak Constitutional Court) and their staffs. Two of the authors work in or closely cooperate with these courts, and this enabled them to study from inside the practical application of human rights treaties in their everyday activities. Particular acknowledgements are due to Tereza Franková and Ľubomír Majerčík from the Czech Constitutional Court, Jan Petrov from the Czech Supreme Administrative Court, and Ján Štiavnický from the Slovak Constitutional Court for their invaluable help in collecting case law and expert advice.

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1 The authors continued to make adjustments, additions and corrections in the book's text right up to publication. Therefore, some changes were made after the general editing had been completed. Any and all linguistic errors which may as a consequence have found their way into the text of course remain solely the responsibility of the authors.

1 INTRODUCTION

What motivates states to commit to international human rights treaties remains a much-debated question in political and legal science. Many tentative explanations for the observed variation in signature and ratification patterns have been proposed. Some are based on the content of the treaties (the substance of the protected rights and the control mechanism), some focus on the characteristics of the states making a commitment, while others are tied to external factors (having originated either from pressure from the international community or within the domestic political system). Empirical evidence supporting the proposed hypotheses remains nevertheless rather scarce, and overall knowledge about the reasons for signing and ratifying treaties is inconclusive. We aim to contribute to this scholarly discussion by providing a new and thorough examination of the commitment practice in two post-communist countries – the Czech Republic and Slovakia – and in their non-democratic and transitioning predecessors. While both countries have experienced very similar international development propelled by the same international incentives and constraints, their internal political experiences differ significantly.

Writings on international human rights treaties have long been dominated by legal scholars. Countless books and articles have emerged with commentary on the content, interpretation, and application of international human rights treaties' provisions. Social scientists with their specific non-legal questions and methods more intimately discovered the field only in the past decade. It comes as no surprise that the most frequent and influential texts have originated in the United States, where social science approaches to law have a much longer and more developed tradition than in continental Europe (which is just slowly catching up).[2] The walls between disciplines

2 Cane, Peter, and Herbert Kritzer. Introduction. In *The Oxford Handbook of Empirical Legal Research,* edited by Peter Cane, and Herbert Kritzer. Oxford: Oxford UP, 2010, pp. 1–2. A quick look at the matrix of institutions is also telling – while American centres of socio–legal research have decades-long traditions (see e.g. the Center for the Study of Law and Society at UC Berkeley founded in 1961) and likewise local journals (Law & Society Review was founded in 1966), and the United Kingdom caught up quickly (the Oxford Centre for Socio–Legal Studies and the Journal of Law and Society were established in the 1970s), continental Europe has been lagging.

of law and various social sciences are still high and resilient in continental Europe, and more systematic empirical approaches to research of legal institutions remain exceptional. This is probably connected with the much more flexible and open legal education in the United States, where students generally continue with their three-year legal degree only after graduating from a four-year undergraduate programme not necessarily related to law. American legal scholars can more easily utilize different approaches to the topic of research beyond the purely legal in nature, because they often have a background in a different discipline or at least experienced a general undergraduate programme in a US university. On the other hand, European continental systems of legal education continue to be built upon exclusively legal study programmes in which graduates spend five years without going very far beyond the boundaries of law. Most legal scholars in Europe are still trained by a doctrinal approach which, unlike studies in the United States, does not bother to improve its functioning with infusion of social science.[3] It is therefore no surprise that continental European legal research has remained more bounded and doctrinal.[4] As already implied, the situation is changing only slowly. Nevertheless, interesting interdisciplinary projects on law have begun to appear in the past decade.[5]

3 Van Gestel, Rob, and Hans-Wolfgang Micklitz. Why Methods Matter in European Legal Scholarship. *European Law Journal*, Vol. 20, No. 3, 2014, p. 294.

4 New books on legal methodology provide a good illustration. For example, Jan Smits calls for rediscovery of the legal approach to the law and posits that legal science is primarily formed by the question of how the law *ought* to read (see Smits, Jan M. *The Mind and Method of the Legal Academic*. Cheltenham: Edward Elgar Publishing, 2012, pp. 7 and 35). Even a single individual can have doubts about the *ought-to* question, and so the debate quickly becomes complex as more people enter into the debate. At the polar opposite extreme is *An Introduction to Empirical Legal Research*, by Lee Epstein and Andrew Martin (Oxford: Oxford UP, 2014). This is a lively and accessible guide to legal research which contains many illustrative examples, but, with regard to the analysis of data, it covers only the most-used quantitative methods and completely omits qualitative approaches. Short overviews of both approaches are provided in *The Oxford Handbook of Empirical Legal Research*, edited by Peter Cane and Herbert Kritzer (Oxford: Oxford UP, 2012), and in *Research Methods for Law*, edited by Mike McConville and Wing Hong Chui (Edinburgh: Edinburgh UP, 2007).

5 See e.g. the big projects on courts established in Scandinavian countries – PluriCourts in Oslo and iCourts in Copenhagen. Many interesting papers are also presented annually within the Section Law, Courts and Judicial Politics at the General Conference of the European Consortium for Political Research (ECPR).

Only in the new millennium did there begin to flourish perspectives not solely legal in nature on commitments to human rights treaties. Nevertheless, the majority of contributions are still to be found in academic journals; the number of books elaborating upon the issue of why states take on international human rights obligations remains limited and these rarely are based upon any systematic empirical analysis. Moreover, only scarcely does the phenomenon of adopting international human rights obligations appear by itself. Much more frequently, it is incorporated as a subtopic in a much broader research aim covering human rights more in general. Rational choice accounts of human rights commitments constitute an influential branch of research, as reflected in the work of Andrew Guzman (*How International Law Works*)[6] and Eric Posner (*The Limits of International Law*, [with Jack Goldsmith],[7] *Perils of Global Legalism*,[8] or *The Twilight of Human Rights Law*[9]). The constructivist school has also contributed substantially, namely from Kathryn Sikkink (*The Justice Cascade*),[10] Ryan Goodman and Derek Jinks (*Socializing States*),[11] and the edited volumes by Thomas Risse et al. (*The Persistent Power of Human Rights*).[12] Elements of both approaches are combined in works by Beth Simmons (*Mobilizing for Human Rights*)[13] and Emilie Hafner-Burton (*Making Human Rights a Reality*).[14]

The book *Making Sense of Human Rights Commitments: A Study of Two Emerging European Democracies* contributes to the flourishing field of Law and Politics with its complex elaboration on the research puzzle of adopting international human rights commitments. This will be described in detail in Chapter

6 Guzman, Andrew. *How International Law Works*. Oxford: Oxford UP, 2008.

7 Goldsmith, Jack L., and Eric A. Posner. *The Limits of International Law*. Oxford: Oxford UP, 2005.

8 Posner, Eric A. *The Perils of Global Legalism*. Chicago, IL: University of Chicago Press, 2009.

9 Posner, Eric A. *The Twilight of Human Rights Law*. New York, NY: Oxford UP, 2014.

10 Sikkink, Kathryn. *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*. New York, NY: WW Norton & Company, 2011.

11 Goodman, Ryan, and Derek Jinks. *Socializing States: Promoting Human Rights through International Law*. New York, NY: Oxford UP, 2013.

12 Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink (eds.). *The Persistent Power of Human Rights: From Commitment to Compliance*. New York, NY: Cambridge UP, 2013.

13 Simmons, Beth A. *Mobilizing for Human Rights: International Law and Domestic Politics*. Cambridge: Cambridge UP, 2009.

14 Hafner-Burton, Emilie. *Making Human Rights a Reality*. Princeton, NJ: Princeton UP, 2013.

2. Our project takes an approach different from that of the most influential empirical works on the adoption of human rights treaties (see especially the book of Beth Simmons, *Mobilizing for Human Rights*[15] and articles of Oona Hathaway[16]). Instead of examining data from many countries and a few most-important treaties, we concentrate only on one and sometimes two countries and include into the data set many more human rights treaties. We also examine more closely the process of committing to the selected treaties. Such a strategy should contribute to deeper understanding as to why states take on international human rights commitments.

We build on the expertise of our author team, thereby joining scholars trained in law, political science, international relations, and social science methodology. Moreover, the contributors have practical experience with international human rights treaties and close contact with present-day political and judicial reality as transmitted through their positions at the Constitutional Court (Ivo Pospíšil – Secretary General of the Court, Petr Kilian – clerk), the Supreme Court (Katarína Šipulová – former head of the analytical unit of the Court), or the Government's Council for Human Rights (Hubert Smekal – member of the Council). In addition to the mix of theoretical and practical insights and the combination of legal and political science perspectives, we employ both quantitative and qualitative methods in order to convey a multidimensional picture of the Czech and Slovak practice of committing to international human rights treaties. Manifold times and in every phase of the research, it has been apparent that the multidisciplinary composition of our team is a hugely valuable asset. For example, at first sight the technical legal issue of reservations in relation to the international treaties can easily slip under the radar of a political scientist who is simply unaware of the huge consequences such a reservation might have. Not including reservations into the research design might have greatly distorted the ultimate findings.

15 Simmons, *Mobilizing for Human Rights*.

16 Hathaway, Oona A. Do Human Rights Treaties Make a Difference? *Yale Law Journal*, Vol. 111, No. 8, 2002, pp. 1935–2042; Hathaway, Oona A. Why Do Countries Commit to Human Rights Treaties? *Journal of Conflict Resolution*, Vol. 51, No. 4, 2007, pp. 588–621; Hathaway, Oona A. Between Power and Principle: An Integrated Theory of International Law. *The University of Chicago Law Review*, Vol. 72, No. 2, 2005, pp. 469–536; Hathaway, Oona A. The Cost of Commitment. *Stanford Law Review*, Vol. 55, No. 4, 2003, pp. 1821–1862.

1.1 Case Selection

Until recently, legal scholars have given very little consideration to the issue of case selection. Among the few exceptions are Ran Hirschl for comparative constitutional law[17] and Katerina Linos for international law.[18] Both Hirschl and Linos draw inferences for their legal research from more general social science literature on case studies which has developed dramatically in the decade since the classic book *Studies and Theory Development in the Social Sciences* was published by Alexander L. George and Andrew Bennett *Case* in 2005.[19] Modern case studies seek to step outside the bounds of describing the specific case and through elaboration of that case to contribute to the more general knowledge. The selection of proper cases plays a crucial role if generalization from one case to a larger set of cases is to be accomplished successfully.

The selection of the Czech Republic and Slovakia as cases for study does not completely conform with the canon of case-study theory, but it nevertheless brings many positives. The choice of the Czech Republic and Slovakia (as well as of Czechoslovakia) has been driven by both theoritical consideration and pragmatically by our expertise in the subject of the study and by the availability of data. Fortunately, the Czech Republic and Slovakia at the same time present excellent material for a comparative study. As regime type is considered one of the most important variables in any research on making international human rights commitments, the two states, due to their specific historical experience, offer great study material. They have experienced three types of regime: totalitarian regime, democratic, transition and democracy. Moreover, they formed the joint state of Czechoslovakia for seven decades. One important clarification is needed: Although our project on 'International Human Rights Obligations of the Czech Republic: Trends, Practice, Causes and Consequences' unsurprisingly focuses more

17 Hirschl, Ran. The Question of Case selection in Comparative Constitutional Law. *The American Journal of Comparative Law*, Vol. 53, No. 1, 2005, pp. 125–155.

18 Linos, Katerina. How to Select and Develop International Law Case Studies: Lessons from Comparative Law and Comparative Politics. *The American Journal of International Law*, Vol. 109, No. 3, 2015, pp. 475–485.

19 George, Alexander L., and Andrew Bennett. *Case Studies and Theory Development in the Social Sciences*. Cambridge, MA: MIT Press, 2005.

strongly on the Czech Republic than on Slovakia, bringing Slovakia into the analysis as well yields huge benefits for the research design. We can observe if two countries with very similar socio-economic characteristics are going to develop similarly in terms of signing and ratifying human rights conventions. Therefore, we use Slovakia after the peaceful dissolution of Czechoslovakia (31 December 1992) as a case for comparison with the Czech Republic where it seems useful to do so (see also more information below).

Moreover, according to Goertz and Mahoney, renowned authors in the field of methodology, the qualitative culture permits selection of a case regarding which the researchers have excellent knowledge. The selection is further justified when the case can be regarded as substantively important, representing a case resembling an 'ideal type'.[20] Therefore, based on multiple sources of legitimation, we consider our case selection to be fully justifiable.

With both the Czech Republic and Slovakia having long common history, legal system, and the same long-term foreign policy goals, sharing accession to the EU as one of their top foreign policy priorities, the core of our empirical research focuses on theories emphasizing the internal factors (content of the treaty and domestic political settings) to provide potential explanations for the commitment practice of states. The comparative set-up helps us to ascertain the conditions under which governments are most prone to committing to HR treaties, specifically seeking relations between the ideological position of governments and HR commitments.

The Czech Republic and Slovakia stand as ideal candidates for studies searching for similar cases in terms of their shared basis of international treaties. Czechoslovakia was established in 1918 and the two countries shared a common fate since that time (with a short intermezzo during World War II) through the four post-war decades under a communist regime which collapsed in November 1989. Czechoslovakia, as the Czech and Slovak Federal Republic (CSFR), then experienced more than three years in a democratizing regime which endeavoured to establish itself in the international arena also by committing itself to human rights treaties. On 1 January 1993, after

20 Goertz, Gary, and James Mahoney. *A Tale of Two Cultures: Qualitative and Quantitative Research in the Social Sciences*. Princeton, NJ: Princeton UP, 2012, pp. 184–185.

strong calls for national self-determination resurged during the democratization process, the federation split into two independent states, the Czech Republic and Slovakia. Approximately seven decades of common history put the two new states at the same starting line as regards their international commitments and domestic legal systems. In the short period between 1993 and 1998, the Slovak regime changed under the government of Prime Minister Mečiar, slowly moving towards a semi-authoritarian system, characterized by severe restrictions on political rights, the suppression of opposition, censorship of the media, economic scandals, and corruption. At the end of 1998, Mečiar's government fell due to worsening economic problems and external pressure (especially unsuccessful pre-accession talks with the EU and NATO). After 1998, Slovakia fully reoriented its foreign policy towards integration into the Western structures. In December 2002, both states successfully concluded their pre-accession negotiations with the EU and they joined the organization in May 2004.

1.2 Generalization

The modern approach to case-study research does not conform to the long-held views that case studies can only be idiographic and do not allow generalization beyond the studied case.[21] Although it is certainly true that a well-designed case study itself contributes most to the knowledge about the particular case, it also can be a useful means for learning about a more general phenomenon – in our case, international human rights commitments.[22] According to John Gerring, the case study is an intensive study of a single unit for the purpose of understanding a larger class of (similar) units.[23] Jack Levy stresses that reasons such as intrinsic interest or historical importance

21 Still, there are numerous problems connected to the generalizability. See e.g. Lieberson, Stanley. Small N's and Big Conclusions: an Examination of the Reasoning in Comparative Studies Based on a Small Number of Cases. *Social Forces*, Vol. 70, No. 2, 1991, pp. 307–320; Rueschemeyer, Dietrich. Can one or a few cases yield theoretical gains? In *Comparative historical analysis in the social sciences,* edited by James Mahoney, and Dietrich Rueschemeyer. Cambridge: Cambridge UP, 2003, pp. 305–336.

22 For more on case studies, see: George, and Bennett. *Case Studies and Theory Development in the Social Sciences*.

23 Gerring, John. What Is a Case Study and What Is It Good for? *American Political Science Review*, Vol. 98, No. 2, 2004, p. 342.

are no longer acceptable criteria for case selection, which shall instead be justified in terms of theoretical criteria.[24] An important question for our project consequently arises: to what extent can Czechoslovakia, or later the Czech Republic, serve as representative of some larger group of states? During the socialist times (1948–1989), key internal and external policy decisions of Central European countries, including of Czechoslovakia, were dominated by guidelines from the Soviet Union and did not differ much one from one another. After the fall of the Iron Curtain in 1989, the same set of countries, i.e. Poland and Hungary, but additionally also the three Baltic (former Soviet) republics and Slovenia turned away from their former power centres and reoriented their course to the Western structures. Widely termed a 'return to Europe',[25] this included prospects for joining what was then still known as the European Communities and NATO while also adopting a new value framework of the state with reference to individual rights, liberal democracy, and rule of law. Newly independent states of the former socialist bloc started to cooperate through their own institutions, such as the Central European Initiative or the Visegrád Group, but they also began collaborating with Western institutions like the Council of Europe which set considerably less stringent membership requirements than did the European Communities and NATO. Therefore, early post-socialist Czechoslovakia and the newly democratized Czech Republic followed a similar developmental trajectory as did several other Central and Eastern European states.

In order to gain some precision, the comparison of the Czech Republic with Slovakia is being made to observe if two very similar countries follow the same, or at least very similar, patterns of committing to international human rights treaties. If not, what have been the reasons for the differences? The issue is still novel, and the case of the Czech Republic is not

24 Levy, Jack S. Case Studies: Types, Designs, and Logics of Inference. *Conflict Management and Peace Science*, Vol. 25, No. 1, 2008, p. 7.

25 The term 'return to Europe' was widely used especially by Czech dissident-turned-president Václav Havel. See e.g. his speeches to the Polish Sejm and to a joint session of the U.S. Congress (Havel, Václav. *Speech in the Polish Parliament (Sejm)*. Warszawa, 25 January 1990, http://www.visegradgroup.eu/the-visegrad-book/havel-vaclav-speech-in; Havel, Václav. *Speech in A Joint Session of the U.S. Congress*. Washington, D.C., 21 February 1990, http://vaclavhavel.cz/showtrans.php?cat=projevy & val=322_aj_projevy.html & typ=HTML).

much elaborated in the international scholarship. Therefore, in our opinion, the Czech case would be interesting even as only a descriptive exercise. Our project sets higher goals, however, and aims to achieve causal inference.[26] In the individual chapters we are asking *Why?* questions and introduce more in detail the methods used for answering them, including process tracing, comparative analysis, and advanced quantitative methods.

1.3 Theoretical and Methodological Issues

Especially since the turn of the millennium, both empirical and theoretical research on international human rights commitments have appeared in sufficient quantity. That means any new enterprise on a related topic has some base upon which to build. Our project takes a deeper look into existing theories on adoption of international human rights commitments and tests them on the cases of the Czech Republic and Slovakia and their predecessor. Throughout the course of the project, we made many observations and developed hunches about some recurring patterns which we were then able to followed through upon more closely. Our findings connected to the subjects under study can therefore serve as a basis for formulating new hypotheses. As this was a four-year project, our ideas developed progressively. Therefore, we did not stick with pure theory-testing as the methodological orthodoxy might prod us. Rather, we developed our own ideas based upon analysing more deeply clues observed in the data. To an extent, therefore, our book not only presents testing but also constitutes in part an exploratory enterprise.

The book's unifying aspect consists in answering the broad question: Why do states adopt international human rights commitments? Individual chapters then cover particular aspects of the general inquiry using methods specifically corresponding to the component research questions (see section 1.5 for examples of the questions we are posing). Our research steps into the debate on the reasons why states make human rights commitments, but in fact it deals more precisely with the question as to what are the factors influencing the decision of a state to make such commitments? A mix

26 Gerring, *What Is a Case Study?* p. 347.

of qualitative and quantitative methods has been employed, with quantitative methods serving both the purpose of providing the main instrument for explanation and as a preliminary sketch of the terrain from which we then picked individual cases due to their specific characteristics in order to examine them more in detail. We seek to employ mixed methods not merely as a collection and analysis of two types of data but also by integrating the two approaches through various phases of research.[27] Thereby, the use of mixed methods can yield usable results which transcend the limits of mono-methods research. Mixed methods research and design can cross-validate or complement individual findings and fuse different strands of knowledge, skills, and disciplines.[28] Combining qualitative and quantitative methods in our project does not mean pure triangulation,[29] but rather it produces an impetus for sequencing of the research with quantitative analysis providing an overview of the field and the qualitative approach then providing insights (e.g. into typical or deviant cases). Employing both approaches ensures that we will not fail to see the forest for the trees, as it were, even as we will be able to describe in greater detail not only the most common, but also the most interesting trees.

1.4 Terminology

Our study works with a set of 192 human rights treaties associated with the League of Nations, United Nations (UN), Council of Europe (CoE), International Labour Organisation (ILO), and a few other autonomous

27 Tashakkori, Abbas, and John W. Creswell. Editorial: The New Era of Mixed Methods. *Journal of Mixed Methods Research*, Vol. 1, No. 1, 2007, pp. 3–4; Tashakkori, Abbas, and Charles Teddlie. *Mixed Methodology: Combining Qualitative and Quantitative Approaches*. Thousand Oaks, CA: Sage, 1998, pp. 51–58.

28 Bergman, Manfred Max. The politics, fashions, and conventions of research methods. *Journal of Mixed Methods Research*, Vol. 5, No. 2, 2011, pp. 99–102; Bergman, Manfred Max. The Good, the Bad, and the Ugly in Mixed Methods Research and Design. *Journal of Mixed Methods Research*, Vol. 5, No. 4, 2011, pp. 274–275; Creswell, John W. et al. Advanced mixed methods research designs. In *Handbook of Mixed Methods in Social and Behavioral Research,* edited by Abbas Tashakkori, and Charles Teddlie. Thousand Oaks, CA: Sage Publication, 2003, pp. 211–213.

29 For the discussion of the use of the term and proposal to rethink it, see Denzin, Norman K. Triangulation 2.0. *Journal of Mixed Methods Research*, Vol. 6, No. 2, 2012, pp. 80–88. See also Bergman, *The Good, the Bad, and the Ugly*, p. 272.

treaties.[30] We conceive a human rights treaty broadly: out of the whole collection of the aforementioned treaty regimes, we define as a human rights treaty any multilateral treaty encompassing provisions tied to human rights protection.

Figure 1.1 Definition of a human rights treaty.

A human rights treaty is herein defined as any multilateral international treaty which contains provisions explicitly inferring human rights on individuals. This broad understanding means that our definition includes large catalogues containing lists of human rights as well as treaties regulating the execution or procedural aspects of a particular human right.

Source: Authors

Typically, a human rights treaty stipulates an entitlement to an individual. Acknowledging deep differences within our treaty set, we further categorize the treaties based on the degree, or 'intensity' of their 'human rights content', which is to say we differentiate treaties depending on the extent and intensity of human rights provisions they contain. The European Convention of Human Rights surely cannot be viewed the same as an international treaty which includes only one human rights provision of just marginal importance. Moreover, we expect states to behave differently towards large conventions declaring the existence of human rights, which leave the form of their protection to the states' discretion, and towards treaties regulating compliance in much detail, leaving the Government a limited margin of appreciation only. Depending on their 'human rightness', we therefore developed three categories of human rights treaties, and double-checked if the results apply also only to the most human rights-intensive category (i.e. to the most important human rights treaties). Treaties with highest human rights intensity include treaties whose main focus lies with human

30 The EU Charter of Fundamental Rights, although clearly a human rights treaty, was intentionally not included in the data set. In contrast to other human rights international treaties, the Charter binds primarily the European Union, its institutions and states only when they are implementing Union law: in other words, its provisions are not generally applicable. Furthermore, the form of the negotiation and ratification process is too different from other international human rights treaties, making the mutual comparison of ‚commitment decisions' and incentives almost impossible.

rights. Mid-intensity means that human rights are not a main part of a treaty which covers also other issues. The lowest human rights intensity signifies that a treaty contains only few human rights provisions, typically regulating procedural and technical aspects of an execution of one particular human right or area of human rights protection.[31] Once again, an indicator that a provision of a treaty can be identified as a 'human rights' provision is either that it deals with some good directly in connection to an individual or it deals with procedural issues connected to such a provision.

The crucial term 'commitment practice' encompasses several separate acts leading to a final decision by a state to be bound by treaty's provisions. States differ quite widely in procedures for becoming a party to an international treaty, and the actual process depends on the practice in a particular country. We therefore borrow the general definition of a 'commitment' from Beth Simmons, who understands it as the making of an explicit, public, and law-like promise by public authorities to act within particular boundaries in their relationships with individual persons.[32] Treaties are then understood as especially clear statements of intended behaviour. Legal commitments are broadly accepted as obligatory and in some polities are legally enforceable.[33]

The 'commitment practice' includes two most important separate acts: signature and ratification,[34] both of which signify clear intention of a state in relation to a treaty. Nevertheless, it remains important to distinguish signature and ratification because of their consequences as well as the different sets of actors involved. The signature part of the process sees the Government as the main actor which in the international arena signals the intention to become a party to the treaty. But then it has to secure

31 For illustration of categorization of the treaties according to their human rights content (i.e., intensity of human rights content): High intensity category includes, for example, the Convention for the Protection of Human Rights and Fundamental Freedoms, or International Covenant on Civil and Political Rights; Medium intensity includes European Convention on Transfrontier Television, or European Convention on Extradition; and category Low intensity includes Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, or Night Work Convention.

32 Simmons. *Mobilizing for Human Rights*, p. 7.

33 Ibid.

34 For other relevant procedures of commitments, such as accession and succession, we treat the act of submitting a treaty to the Parliament as equivalent to the act of signature.

approval in the national political arena. Ratification stands as an act of final commitment and a deliberate decision of a state as a whole to bind itself by the treaty, apply it, and respect its effects. In order to become fully binding for a state, international human rights treaties must be ratified. To provide an illustrative example based on countries under our study, both in the Czech Republic and Slovakia a human rights treaty is typically ratified by the President after approval by the Parliament in a simple majority voting. Especially in bicameral parliamentary systems, all governments must seek support among other actors to obtain parliamentary approval and then must also secure the President's signature. A specific position is held by both constitutional courts, which are endowed with the authority to decide ex ante on the compatibility of an international treaty with domestic constitutional provisions and even to block the ratification. Nevertheless, this review has never been used in the case of an international human rights treaty in either the Czech Republic or Slovakia . Clearly, the whole process of committing to an international human rights treaty includes many actors and highly institutionalized procedures.

Importantly, our project, with its inclusion of more stages of the process, differs from usual legal writings. Whereas the legal research typically focuses on ratifications and subsequent interpretation of treaties and their provisions, our project deals also with the signatures. We consider the time of signing a crucial political decision of commitment.[35] Moreover, there is evidence for both the Czech Republic and Slovakia that once a treaty is signed the probability that it will be ratified is very high (see Chapter 8). For these reasons, commitment includes both signatures as the expression of political will made exclusively by the Government to become bound by the treaty and ratifications as the expression of the Parliament and the President to give the treaty a binding effect. On the other hand, the life of the treaty after its ratification is not the main element of this book. In contrast to legal

35 Furthermore, it is worth clarifying that depending on the type of treaty, the formal act of the Government as a key decision-maker in the first phase of the process might take the form of either signature, or submission for parliamentary debate and ratification without previous signature. This second term ('submission') is relevant for treaties to which a state accedes, i.e. treaties already in force and no longer opened for signature. It is also used for treaties entering the ratification process for the second (or subsequent) time due to its previous rejection by the Parliament.

research, we do not concentrate so intensively on the effects of treaties, on possible interpretations of their provisions, or on the activities and case law of the bodies created to supervise compliance with the treaty. These topics, although given some coverage in the book, are candidates for another complex analysis, as they constitute a bounded set of problems which can be tackled on its own.[36] Individual chapters develop various issues and focus on different aspects of adopting international human rights commitments. Therefore, we will always specify which element of commitment-making is being addressed.

To sum up basics on the crucial terms: international human rights commitments encompass signatures and ratifications of given human rights treaties. A signature remains a political decision entirely in the hands of the Government and typically constitutes the first step leading later to ratification. Signature does not translate into explicit positive legal obligations, but it does signify the intention of the state to become bound by the treaty in the near future (i.e. to ratify the treaty).[37] The Government stands as a key agenda-setter, while the ratification is largely in the hands of the Parliament. After passing through the Parliament and acquiring the signature of the President, a treaty can come into the effect for the country (see more in Chapter 8).

Further classification of human rights treaties and the collection of metadata was inspired by previous research on international human rights commitments which identified several independent variables as potentially influential for the decision of a state to sign or ratify such a treaty. The research state of the art is introduced further in the literature review chapter (Chapter 2). Specifically, we coded the strength of the control mechanism, intensity of its human rights content, and generations of human rights[38] covered by the treaties. Our coding therefore captures the extent to which a treaty deals with human rights, what its content is about, and how the substantial

36 These issues are covered by another project (entitled *Beyond Compliance*) in which a part of our team also participates.

37 Aust, Anthony. *Modern Treaty Law and Practice*, 3rd ed. Cambridge: Cambridge UP, 2013, pp. 89–90.

38 See Tomuschat, Christian. *Human Rights: Between Idealism and Realism*, 3rd ed. Oxford: Oxford UP, 2014, pp. 25–68.

provisions are protected in the sense of the extent to which an international treaty regime has the potential to influence practice of the parties to the treaty.

We know that the coding is not without controversies. For example, a vast literature criticizes the classification of rights according to generations.[39] Notwithstanding the difficulties with clear delineation as to generation of rights, we still believe that the list of human rights does not comprise one undistinguishable mass of rights. Rather, certain similarities and dissimilarities can be observed among them and which make classification according to generations meaningful. We are helped here not only with a literature but also by international treaties themselves (especially the two UN International Covenants), which provide important indications for how to code. In our study, the first-generation rights include civil and political rights; the second economic, social, and cultural rights; and the third collective-developmental rights. The fourth generation includes group human rights (e.g. rights of children, women, etc.) and is combined with the previous three generations.[40] If a treaty includes representatives of all generations of rights, then it is coded as a treaty with the presence of all four generations of rights.

It makes a difference when a treaty contains only a list of human rights without any oversight mechanism versus when states decide to endow a treaty with an international court to check compliance with its provisions. There is a continuum, however, extending between the two poles of no supervision versus an international court, and we capture that by our coding. Treaty regimes regularly contain the obligation on the side of states

39 For a good overview on the general concept of generations of human rights and its criticism see e.g. Tomuschat, *Human Rights: Between Idealism and Realism*, pp. 136–154.

40 We admit that such a categorization of human rights generations is not widely accepted. Nevertheless, we sought to distinguish the original conception of individual human rights belonging to everyone because they are a human being from the rights stemming from one's belonging to a certain group. Some states might, for example, be particularly disapproving of the rights of women and if we did not have a special category covering the fourth generation of rights, we could not capture this. For a discussion of different conceptions of group rights, see Jones, Peter. Human rights, group rights, and peoples' rights. *Human Rights Quarterly,* Vol. 21, No. 1, 1999, pp. 80–107. It should also be noted that by introducing a category for the fourth generation we do not lose information about the other human rights generations covered by the treaty, e.g. voting rights of women fall under both the first generation and the fourth generation of human rights.

parties to it to report on progress towards fulfilment of the treaty's goals. Alternatively, such an evaluation can be made by an international body. A more advanced means of supervision includes an international body which resolves actual disputes and sometimes can deal with complaints from individuals.

To summarize the basic information provided so far, the project includes a dataset of 192 international human rights treaties adopted by the Leagues of Nations, the UN, the CoE, the ILO, and a few autonomous treaties upon which the Czech Republic and Slovakia and their predecessors acted, or could have acted. The time frame covers the period starting with the creation of independent Czechoslovakia in 1918 and follows with the period of socialist Czechoslovakia from 1948 until 1989. The democratizing federation (1989–1992) was then replaced by two young democracies – the Czech Republic and Slovakia – whose political actors signed (governments) and most often also ratified (parliaments and presidents) international human rights treaties. Based on existing theories and empirical studies and on our own observations, we identify a set of independent variables whose influence on the dependent variable – the act of international human rights commitment (or non-commitment) – we shall assess.

The question of international human rights commitments – of signatures and ratifications – permeates the entire book, and therefore we briefly sketch out notes on basic terminology already here. Other more specific terminological (and methodological) issues will be clarified when dealing with a particular issue within a given chapter.

1.5 Book Contents

The book consists of three parts which connect the global theoretical and empirical context with the case study of the Czech Republic and Slovakia. The first part on general trends in international human rights commitments (Chapters 2 and 3) introduces the most important previous research in the field and provides an overall empirical picture regarding the numbers of signatures and ratifications of human rights treaties worldwide. We sketch the global trends in human rights commitments in relation to the crucial

variables identified by previous research. In this respect, Chapter 3 serves as an introductive probe study into commitment patterns and it introduces the differences in the behaviour of various political regimes over time and geographic space.

The second part of the book develops these findings further in an in-depth analysis of commitment patterns of a small set of countries. Using several methodologies and from various perspectives, we analyse the commitment practice of the Czech Republic, Slovakia and their predecessors. The key issue of the book concerns the phase of adoption of human rights commitments.

Compliance with a treaty and its implementation constitute the focus of the third part of this book. When political actors make decisions on human rights commitments they closely consider how these commitments will be applied in practice. The consequences of signing and ratifying a treaty differ from state to state, depending to a large extent on the practice of domestic courts. Therefore, in the third part, we examine how Czech and Slovak constitutional and apex courts refer to human rights treaties in their case law. We further explore the idea that a part of the explanation of why domestic courts use human rights treaties increasingly frequently may lie in more space being devoted to human rights in the curricula of the Czech and Slovak law schools. The third part of the book therefore concludes with a study of the representation of the international human rights law in university education. Below, we introduce the individual chapters more in detail.

This introduction is followed by an overview as to the present state of the knowledge on adopting international human rights commitments (see Chapter 2). We present findings of both theoretical and empirical accounts which deal with the big question 'Why do states commit to human rights treaties?'. We then categorize these and identify possible problematic issues and blank points on the research map. As noted above, we draw upon previous works also in identifying the core independent variables potentially relevant in the practice of human rights commitments (e.g. political regime types, foreign policy motivations, the number of states which already have ratified the treaty, the treaty's control mechanism, the treaty's content, its consistency with domestic policy and practice, as well as reservations).

Intuitively, the relationship between type of political regime and international human rights commitments practice is the most promising for inquiry. Despite a straightforward hunch that international human rights treaties are adopted virtually automatically by liberal democracies, because the content of such treaties corresponds with their value orientation, many examples confirm that also illiberal undemocratic countries show willingness to participate in a human rights regime (see Chapter 3). On the other hand, not all liberal democracies stand out in adopting international human rights treaties. We make use of the history of the Czech Republic and Slovakia, which experienced both illiberal undemocratic and liberal democratic regimes and naturally also the transitory phase between the two, to further explore this puzzle.

As recognized in various venues where we have presented our research, the reality of adopting international human rights commitments differs rather substantially among countries all over the world, and therefore a basic overview is provided as to the political and legal realities of adopting international treaties in Czechoslovakia, the Czech Republic, and Slovakia. Moreover, the main actors and procedures and their developments will be described in Chapter 4.

Communist Czechoslovakia committed to a variety of international human rights treaties. Given the problematic track records of communist countries, particularly with regards to the first generation of rights (civil and political rights), we seek to find the main reasons for signing and ratifying international human rights treaties. The main questions of the chapter are as follows: Why did a non-democratic country make international human rights commitments? Was it to raise its international reputation? Or were such actions perceived as sincere commitments undertaken as a part of an effort to improve the human-rights situation in the country? How did the state choose which treaties to sign and to ratify? Did a given treaty's control mechanism play a role? Were reservations greatly used to soften obligations following from the commitment?

After the Velvet Revolution in November 1989, both the masses and the newly established elites called for a speedy 'return to Europe', to Western rights, liberties, and economic prosperity. Were these calls reflected in a higher

rate of international human rights commitments? If so, which treaties were signed and possibly ratified first (and therefore considered to have the greatest importance)? We presume that the first-generation treaties would take priority over economic, social, and cultural rights inasmuch as these cover the civil and political rights which were most scarce under the practice of communist regimes. Similarly, which were the most widely used arguments for taking on international human rights commitments?

The creation of two new states – the Czech Republic and Slovakia – in January 1993 constitutes an ideal scenario for comparison of two very similar cases which share the same basic legal framework and institutions but nevertheless experienced differing internal developments. While the Czech Republic stayed on the track to liberal democracy, Slovakia under Prime Minister Mečiar experienced a period of democratic backsliding. The two states had coexisted for seven decades as one country; their legal systems were therefore almost identical and so, too, were their other normative systems. The main socio-economic indicators showed considerable similarities, as well.

Did the change in the liberal quality of the Slovak regime influence its practice in adopting international human rights commitments? If the pattern of signing and ratifying human rights treaties remained approximately the same in two different regimes, this could provide evidence for the argument that the regime itself, and therefore sincere efforts to be bound by human rights obligations, do not influence the commitment practice and that the desire to maintain or improve international reputation plays a more important role.

Accession to the EU was the single most significant foreign policy objective of the post-communist countries in Central and Eastern Europe, the Czech Republic and Slovakia included. Adherence to human rights principles featured in the conditions for accession; one can therefore expect high commitment activity from candidate countries. At the same time, it must be noted that the countries had already signed up for the most important international human rights treaties. It strikes us as interesting to see how pressure from the EU influenced the behaviour of the Czech Republic and Slovakia.

Once the two countries had entered the EU, the strong external motivation to sign and ratify international human rights commitments faded. The 10-year period from 2004 to 2014 can therefore provide substantial evidence about the willingness of the countries to pledge themselves to human rights commitments.

The fifth chapter introduces the Czech and Slovak international human rights practices, while the following chapter synthesizes the preceding historical analysis and looks at the whole period through quantitative lenses. The chapter tests tentative explanations for the variation in ratification patterns proposed within the literature. We seek to identify the factors influencing states' decisions to commit to international human rights treaties. Our model includes those variables introduced above, such as intrinsic characteristics of the treaties (the substance of the protected rights and the control mechanisms) and external factors (pressure of the international community, features of the domestic political system). Building upon an analysis of government manifestos and commitment behaviour to human rights treaties, we examine, among other things, whether Czech and Slovak governments claiming to protect certain human rights are more likely to act accordingly and aim to adopt the related international human rights commitments. The study on patterns of commitments to such treaties builds upon an in-depth analysis of domestic political settings while searching for consistencies between the ideological position of a Government as the agenda-setter and its international human rights commitments.

The following chapter (Chapter 7) focuses on the practice of stating reservations to the human rights treaties, because through such reservations, states could considerably limit potential effects of the treaties. We compare the practice of reservations between the three regimes – non-democratic Czechoslovakia, transitioning Czechoslovakia, and democratic the Czech Republic and Slovakia – with special emphasis on the type of reservations. Substantive reservations restrict the list of substantial provisions (states typically choose not to be bound by a particular right which might cause problems during ratification process), while procedural reservations weaken

the control mechanism of the treaty. We document the shift in practice from procedural reservations under the undemocratic regime towards substantive reservations in the practice of the new democratic republics.

In the eighth chapter, we ponder how quickly have the Czech Republic and Slovakia been able to ratify international human rights treaties. Is the time aspect influenced by the character of the treaty, external pressure, the composition of the Government, or other independent variables? Who are the key veto players in the ratification process: the Government, the Parliament, or the President? Does the pattern of ratification change with a shift in the number of veto players? Do the different structures of the Slovak and the Czech parliaments translate into different duration of the ratification process? Were there any significant differences in the smoothness and speed of the ratification process under Mečiar's semi-democratic regime? The chapter assesses the position of individual actors in domestic political arenas and their veto powers in the ratification process.

Although the book focuses on the adoption phase of the international human rights commitments, at least a rough overview of the impact of human rights treaties is provided. Whereas the eight chapter identifies relevant actors in the process of signing and ratifying international human rights treaties, the ninth and tenth chapters ask how such treaties are used by the Czech and Slovak top courts. The chapter maps the development in referencing international human rights treaties over time and evaluates the significance of a treaty's use in deciding a dispute (e.g. whether an international human rights norm is the key norm for deciding a case or if it plays only a supportive role). Further, the chapter identifies the most widely used treaties and assesses if characteristics of a treaty (e.g. the rights covered, the control mechanism employed) matter.

Finally, the eleventh chapter seeks to uncover the significance of international human rights law in the curricula of Czech and Slovak law faculties and its evolution over time. It can be expected that as students gain in familiarity with international human rights treaties these will be used more often in national top courts' case law. That is because newer alumni of the faculties often work in positions of judicial clerks or as analysts at the courts and their knowledge on human rights can inform their everyday work.

The concluding chapter summarizes the main findings and proposes some ideas for future work.

1.6 Some Hints to the Reader

Our project stands out in at least four aspects. First, we have compiled primary data which have never been used before, comprising the population of all international human rights treaties. Second, we combine the most influential social–scientific and legal theoretical perspectives with qualitative and quantitative methods. Third, our comparative design, using the Czech Republic and Slovakia, offers an in-depth comparison of two countries with a shared history as well as similar legal and normative systems but with a variation in political development. This creates a promising empirical laboratory and allows us to focus on how domestic political factors and treaty characteristics interact to determine commitment behaviour. Fourth, the research team includes researchers who have been employed also within high-level judicial institutions in the Czech Republic and therefore have access to otherwise scarcely accessible data and insights.

We have prepared the book to be read from cover to cover, but, having said that, we acknowledge that there might be readers who are interested only in particular chapters. Therefore, those parts of the research which have specific research questions and can stand independently include a short summary of the research design which enables the reader to skip the previous chapters and the overall introduction of the project. Even the optimal reader who starts from the List of Abbreviations and ends at the Index can benefit from this occasional reminder at the start of a new chapter as to the fundamentals of the research design.

I. GENERAL TRENDS OF HUMAN RIGHTS COMMITMENTS

2 WHAT WE KNOW ABOUT ADOPTING INTERNATIONAL HUMAN RIGHTS COMMITMENTS

International human rights treaties comprise a special and quite clearly distinguishable subset of the set of international treaties. By elaborating on international human rights treaties, we do not intend to contribute to the general theory of international cooperation[41] and of international treaties which especially theorists of international relations and lawyers have been developing already for decades. Importantly, this project focuses in particular on the phase before a treaty becomes binding for a state, and therefore it does not deal much with the effects of a treaty (Chapters 9, 10, and 11 on the use of international human rights treaties in judicial practice and on human rights in legal education summarize the relevance of international human rights commitments only in a non-exhaustive way and especially for the sake of completeness). Accordingly, we limit our nevertheless high ambitions to contribute especially to knowledge on the process of making commitments in relation to international human rights treaties and not so much on their impact. What might be termed 'life after treaty adoption' must nevertheless be reflected as well, because knowledge regarding the judicial, legislative, and executive practice concerning human rights treaties informs the way relevant institutions think when negotiating a treaty. To put it bluntly, if the ratified international human rights treaties are to be taken seriously in practice, then the negotiators are acting differently

41 A classical definition of such cooperation has been provided by Robert Keohane: '*Cooperation occurs when actors adjust their behavior to the actual or anticipated preferences of others, through a process of policy coordination. (…), intergovernmental cooperation takes place when the policies actually followed by one government are regarded by its partners as facilitating realisation of their own objectives, as the result of a process of policy coordination.*' Cited from Keohane, Robert O. *After hegemony: Cooperation and discord in the world political economy.* Princeton, NJ: Princeton UP, 2005, pp. 51–52.

than they would be if such treaties were to be ignored all the time.[42] That is why we include into the book and specifically into this chapter also information (data, theories) on the utilization of human rights treaties in practice.

By visualizing the broad field of international cooperation, Figure 2.1 helps to clarify our field of interest. Unfortunately, not all interactions in the international arena proceed in a cooperative way; non-cooperation and even conflict are regular features of international interactions. In any case, the globalized world, with its lower transaction costs, enables (and rewards) more cooperation than in the past. The vast majority of international cooperation proceeds in ways other than by strictly legal modes. Indeed, legal cooperation might be only the most formalized manner in which states interact. That does not naturally mean that non-legal cooperation is completely free of law or that it takes place outside the law. Quite the opposite is true. Cooperation among states is largely regulated by law, but only a small proportion of cooperation involves producing law (i.e. what we call here international legal cooperation). That means only a part of international legal cooperation leads to adoption of international treaties. Drawing on the phase of the process, number of parties involved, and objects of treaties, and while examining a large set of all international treaties, we are interested only in those points where multilateral (and not bilateral) and human rights (and not e.g. economic, or security) treaties intersect. Finally, we are predominantly focusing on the adoption phase of such treaties, on their signing and ratification (i.e. before they start producing legal effects for a given country). As mentioned above, for the sake of completeness, we add also chapters examining impacts of treaties (see Chapters 9, 10, and 11), but the core of the project lies elsewhere. In short, we seek to understand under what conditions states are more inclined to commit themselves through international treaties to protect human rights. Furthermore, we cautiously suggest on the basis of available data possible reasons why states commit to human rights treaties.

42 Such logic parallels Hirschman's concepts of exit and voice (Hirschman, Albert O. *Exit, Voice, and Loyalty. Responses to Decline in Firms, Organizations, and States.* Cambridge, MA and London: Harvard UP, 1970).

Figure 2.1 Defining the research topic

Source: Authors

We first explain in this chapter why human rights treaties comprise a special subset of the set of international treaties and why studying this subset requires a different approach than would analysing the rest of the general set. We next proceed with an overview and categorization of the writings on international human rights treaties. Finally, we introduce the findings of the most important works dealing with the issue of international human rights commitments, because these serve as a source for identifying variables to be inserted into our models. More simply put, the existing works' findings serve as a starting point, because they identify elements and hypotheses worth considering closely if one intends to understand why states sign and/or ratify human rights treaties.

2.1 Why Human Rights Treaties Are Special

It has become standard practice in international relations that states commit to multilateral human rights treaties. Some human rights treaties even have a nearly universal membership. For example, the UN Convention on the Rights of the Child has been ratified by every single country in the world except the United States.[43] In addition to the UN system of human rights protection operating on the global level, regional systems have evolved and can provide even more intrusive systems of oversight and control over states' practices

43 See UN Treaty Collection. *Status of Treaties: Convention on the Rights of the Child*. 2016, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en.

than does the global one. Despite this intensive international encroachment upon state sovereignty, commitments to the treaties under the most developed international regional organization dealing with human rights – the Council of Europe – have consistently flourished.[44]

Such behaviour of states may come as a surprise to the stream of non-idealist scholars. It may seem puzzling why a Government would voluntarily put itself under external supervision, especially in such a sensitive and sovereignty-related area as that of human rights. Human rights touch the very essence of the relationship between the Government and the governed when stating what the governed have a right to do and, on the other hand, what governments cannot do and must do. Why would a state voluntarily give up its latitude to assert such fundamental positions for itself without intrusion of external actors? Provisions on human rights typically form an important part of constitutions, and disputes on their interpretation have remained among the most heated struggles between political actors. Therefore, it seems to be an uncontroversial claim that the relevance of human rights in current politics is difficult to overstate.

Advocates of the rationalist approaches which involve analysing costs versus benefits remain astonished, because they cannot easily see the benefits which states gain in exchange for committing to human rights treaties. The assumption of self-interest of actors is quite well-received in the broader scientific community. For example, the evolutionary expert Martin Nowak writes: '*Evolution is based on a fierce competition between individuals and should therefore reward only selfish behavior*.' Yet it is puzzling also for biologists how it is possible that we observe so much cooperative behaviour.[45]

We turn now to the cause of the aforementioned rationalist puzzlement and explain why human rights treaties are a specific subspecies of the species that is international treaties. Typically, states enter into international treaties because they expect reciprocal benefits. The mechanism of cooperation in general has been explained by Robert Axelrod in his famous book

44 Compare Council of Europe. *Search on Treaties: Simplified Chart of signatures and ratifications*. 2016, http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/chart/signature.

45 Nowak, Martin A. Five rules for the evolution of cooperation. *Science*, Vol. 314, No. 5805, 2006, p. 1560.

The Evolution of Cooperation, which also draws many parallels with states' behaviour in international politics. His starting points echo the still-persisting situation in the international arena of nations interacting without central authority. Employing game theory (the prisoners' dilemma game), Axelrod ponders his crucial question: Under what conditions will cooperation emerge in a world of egoists without central authority?[46] Two industrial nations with trade barriers to one another's exports would, because of the mutual advantages of free trade, be better off if these barriers were eliminated.[47] Common action of the countries based on reciprocity leads to mutual benefits for both. But in an anarchic world where cheating is not sanctioned by central authority, the optimal way to induce mutual cooperation is through the expectation that in repeated games defection will be punished (the element of reciprocity). This leads states to conform. Cooperation, then, evolves as the actors' expectations converge.[48]

Axelrod's approach has greatly influenced theorizing on international cooperation. According to Helen Milner, game theory became the central tool of its analysis and the prisoners' dilemma its key metaphor.[49] Theorists identified various conditions connected with the occurrence and success of cooperation. States cooperate in order to realize gains, be they absolute, relative, or balanced distributed. The start and nature of cooperation is further influenced by the number of players, their power asymmetries, and belief that the game will continue indefinitely. The role of international regimes and epistemic communities is further highlighted.[50] Milner also pointed to two serious drawbacks: untenable assumptions leading to parsimonious hypotheses and neglect of domestic politics which in combination have damaging effects for understanding cooperation. States can make final decisions on international cooperation based on purely domestic political games.[51] These observations bring insights also for our project, because they help us in designing which variables to include into our study. Our

46 Axelrod, Robert M. *The Evolution of Cooperation*. New York, NY: Basic Books, 2006, p. 3.
47 Ibid., p. 7.
48 Milner, Helen. International Theories of Cooperation among Nations: Strengths and Weaknesses. *World Politics*, Vol. 44, No. 3, 1992, p. 470.
49 Ibid., p. 467.
50 Ibid., pp. 470–480.
51 Ibid., pp. 481–496.

book, then, contributes to knowledge on international cooperation through the inclusion of various domestic politics-related variables.

The peculiarity of cooperation among states on human rights treaties lies in the fact that it is not based on the 'tit-for-tat' principle when states do something for their mutual benefit. Instead, the states agree among themselves a treaty which does not benefit governments directly but primarily benefits their citizens (or perhaps better said, persons under their jurisdictions). Thus, while usual international treaties concerning security or economic matters are based on reciprocity, the human rights treaties differ inasmuch as states are making commitments not primarily in relation to other states but in relation to the people under their jurisdictions. When searching for inspiration from abstract theoretical works, it is therefore fruitful to look at the issue of cooperation without reciprocity. Unfortunately, however, not much has been written about this topic.

To illustrate what is meant by the lack of reciprocity in human rights treaties, we consider a situation wherein one country reneges upon its obligations and begins torturing people, even citizens of a different state. This does not mean that the second state would be empowered thereby to retaliate and torture citizens of the first, renegade state. The issue of cooperation without reciprocity has been introduced again by Robert Axelrod, who co-authored a short article with Rick Riolo and Michael Cohen in which they show that '*cooperation can arise when agents donate to others who are sufficiently similar to themselves in some arbitrary characteristic*.'[52] Such cooperation on the basis of similarity could be widely applicable even in situations where repeated interactions are rare and reputations are not established.[53] It should be noted that the article has not been adapted to the realm of international politics but that it originated from research on biological evolution. Its findings can nevertheless be important also for social situations more generally. Similarly, insights of biologist and mathematician Martin Nowak on evolution of cooperation can be interesting also for students of international politics. Nowak notes that cooperation can be obtained when participation in the game is voluntary, rather than obligatory. Punishment is not

52 Riolo, Rick L., Michael D. Cohen, and Robert M. Axelrod. Evolution of cooperation without reciprocity. *Nature*, Vol. 414, No. 6862, 2001, p. 441.

53 Ibid., p. 443.

a mechanism for the evolution of cooperation as such, but it may play a role in promoting cooperative behaviour in some situations.[54]

Axelrod utilized his approach also in an article dealing directly with international politics (cowritten with Robert Keohane). Axelrod and Keohane posit that cooperation is not equivalent to harmony, because, while harmony requires complete identity of interests, cooperation can only happen in situations that contain a mixture of conflicting and complementary interests. In such situations, actors adjust their behaviour to the actual or anticipated preferences of others, thus enabling cooperation to occur.[55] Starting international cooperation depends on structure, and in some game settings the cooperation comes much more readily. The actors must be convinced that cooperation is beneficial to them, and this depends upon how they perceive their interests. Long time horizons are important when considering cooperation – the bigger the future payoffs which are expected, the smaller will be the incentive to defect now because the other party would retaliate and not permit the future (bigger) expected payoffs.[56] According to Axelrod, '*reciprocity can be an effective strategy to induce cooperation among self-interested players in the iterated, bilateral Prisoners' Dilemma, where the values of each actor's options are clearly specified. However, effective reciprocity depends on three conditions: (1) players can identify defectors; (2) they are able to focus retaliation on defectors; and (3) they have sufficient long-run incentives to punish defectors*.'[57] Here again, the clear contrast to multilateral human rights treaties comes to the forefront. The parties in the game are usually reluctant to stand up alone against a defecting party, because the others would be freeriding on the one player's 'policing' while not worsening their bilateral relations with the noncomplying party. Moreover, a state willing initially to pursue the case against the defecting state can find human rights issues less pressing than competing relations which the state has with the defecting partner. Therefore, in the competition between various interests in bilateral relations, the human rights issue might not prevail over, for example, security or economic cooperation.

54 Nowak, *Five rules for the evolution of cooperation*, p. 1563.
55 Axelrod, Robert M., and Robert O. Keohane. Achieving Cooperation under Anarchy: Strategies and Institutions. *World Politics*, Vol. 38, No. 1, 1985, p. 226.
56 Ibid., pp. 228–232.
57 Ibid., pp. 234–235.

Consequently, big powers with many ties in the international arena will not be targeted, because others do not wish to spoil benefits from friendly relations with mighty states (and experience disadvantages from bad relations with such states). Finally, the human rights norms are often so vaguely defined that uncertainty arises as to whether the norms were 'really' violated. The strongest international human rights treaties partially resolve this problem through the delegation of initiation and/or decision-making to a supranational body. Still, the problem of definitive compliance remains, because human rights regimes do not possess such instruments as to always force defectors to comply.[58]

Following Axelrod's general framework, Andrew Guzman elaborated some questions touching upon our area of interest in his book *How International Law Works*.[59] Guzman's work focuses on the question of how it is possible that international law can under certain circumstances affect state conduct even though coercive force is rarely applied to achieve compliance. Guzman based his theory on three elements of international legal arrangements which bolster international cooperation: reputation, reciprocity, and retaliation. Guzman admits that reciprocity can serve as a powerful compliance-enhancing tool in the right circumstances, especially in a bilateral context. On the other hand, reciprocity will '*fail to induce compliance when a threat to withdraw one's own compliance either lacks credibility or is of no consequence to a potential violator*.'[60] This is exactly the case of international human rights treaties which must rely on enforcement mechanisms other than reciprocity.[61] Moreover, inasmuch as compliance with a human rights treaty is determined domestically, it can be difficult for other states to verify the actual state of a treaty's fulfilment. Collective action problems further complicate enforcement of the treaty, because states may disagree in assessing the gravity of a violation, they have different relationships with the violator, no one wants to stand alone against a big power, etc.[62] Beth Simmons concluded

58 Simmons, Beth A. *Mobilizing for Human Rights: International Law in Domestic Politics*. Cambridge: Cambridge UP, 2009, p. 122; Guzman, Andrew T. *How International Law Works: A Rational Choice Theory*. New York, NY: Oxford UP, 2008, pp. 66–67.

59 Guzman, *How International Law Works*.

60 Ibid., p. 45.

61 Ibid., pp. 43–45.

62 Simmons, *Mobilizing for Human Rights*, pp. 123–124.

that in a scenario where joint gains and reciprocity were almost absent, enforcers reluctant, and reputation costs not high, those explanations rooted only in the context of international politics did not suffice.[63] We now turn to theorizing as to which other remaining factors possibly motivate states to adopt international human rights commitments.

2.2 Why States Adopt Human Rights Treaties

The previous section explained that human rights treaties differ from ordinary international treaties especially because they lack reciprocity and this worsens subsequent compliance with the treaties. Moreover, becoming a party to human rights treaties does not bring states any tangible benefits. Why, then, do states adopt international human rights commitments? A pure idealist would answer that it is because they find it the right and proper thing to do. A pure rationalist, meanwhile, would try to find some benefits, despite that none are clearly visible at first sight. Two undisputed facts intervene into such an oversimplified picture: (1) There exists a very large number of cases wherein states adopt international human rights commitments (see Chapter 3), and (2) there are cases even of illiberal non-democracies adopting international human rights commitments.[64] It follows, then, that such treaties are signed and ratified also by states which have not internalized the idea of human rights and therefore are not acting on them with sincere belief that they are subscribing to values in which they trust. Consequently, there most probably exist some perceived benefits with which states calculate when making such a commitment.

The concise introduction of two main theoretical streams explaining international human rights commitments of states approximates such Weberian ideal types. The important analyses of the issue nevertheless typically incorporate elements of both approaches and include much more richness and nuance than if exclusively adopting a pure version of a given theoretical approach. The key question of why states adopt international human rights commitments

63 Ibid., p. 125.

64 Hafner-Burton, Emily M., and Kiyoteru Tsutsui. Human Rights in a Globalizing World: The Paradox of Empty Promises. *American Journal of Sociology*, Vol. 110, No. 5, 2005, p. 1376.

would be answered differently by adherents to the logic of appropriateness and the logic of consequences. The literature generally follows two main logics which loosely overlap with constructivist (logic of appropriateness) and rationalistic (logic of consequences) analytical paradigms.[65]

Followers of the logic of appropriateness suggest that states want to further the norms they believe in, while sympathizers with the logic of consequences focus on analysing costs versus benefits. A strict differentiation between the two logics was abandoned long ago (see e.g. Elinor Ostrom[66] in 1991 generally for the social science field, or Fearon and Wendt[67] in 2002 more specifically for international relations),[68] but they continue to be useful as informing frameworks rather than as strict guidance to follow. Recent accounts analysing the issue of human rights commitments eclectically use elements of both logics, with one of them prevailing depending on a given author's perspective, most frequently following the constructivist or the rationalist paradigm.

The basic rational choice assumption implies that states will enter into treaties only when doing so will make them better off. The expected benefits of concluding international treaties typically include the possibility to resolve problems of cooperation, to commit to certain conduct, and to gain assurances concerning other states' future behaviour. Rationalists incorporate into their models states' attitudes towards risk, expect that the future is uncertain, and recognize that agreements also involve a possibility of noncompliance.[69]

65 For a classical elaboration on the two logics in international politics, see: March, James G., and Johan P. Olsen. The Institutional Dynamics of International Political Orders. *International Organization*, Vol. 52, No. 4, 1998, pp. 943–969.

66 Ostrom, Elinor. Rational Choice Theory and Institutional Analysis: Toward Complementarity. *American Political Science Review*, Vol. 85, No. 1, 1991, pp. 237–243.

67 Fearon, James, and Alexander Wendt. Rationalism v. constructivism: a skeptical view. In *Handbook of International Relations,* edited by Walter Carlsnaes et al. London: Sage, 2002, pp. 52–72. Fearon and Wendt posit that '*rationalism and constructivism are most fruitfully viewed pragmatically as analytical tools, rather than as metaphysical positions or empirical descriptions of the world*' (Fearon, and Wendt, *Rationalism v. constructivism*, p. 52).

68 Moreover, it is nearly impossible to apply one logic rigidly in collective decision-making bodies inasmuch as various members of such bodies can apply different logics. Perhaps most importantly, the question might not be one of 'either – or'. Rather, people can make decisions based on norms they believe are correct and at the same time yielding the best results. More fruitful, then, seems to be to explore under what conditions either of the logics prevails.

69 Guzman, *How International Law Works*, pp. 121–122.

Negotiating human rights treaties includes numerous trade-offs. Given that compliance with treaties' provisions is a preferred outcome, the negotiators face an uneasy 'breadth vs. depth dilemma': They can either include only liberal democratic countries with a high level of value coherence and aim for a treaty that is ambitious content-wise and with possibly strong control mechanisms, or they will seek to address a broad international community of states, invite as many countries as possible, but then resign themselves to an unambitious content and/or a weak control mechanism. Additionally, as Andrew Guzman points, states prefer agreements with narrower scope, because incorporating more issues increases transaction costs of negotiations.[70]

When states make human rights commitments, they either do so with serious intentions and with expectations of future compliance (while believing that they will fare reasonably well also under future interpretation of the treaty), or they just make easy and empty promises while knowing that treaties usually lack strong enforcement mechanisms, that they do not function well in practice, or that countries can shield themselves through reservations. The insincere states know that, realistically, they may face principally reputational harm from the international community, and particularly from non-governmental organizations. Nevertheless, as Thomas Risse et al. show in *The Power of Human Rights*,[71] the autocrats might be unpleasantly surprised that in the long run, and as the human rights spiral proceeds, the negative impacts may be greater than they originally anticipated.[72]

Researchers acknowledge that political regime is a very important variable which shapes the reasons why states take on international human rights commitments. Moravcsik asserts that regimes in transition from non-democratic to democratic are the most determined to adopt strong human rights commitments in order to 'lock in' the domestic change through an external

70 Ibid., pp. 180–181.

71 Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink (eds.). *The Power of Human Rights. International Norms and Domestic Change.* Cambridge: Cambridge UP, 1999.

72 Unfortunately, the theoreticians can themselves be disappointed when the 'spiral model' does not work as straightforwardly as expected (see Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink (eds.). *The Persistent Power of Human Rights. From Commitment to Compliance.* Cambridge: Cambridge UP, 2013).

international safeguard.[73] His elegant theory has not received complete acceptance, however. For example, Hawkins and Jacoby observed that newly democratized countries have not in their domestic practice followed the mechanisms which they supported during negotiations of the European Convention on Human Rights, and therefore they have not 'locked in' the domestic situation which supposedly should have been the biggest pay-off from the introduction of its strong control mechanism.[74]

Liberal democracies usually enjoy high levels of human rights protection, and therefore any lack of fit between the quality of human rights protection and the state required by a human rights treaty remains very small or even non-existent. Liberal democracies usually do not expect to change their own behaviour when ratifying treaties, but they expect others to do so in order to abide by those treaties' provisions. Liberal democracies support the diffusion of human rights norms either because of their altruism towards people in other countries or because they believe in inter-democratic peace theory, which holds that two democratic governments do not wage wars against each other, and therefore spreading democracy and human rights should help the world to reduce the probability of starting wars.[75]

Many authoritarian countries suffer from low levels of development and depend on foreign aid, assistance, or defence. That means rich, liberal democratic countries have some leverage when pressing such countries to adopt international human rights commitments. In any case, due to the lack of enforcement capabilities within international human rights regimes, even such authoritarian countries do not expect to improve the situation on the ground. Rich authoritarian countries, meanwhile, have even fewer incentives to change their own behaviours, and therefore their human rights commitments probably constitute just a public relations exercise.[76]

73 Moravcsik, Andrew. The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe. *International Organization*, Vol. 54, No. 2, 2000, pp. 217–252.

74 Hawkins, Darren, and Wade Jacoby. Agent permeability, principal delegation and the European Court of Human Rights. *Review of International Organizations*, Vol. 3, No. 1, 2008, pp. 1–28.

75 Posner, Eric A. *The Twilight of Human Rights Law*. Oxford: Oxford UP, 2014, pp. 59–61.

76 Ibid., pp. 61–62.

2.3 Overview and Categorization of Writings on International Human Rights Treaties

Empirical social science accounts dealing with international human rights treaties remain quite sparse compared to the myriad legal writings describing, comparing, and discussing international human rights treaties and the practice of bodies established for their oversight. The empirical non-legal works focus on three issues: (1) signatures and ratifications of human rights treaties, (2) design of international human rights regimes, and (3) compliance with human rights treaties.

Judged by the large number of related publications, it seems the third of those issues has received the most attention in recent years (see e.g. Hillebrecht's *Domestic Politics and International Human Rights Tribunals*[77]). Those writing typically examine the relationship between the broad undertaking of human rights commitments and states' actual behaviours. Compliance with an international treaty and its effectiveness are two notably different issues, although the two are often dealt with together. When a state thoroughly complies with the norms of a treaty even before ratifying it, then that state scores perfectly in terms of compliance but the treaty itself generates no extra causal effects. On the other hand, a state might be performing terribly before ratifying a human rights treaty, but, due to the combination of international and domestic pressure based on the treaty, it might slightly improve its human rights behaviour. If carefully documented (e.g. by process tracing), one can conclude in the latter case that a treaty has had causal effects despite the fact that the state has not complied with it fully.

The second issue (design of international human rights regimes) has been elaborated especially by Jack Donnelly, who introduced a useful classification of international human rights regimes as well as a matrix for localization of various regimes.[78] Although the first issue (signatures and ratifications of human rights treaties) has also attracted some attention from social

77 Hillebrecht, Courtney. Domestic Politics and International Human Rights Tribunals: The Problem of Compliance. Cambridge: Cambridge UP, 2014.

78 Donnelly, Jack. *Universal Human Rights in Theory and Practice*, 3rd ed. Ithaca, NY: Cornell UP, 2013; Donnelly, Jack. International human rights: a regime analysis. *International Organization*, Vol. 40, No. 3, 1986, pp. 599–642.

scientists, and despite an increasing number of studies, no consensus has been achieved regarding the reasons why states sign and/or ratify human rights treaties. Arguably,[79] the most comprehensive account on why countries make human rights commitments has been provided by Beth Simmons in *Mobilizing for Human Rights: International Law in Domestic Politics*. Her theory of 'rationally expressive commitments' asserts that '*governments are more likely to ratify human rights treaties they believe in and with which they can comply at a reasonable cost than those they oppose or find threatening*'.[80] Simmons posited that liberal democracies and authoritarian states have different reasons for entering or not entering into human rights treaties. When liberal democracies do not make commitments, this may be due to contingencies which raise domestic costs of ratification, be these legislative hurdles, federalism, or judicial constraints. On the other hand, authoritarian states enter into human rights treaties because they expect benefits, make mistakes, or their leaders do not take into the account long-term costs of such decisions.

Eric Posner criticized Simmons for not explaining what liberal democracies gain from entering a human rights treaty, especially given that political costs associated with making commitments imply '*that no liberal democracy should enter a treaty*' [81] unless it provides benefits which exceed the costs. Posner continues with methodological criticism concerning the dependent variable and interpretation of the associated data, selection effects, problems of reverse causation, and omitted variables. Despite the characterization of the book as 'pathbreaking'[82] and despite all its empirical richness, for the reasons cited above, Simmons's findings are not accepted as utterly convincing. Nevertheless, she contributed to the field methodologically and also identified the most important contextual factors whose effects can be tested in further research.

79 Chilton, Adam S. Book Review (reviewing Beth A. Simmons, Mobilizing for Human Rights: International Law in Domestic Politics). *Harvard Human Rights Journal,* Vol. 24, 2011, pp. 243–244.

80 Simmons, *Mobilizing for Human Rights*, p. 64.

81 Posner, *The Twilight of Human Rights Law*, p. 3.

82 Ikenberry, G. John. Recent Books on International Relations (reviewing Beth A. Simmons, Mobilizing for Human Rights: International Law in Domestic Politics). *Foreign Affairs*, Vol. 89, No. 1, 2010, p. 138.

Simmons returned to the issue of human rights commitments in an article with Richard Nielsen addressing the matter of benefits for states participating in international human rights regimes.[83] The authors introduced the 'rewards-for-ratification' hypothesis stating that countries are rewarded for ratification in the form of tangible benefits (increases in foreign aid, trade, and investment) and intangible benefits (praise, acceptance, and legitimacy). Nielsen and Simmons asserted that none of these explanations had previously been robustly tested empirically. They implicitly claimed to be explaining motivations for states to make human rights commitments, but their research is in fact not about motivations but about consequences of commitments. Nielsen and Simmons found almost no evidence that states are rewarded for entering human rights treaties. Nevertheless, state representatives might still be expecting rewards and act on such beliefs. As the authors noted, there was a lack of evidence about whether states were rewarded for their commitments, and therefore the state representatives would also not be able to know whether they were going to obtain concessions. The authors therefore answer a different question than they seem to pose in the introductory part of the article.

The research on human rights commitments made by states remains fragmented. Various authors use different treaties of different international organizations, focus on different countries and periods, cover different rights and work with them differently. Importantly, when observing many countries and their commitments to many treaties over a period of many years, together with other variables, one often can observe patterns appearing in the data. Nevertheless, the level of understanding remains rather shallow and the causal mechanism unidentified. Many factors obscuring the 'real' picture of commitments have previously been omitted (e.g. a treaty's control mechanism). There is some evidence of non-democratic regimes systematically entering into procedural reservations to the treaties they ratify and by doing so disabling the oversight of any treaty bodies over

83 Nielsen, Richard A., and Beth A. Simmons. Rewards for Ratification: Payoffs for Participating in the International Human Rights Regime? *International Studies Quarterly*, Vol. 59, No. 2, 2015, pp. 197–208.

their domestic human rights performance.[84] This implies that although illiberal non-democracies care about possible effects of adopting a human rights commitment and may shield themselves against any negative consequences stemming from violating such a treaty, they nonetheless found it beneficial to signal to the outer world that they accept human rights.

Generally, more elaborated works on adoption of human rights commitments focus their attention also on domestic-level variables. We now turn to findings of important works on the issue (i.e. of books and articles published in scholarly journals).

2.4 Findings of Important Works

Research on adoption of international human rights commitments has flourished since the turn of the millennium. Publications have become methodologically more diverse and rigorous. Both qualitative and quantitative approaches are used, albeit with a persisting dominance of qualitative methods. The most respected works include both qualitative and quantitative elements to enhance the validity of findings. The field is still developing, but the fundaments already have been built by the meticulously crafted and sophisticated works discussed below. Linda Camp Keith points to the incompleteness in our theoretical understanding because empirical evidence does not simultaneously account for three sets of factors that represent dominant theoretical perspectives: (1) state interests, (2) domestic politics or institutions, and (3) the diffusion of international norms and embeddedness of states into global society.[85]

The publications on human rights treaties usually do not treat the phase of adopting commitments in isolation from the states' perception of potential compliance. The aforementioned gap between the actual quality of human rights protection and the state demanded by a human rights treaty supposedly plays a role in making a decision on participation in a human

84 Týč, Vladimír, Linda Janků, and Katarína Šipulová. Reservations to Human Rights Treaties: A Case Study on the Practice of Czechoslovakia and Its Successor States. *International Community Law Review*, Vol. 16, No. 3, 2014, pp. 371–398.

85 Keith, Linda Camp. Human Rights Instruments. In *The Oxford Handbook of Empirical Legal Research,* edited by Peter Cane, and Herbert Kritzer. Oxford: Oxford UP, 2010, p. 358.

rights regime, but only in the cases of certain treaties, and especially those with stronger control mechanisms.[86] Oona Hathaway posits that the quality of human rights protection matters even when democracies make decisions on the adoption of human rights commitments. Hathaway found that democratic states with poor records regarding torture, civil rights, and women rights were less likely to become a party to the CAT, ICCPR, and CEDAW respectively. On the other hand, decisions of non-democratic states remained purely in the hands of ruling elites which had not paid much attention to the situation on the ground.[87] Circumstances might change slightly when an autocratic Government feels that its rule is approaching its final stage and it expects short-term praise while leaving the consequences for the next Government.[88] Finally, Todd Landman collected evidence that recently democratized countries manifest their new positions also through frequent ratifications of human rights treaties to which they attach fewer reservations even than established democracies.[89]

Emilia J. Powell and Jeffrey K. Staton address another important aspect of the puzzle: how domestic judiciaries influence the joint choice to ratify and comply with the CAT. Their approach is based on the logic that functioning of domestic courts will influence Government's expectations regarding the effects of a human rights treaty's coming into effect and therefore change the perceived costs of ratification. Their results do not, however, indicate robust support for their hypothesis.[90] Oona Hathaway focuses on the interplay between the commitment, enforcement (both national and transnational), and compliance, and, in the case of human rights treaties, she finds that lack of enforcement increases the chances of joining a treaty.[91]

86 See especially works of Wade Cole, Oona Hathaway and Todd Landman: Cole, Wade M. Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966-1999. *American Sociological Review*, Vol. 70, No. 3, 2005, pp. 472–495; Hathaway, Oona A. Why Do Countries Commit to Human Rights Treaties? *The Journal of Conflict Resolution*, Vol. 51, No. 4, 2007, pp. 588–621; Landman, Todd. *Protecting Human Rights: A Comparative Study*. Washington, DC: Georgetown UP, 2005.

87 Hathaway, *Why Do Countries Commit to Human Rights Treaties?*

88 Simmons, *Mobilizing for Human Rights*, p. 88.

89 Landman, *Protecting Human Rights*.

90 Powell, Emilia J., and Jeffrey K. Staton. Domestic Judicial Institutions and Human Rights Treaty Violation. *International Studies Quarterly*, Vol. 53, No. 1, 2009, pp. 149–174.

91 Hathaway, Oona A. Between Power and Principle: An Integrated Theory of International Law. *The University of Chicago Law Review*, Vol. 72, No. 2, 2005, pp. 469–536.

The explanations based on expected economic benefits do not find much empirical support. First Wotipka and Ramirez failed to establish that economically dependent states would be more likely to join the CEDAW in order to ensure they will continue receiving bilateral aid.[92] Their scepticism about the link between the financial factors and the decision to adopt a human rights commitment was later confirmed by Beth Simmons and Richard Nielsen, who found no substantial support either for the idea that ratification increases aid or that states use trade agreements and bilateral investment treaties as rewards for human rights treaty ratifications.[93]

Wotipka and Tsutsui offer some support for an influence of legitimacy concerns of ratifying states,[94] although Simmons and Nielsen hint both through quantitative analysis and a case-study anecdote that ratifications of human rights treaties do not translate into more praise in EU press releases, more state visits, or less Amnesty International criticism.[95] Todd Landman studied whether ratifications of human rights treaties is influenced by states' membership in international organizations and the presence of international NGOs as a measure of states' embeddedness in the international community. Although his findings were affirmative, he observed some variation within particular regions in relation to particular treaties.[96] Similarly Oona Hathaway found some relationship between presence of international NGOs and states' ratification efforts, but again in a rather mixed way, depending on the particular treaty. Therefore, she was very careful in drawing conclusions about the influence of the number of human rights NGOs on states' decisions to ratify a treaty.[97]

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92 Wotipka, Christine Min, and Francisco O. Ramirez. World society and human rights: an event history analysis of the convention on the elimination of all forms of discrimination against women. In *The Global Diffusion of Markets and Democracy,* edited by Beth A. Simmons et al. Cambridge: Cambridge UP, 2008, pp. 303–343.

93 Nielsen, and Simmons, *Rewards for Ratification*, pp. 197–208.

94 Wotipka, Christine Min, and Kiyoteru Tsutsui. Global human rights and state sovereignty: State ratification of international human rights treaties, 1965–2001. *Sociological Forum*, Vol. 23, No. 4, 2008, pp. 724-754.

95 Nielsen, and Simmons, *Rewards for Ratification.*

96 Landman, *Protecting Human Rights*, pp. 59–96.

97 The presence of international NGOs seems to propel states to higher ratification activity in the case of the CAT, but on the other hand it discourages ratification of the Optional Protocol to the ICCPR. See Hathaway, *Why Do Countries Commit to Human Rights Treaties?*, pp. 609–611.

To sum up and further structure the terrain, the research on adoption of human rights commitments considers variables which concern (1) the characteristics of a treaty itself (strength of the control mechanism, the nature of rights covered), (2) the characteristics of a state making the human rights commitment (quality of democracy and human rights protection, more detailed intra-state characteristics such as functioning courts, or ideological position of Government), and (3) the external context (number of neighbours already subscribed to a treaty, economic dependence, or an even more tangible incentive such as the accession process to the EU).

The overview of the most important theoretical and empirical works in the field of human rights commitments helped in identifying variables which we further use in our own research. In the following chapter, we present the global overview of states' commitment activities over time. Such a big picture provides a contextual framework for more in-depth elaboration of our case study on the Czech Republic and Slovakia.

3 POLITICAL REGIMES AND COMMITMENT PATTERNS

3.1 Introduction

What motivates states to ratify international human rights treaties remains an unanswered question in political science. At the same time, this question is perpetually growing in relevance for at least two reasons. First, the internalization and legalization of the human rights discourse after the Second World War has led to a significant increase in the number of human rights treaties. Second, the number of states, and hence the number of potential signatory parties, has never been greater and the international system as a whole has never been more complex.

Many tentative explanations have been proposed for the observed variation in states' ratification behaviour. Some are based on treaty characteristics and how they diverge from a country's practice,[98] others are tied to the character of the political regime of the state.[99] Theories emphasizing external factors focus on foreign policy goals and the pressure of the international community assuming that states adopt human rights instruments in order to boost their international credibility.[100] Transitioning democracies, for example, take on international obligations to 'lock in' desired policies in the face of future

98 Hathaway, Oona A. Why Do Countries Commit to Human Rights Treaties? *The Journal of Conflict Resolution*, Vol. 51, No. 4, 2007, pp. 588–621; Cole, Wade M. Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966-1999. *American Sociological Review*, Vol. 70, No. 3, 2005, pp. 472–495.

99 Moravcsik, Andrew. The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe. *International Organization*, Vol. 54, No. 2, 2000, pp. 217–252; Hafner-Burton, Emilie M., Kiyoteru Tsutsui, and John W. Meyer. International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties. *International Sociology*, Vol. 23, No. 1, 2008, pp. 115–141.

100 Goodman, Ryan. Human Rights Treaties, Invalid Reservations, and State Consent. *The American Journal of International Law*. Vol. 96, 2000, pp. 531–560; Heyns, Christof H., and Frans Viljoen. The Impact of the United Nations Human Rights Treaties on the Domestic Level. *Human Rights Quarterly*, Vol. 23, No. 3, 2001, pp. 483–535.

political uncertainty[101] and to prove their allegiance to democratic norms.[102] Integration into the international community also can play a strong role,[103] as was the case after dissolution of the Soviet Union for the Central and Eastern European democracies in their efforts to accede to the European Union.[104]

Despite the plethora of theoretical explanations (see the previous chapter for an overview), they share a common denominator in that the nature of the political regime plays either a direct or indirect role in all of them. Nevertheless, the supporting empirical evidence remains unsatisfactory. We aim to contribute to this discussion by providing a systematic examination of the typical commitment patterns of political regimes of various types as observed in the international arena since the end of World War II. We will use a newly collated dataset of 150 international human rights treaties and all the respective commitment activity since the end of World War II.

With respect to the commitment patterns of various political regimes, we pose the following research questions: Do political regimes differ in their commitment activity depending on the substance of treaties, which is to say the treaties' different generations of human rights (e.g. political rights, social rights, rights of minorities)? Does the commitment behaviour of different political regimes change with the strength of a treaty's control mechanism (and the potential threat of sanctions for noncompliance)?

We will make a comparison across time and geographical space (looking especially for commitments practice of different European states and its development through time), making it possible to assess whether or not democratic and non-democratic states have been similar in their commitment patterns. We will devote special attention to the category of transitional regimes.

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101 Moravcsik, *The Origins of Human Rights Regimes.*

102 Simmons, Beth A. International Law and State Behaviour: Commitment and Compliance in International Monetary Affairs. *The American Political Science Review*, Vol. 94, No. 4, 2000, pp. 819– 835.

103 Heyns, and Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level.*

104 Guzman, Andrew T. How International Law Works: Introduction. *International Theory*, Vol. 1, No. 2, 2009, pp. 285–293; Landman, Todd. *Protecting Human Rights: A Comparative Study*. Washington, DC: Georgetown UP, 2005.

3.2 Methodology and Terminology

Human Rights Treaty

In contrast with the rest of our research, this chapter works with a set of 150 human rights treaties, comprising treaties of the United Nations and the Council of Europe. We are purposefully omitting treaties created on the floor of the International Labour Organisation and the League of Nations. In the case of the ILO, we were facing a problem of missing data regarding the original dates for historical ratification on the part of currently non-existent states. Regarding the League of Nations, we decided that inclusion of international treaties regimes developed only after World War II will help increase consistency in terms of the rule of commitments-making and their effect on the international system.

As was suggested in the Introduction, our understanding of a human rights treaty is broad: out of the whole collection of UN and CoE treaties, we define a human rights treaty as any multilateral treaty encompassing provisions tied to human rights protection. This definition is consistent with the data presented in several other chapters of the book.

Further classification of human rights treaties and the collection of metadata were based on a selection of independent variables identified by previous research as potentially impacting on states' decisions of whether or not to commit to a human rights treaty. We focus on the strength of the control mechanism and generations of human rights covered by the treaties' content.[105]

States Selected for the Study and Problem of Successions

Our choice of states is based on the Polity IV Regime Authority Characteristics and Transitions Datasets.[106] These encompass data sets coding democratic

105 The first generation of rights includes civil and political rights; the second economic, social, and cultural rights; and the third collective-developmental rights. The fourth generation includes group human rights (e.g. rights of children, women.) and is combined with the previous three generations. If a treaty includes representatives of all generations of rights, then it is coded as a treaty with the presence of four generations of rights. For more on the general concept of generations of human rights and its criticism, see e.g. Tomuschat, Christian. *Human Rights: Between Idealism and Realism*, 3rd ed. Oxford: Oxford UP, 2014, pp. 136–154.

106 Center for Systemic Peace. *INSCR Data Page*. 2014, http://www.systemicpeace.org/inscrdata.html.

and autocratic 'patterns of authority' and regime changes in all independent countries with total populations greater than 500,000 since 1800. Out of this data set, we chose all state entities formally existing at some point between 1945 and 2014,[107] leaving our dataset with 174 state-units.

Our main research question for this study deals with different types of regimes, and with particular emphasis being given to the behaviour of transitioning states. For this reason, we define a transitioning state as a state changing from any non-democratic form of regime (as coded by Polity IV) to a democracy and follow its performance for the first five years.

The broad extent of the historical comparison of commitment behaviour across time and geographical space posed several challenges for the research. To address the problems arising due to the shifting and fluctuating political map of states, we created a convergence table delineating which new emerging or successor country was legally obliged to take over the international commitments of its predecessor state. While international law, in particular the Vienna Convention on Succession of States, has developed a relatively clear set of rules on whether the treaties ratified by a state remain in effect under different scenarios of geographic and political changes (annexation, cession, dismemberment, secession, merger, etc.), their practical application creates a set of significant problems.

107 States and countries existing before 1945 were omitted. On the other hand, the Polity IV data set was complemented by five new states which were accepted as members of the UN and actively committed to treaties before official attainment of independence (i.e. before Polity IV starts the collection of data on their performance). In the cases of Belarus (Byelorussian Soviet Socialist Republic) and Ukraine (Ukrainian Soviet Socialist Republic), we amended the coding for the years 1945–1990 such that these had the same scores as did the USSR, apart from the years 1989 and 1990, for which period we used the arithmetic means of the particular countries' performance in 1991 and the USSR performance in the respective years. For more on character and dependency of former republics of the USSR, see Beato, Andrew M. Newly Independent and Separating Stats' Succession to Treaties: Considerations on the Hybrid Dependency of the Republics of the Former Soviet Union. *American University International Law Review*, Vol. 9, Issue 2, 1994, pp. 525–558. Ghana (for 1957–1959), India (for 1945–1949), and Tunisia (for 1956–1958) were coded using the scores for the first years of their independence. Only variables relating to the length and durability of regime (BYEAR, DURABLE) were amended individually.

Generally, the legal situations of postcolonial states gaining independence during the 1950s into the 1970s present little controversy. The question of a potential succession to the commitments of their predecessors was ruled by the 'clean slate doctrine', whereby newly emerging independent states which were formerly dependent territories (a colony, a protectorate, a trust, a mandate status, etc.) were deemed to be fully dependent upon the predecessor state in terms of the control of foreign policy conduct. Upon gaining independence, therefore, they were allowed to join the international legal system without the obligation to step into the international commitments of their predecessors.[108]

During the late 1980s and 1990s, on the other hand, the international community started to move towards the doctrine of continuity. Turbulent developments in former Soviet republics and Yugoslavia challenged previous interpretations as to the legal status of the newly emerging states and their dependency on the USSR and former Yugoslavia.[109] In contrast to the peaceful dissolution of the Czechoslovak federation, which split into two legally equal independent states, each of which automatically succeeded into the Czechoslovak commitments and obligations, particular difficulties ensued with the dissolutions of other state units. There, we saw one subject claiming a continuity of federation (the Russian Federation after the USSR, Serbia and Montenegro after Yugoslavia) and several newly emerged countries with unclear relationships vis-à-vis the previous state.[110] International law did not provide clear answers in these cases, often creating years-long disputes between the affected states. Moreover, several states decided to succeed to treaties voluntarily – either by universal declaration in relation to all past commitments or individually with regard to sets of selected treaties.

The research on commitment practice therefore faces a dilemma whether to include successions into the overall picture of commitment practice and consider them to be results of political decisions of the same power

108 Beato, *Newly Independent and Separating Stats' Succession to Treaties*, p. 534.

109 Craven, Matthew. The Problem of State Succession and the Identity of states under International Law. *European Journal of International Law*, Vol. 9, 1998, pp. 142–162.

110 Williams, Paul R. The Treaty Obligations of the Successor States of the Former Soviet Union, Yugoslavia and Czechoslovakia: Do They Continue in Force? *Denver Journal of International Law and Polity,* Vol 23, No. 1, 1994-1995, pp. 1–45.

and importance as ratifications of treaties, or whether to leave them out in order not to distort the overall commitment activity to individual treaties by repeating commitments created as a result of geopolitical changes. For these reasons, we coded successions for every country based on official data in UN and CoE databases as a category separate from ratifications. This helps us to isolate the impact of successions from the international commitment practice.

Commitment Practice

Depending on the specific practice in a particular country, the term 'commitment practice' encompasses several different acts leading to a final decision of the state to be bound by a treaty's provisions. Most usually, ratification stands as an act of final commitment and a deliberate decision of a state as such to bind itself by a treaty, apply it, and respect its effects. Typically, all human rights treaties must be ratified in order to become binding. In the Czech and Slovak legal practice, for example, once ratified and domestically published, human rights treaties are understood to be a part of the national legal order. Moreover, in the Czech Republic (thanks to the doctrine of the Constitutional Court) they are considered even a part of constitutional order, therefore constituting rights and obligations without any need for further transposition into the national legal systems.[111] Both in the Czech Republic and Slovakia, a treaty is ratified by the President after an approval of Parliament.

Nevertheless, this procedure of final binding commitment can take different forms depending on the state practice and constitutional rules (e.g. ratification, definitive signature) or the treaty itself (accession after the treaty comes into effect). For the purpose of this chapter, we work with states' final binding decisions and understand commitment as any form of legal procedure with the same effect as a *ratification* (i.e. resulting in the treaty having a binding effect for the state). This definition provides the best international comparability given the available data. Please note that, depending on their purpose, other chapters of this book might use different definitions of what *commitment* means.

111 See Chapters 4 and 9 for a deeper discussion.

3.3 Historical Trends and Geographical Patterns in Commitment Practice

Our research steps into the existent theories of commitments by providing comprehensive empirical evidence addressing the following questions: How does geopolitical change influence commitment patterns? The core focus is being put on searching for differences in commitment patterns of various regimes. Do different political regimes behave differently in their ratification practice? Are transitioning democracies significantly more active in taking on new commitments, as suggested by several theories? Do a treaty's characteristics (content, generation of human rights, strength of control mechanism) influence decisions of various regimes to enter (or not to enter) into human rights commitments? Most importantly, are transitional states more likely to ratify human rights treaties with a strong control mechanism in an attempt to 'lock in' human rights protection?

To address these questions, we start with an overview of commitment patterns occurring in the international community throughout history. Moving on, we search for empirical evidence of variations in commitment practice of different political regimes in relation to different types of treaties.

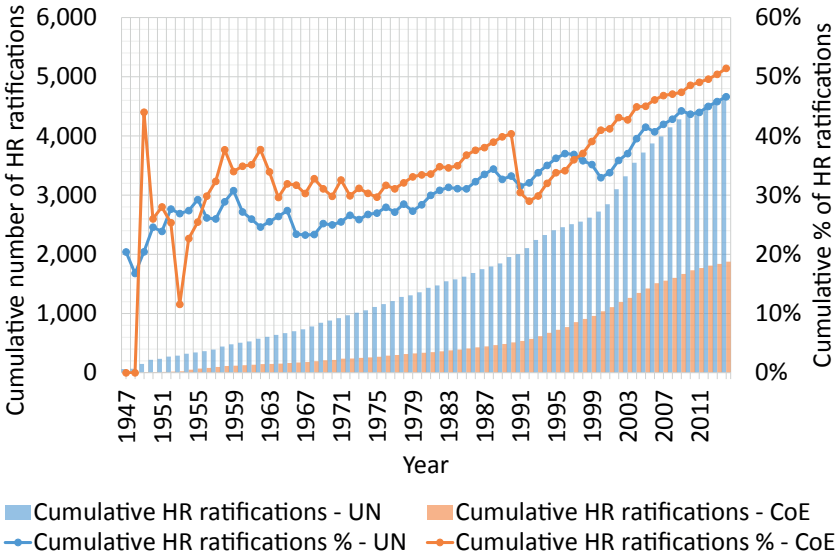
Historical Trends

A comprehensive look at all commitment decisions from 1945 until 2014 permits several interesting observations. Figure 3.1 captures the development in ratifications (and successions) of all human rights treaties over time, both for the UN and CoE. The blue and orange bars mirror the cumulative number of ratifications of all human rights treaties by any members of the respective organization. Overall, we can see evidence of the growing number of commitments of the international community.[112] The continual rise in the number of commitments is nevertheless influenced by the emergence of both new treaties and new independent states. A more precise picture of the expansion of human rights commitments is presented by the two

112 Activities of states were always coded and counted vis-à-vis the membership of individual countries in the respective organizations. In other words, we always took the proportion of ratifications of treaties of the particular organization by its member states in individual years (i.e. those states which could potentially have ratified the treaty). For example, the United States of America would not be included in the proportion of states which could have potentially ratified conventions of the Council of Europe.

curves in the same figure. They display the same data as those represented by the respective bars but as percentages of all possible ratifications of all existing treaties of the given organization by all of its member countries (the percentage is portrayed on the right vertical axis).

Figure 3.1 Cumulative number of human rights ratifications by any country



Source: Authors

We can see that both the member states of the UN and the CoE have become more and more committed over time even once we control for the total number of commitments. This means that the rise of commitments has not only been due to new treaties being adopted but that states also commit to human rights treaties at a higher rate than before. The steep drop of the orange line in the late 1980s is a result of the dissolution of the Soviet block and emergence of numerous new independent countries acceding to the Council of Europe. It is captured by the graph that it took them some time to make commitment decisions and to proceed with ratification. The CoE commitment practice has since been growing significantly, at an even higher rate than has been the case for the UN.

Geographical Distribution

The geographical distribution of commitments for individual countries produces several particularly noteworthy findings. Table 3.1 ranks those UN member states having the highest commitment activity. The first three columns (grouped under the heading 'Ratifications and successions by 31 December 2014') show ratification rates by country relative to all existing CoE treaties until 31 December 2014. The inclusion of successions helps to paint the overall picture of commitments adopted. On the other hand, it slightly distorts the representation of the commitment activity. Both the Slovak and Czech republics stand high in the ranking due to the surprisingly high activism of their predecessor, Czechoslovakia, in comparison to other non-democratic predecessors. Although we can say therefore that Slovakia is the country 'most committed' to the UN human rights treaties, this is due only in part to actions taken by Slovak governments and is due also in part to the actions of Czechoslovak governments prior to the succeeding country's dissolution. Moreover, this measure provides only a snapshot at one point in time and does not reflect the degree of commitment through the duration of country's existence.

Table 3.1 Ranking of states' commitment practice in the UN[113]

	Ratifications and successions by 31 December 2014			Ratification commitment over time		Annual ratification rate	
Country	**Total**	**Rate**	**Rank**	**Rate**	**Rank**	**Rate**	**Rank**
Slovak Republic	50	82%	1	40%	47	6%	4
Mexico	47	77%	2	62%	10	5%	7
Belgium	47	77%	2	62%	11	5%	8
Czech Republic	46	75%	4	27%	102	4%	16
Austria	45	74%	5	62%	7	5%	11
Norway	44	72%	6	75%	2	7%	3
Luxembourg	44	72%	6	56%	20	4%	18
Romania	44	72%	6	62%	8	5%	13
Montenegro	43	70%	9	16%	147	4%	23
Poland	43	70%	9	58%	17	4%	17

Source: Authors

113 See full table of all member states in Annex 2. For the first indicator, 165 countries are used and for the next two indicators that number is 174.

The fourth and the fifth columns (grouped under the heading 'Ratification commitment over time') introduce a different measure. Rather than a total commitment level at one point in time, it is intended to represent the proportion of self-imposed commitments throughout the existence of the state. Inasmuch as we only aim to look at self-imposed commitments, we exclude successions from the calculation altogether. In order to account for differences in the lengths of regimes' existence as well as their ratification speed, we weight their ratification rates by the number of years that each state was bound by each of its commitments. The faster a state ratifies a treaty the greater weight it has in the calculation. Here, Slovakia falls to as low as 47th place. With the exception of Romania, other post-communist countries (the Czech Republic, Montenegro, and Poland) also drop out of the top 10. On the other hand, Norway even improves its ranking and the table is topped by Yugoslavia, with Czechoslovakia coming third.

The last two columns (grouped under the heading 'Annual ratification rate') show a simple annual ratification rate for each country (i.e. the average proportion of treaties ratified by the country annually). This measure is not designed to show the degree of a country's overall commitment at a certain point (the first measure) or the degree of self-imposed commitment over the existence of the regime (the second measure). Instead of asking how committed is a country to human rights treaties it asks how often it commits to them. It is interesting to note that Norway is one of the top 3 performers (7%) also according to this measure and that the Slovak Republic scores very high too. Similarly to the previous indicator, the table is again dominated by Yugoslavia and Czechoslovakia.

Table 3.2 captures the very same kinds of data on commitment practice, only this time for the CoE. Given the CoE's focus on human rights, this table looks more closely aligned with what might be one's intuitive expectations. Regardless of the indicator used, it shows the Scandinavian countries, the Benelux countries, and Italy at the top of the rankings. Considering the results for the UN treaties, it is quite surprising that Slovakia shares only 28th place in the overall representation of existing commitments. The Czech Republic ranks 12th.

Table 3.2 Ranking of states' commitment practice in the CoE[114]

	Ratifications and successions by 31 December 2014			Ratification commitment over time		Annual ratification rate	
Country	Total	Rate	Rank	Rate	Rank	Rate	Rank
Netherlands	65	73%	1	66%	3	6%	3
Norway	64	72%	2	71%	1	7%	2
Spain	59	66%	3	43%	16	4%	19
Sweden	59	66%	3	68%	2	6%	4
Denmark	57	64%	5	64%	4	5%	5
Luxembourg	55	62%	6	61%	5	5%	7
Portugal	54	61%	7	44%	14	3%	23
Cyprus	53	60%	8	45%	13	3%	20
Italy	52	58%	9	60%	6	4%	9
France	50	56%	10	53%	10	4%	18
Belgium	50	56%	10	54%	8	4%	17
…	…	…	…	…	…	…	…
Czech Republic	49	55%	12	38%	18	4%	10
…	…	…	…	…	…	…	…
Slovak Republic	42	47%	28	31%	26	3%	25

Source: Authors

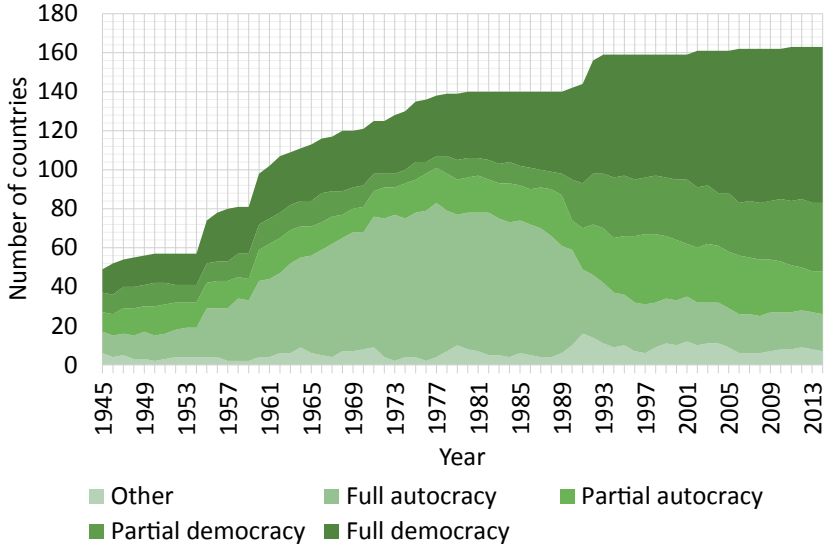
3.4 Commitment Patterns of Political Regimes

General Overview

Next, we move on to the various regime categories. Figure 3.2 displays the structure of the international system in terms of the basic categories of political regimes. The darker green the chart the more democratic was the system at a given point in time. The chart displays a very clear pattern: the overall number of existing states keeps rising after World War II, especially with the start of decolonization processes in the 1950s. We can see a significant decline in the number of autocracies at the beginning of the 1990s, after collapse of the Soviet bloc, and a continual growth in the number of democratic regimes. The year 2014 starts with a strong dominance of democratic regimes. This has implications should the nature of regime be related to human rights commitment patterns.

114 See full table of all member states in Annex 3. For the first indicator, 41 countries are used and for the next two indicators that number is 44.

Figure 3.2 Historical development of international political regimes



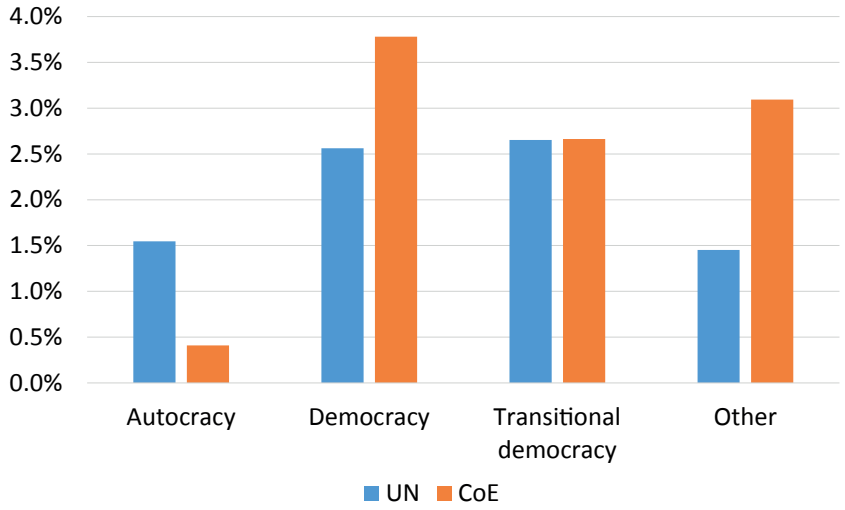
Source: Authors

Figure 3.3 suggests there are differences. It shows the annual ratification rate of autocracies, democracies, and transitional democracies for UN human rights treaties (blue columns) and CoE human rights treaties (orange columns). This supports the argument developed by commitment theories that newly established democratizing states commit to a large number of human rights treaties in search for rapid establishment of their international credibility.[115] Within the Council of Europe, however, the propensity to ratify is stronger in consolidated democracies. The disproportionality between the annual ratification rate of autocracies in relation to human rights treaties in the UN and the CoE might be interpreted as reflecting the different character of the two organizations. The Council of Europe formally conditions membership upon the democratic character of the state. Polity IV uses a slightly different definition of what constitutes a democracy, nevertheless, the overall number of autocratic members is very low in the CoE and the estimates for autocracies from there are therefore based on a small number of countries.

115 Moravcsik, *The Origins of Human Rights Regimes*, pp. 217–252; Simmons, Beth A. *Mobilizing for Human Rights: International Law and Domestic Politics*. Cambridge: Cambridge UP, 2009.

On the other hand, the relatively high annual ratification rate of autocratic regimes in the UN is usually interpreted by rational theories of commitments as showing that non-democratic regimes do, from time to time, ratify international treaties for signalling reasons even without any serious intention of compliance.[116]

Figure 3.3 Average annual ratification rate by regime type for the UN and the CoE[117]



Source: Authors

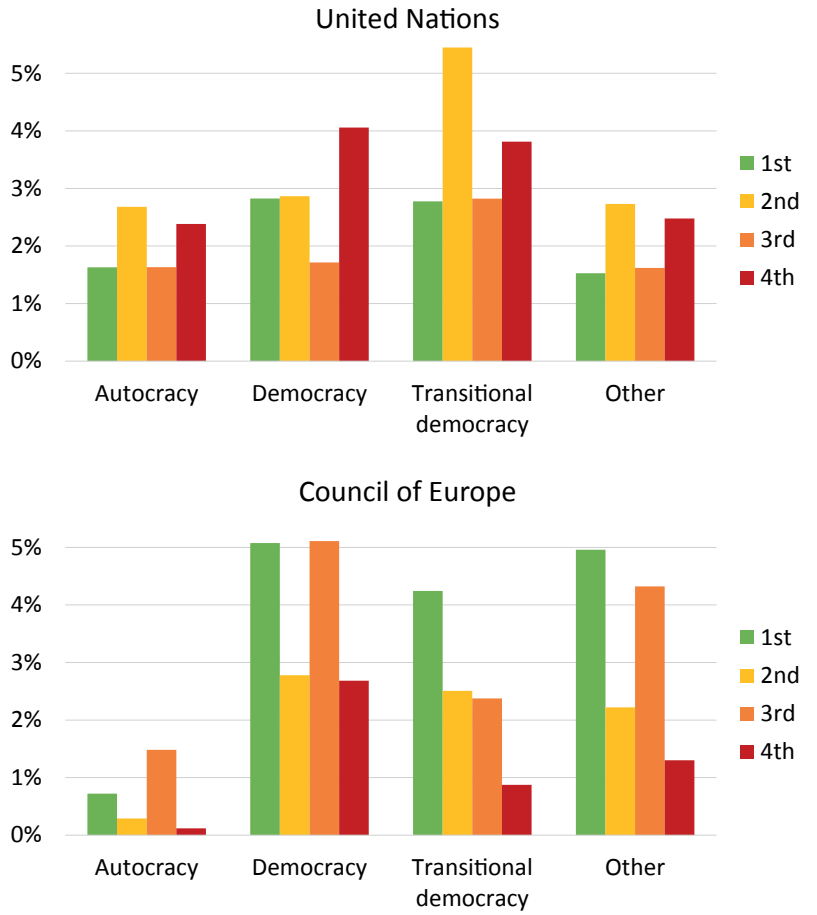
From previous research we also know that Federal Czechoslovakia, existing as a transitional democracy during 1989–1992, had a significantly stronger ratification record than did her non-democratic communist predecessor. More importantly, the federal transitional regime was ratifying human rights commitments three times faster than did its communist or succeeding counterparts.[118]

116 Simmons, *Mobilizing for Human Rights*.

117 Regime categories were derived from Polity IV variable *POLITY* in the following manner: Values 1 to 10: democracy, values -10 to -1: autocracy, values 0, -88, -77 and -66: other. Transitional democracy: every state changing from non-democratic form (-88, -77, -66, and 0–6 standing for partial democracy in closer view) to democracy during the first five years.

118 Šipulová, Katarína, Jozef Janovský, and Hubert Smekal. Strength and Legitimacy of Control Mechanisms in International Human Rights Treaties: The Moderation Effect. *Opinio Juris*, 24th August 2015, http://opiniojuris.org/2015/08/24/emerging-voices-strength-and-legitimacy-of-control-mechanisms-in-international-human-rights-treaties-the-moderation-effect/.

Figure 3.4 Annual ratification rate of different regimes according to UN and CoE treaties' human rights generations



Source: Authors

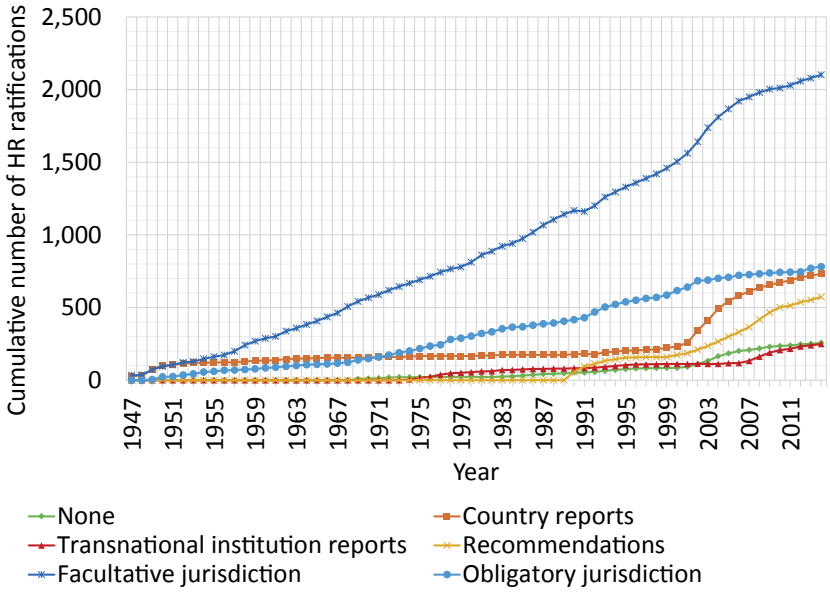
Figure 3.4 captures the annual ratification rate for treaties the provisions of which belong to the first, second, third, or fourth generation of human rights. Similarly to previous charts, the ratification rates are calculated while including all existing treaties of the respective generation which were open for the states to ratify. In the set of UN treaties, all regimes show a greater propensity to ratify treaties belonging to the second or fourth generation

of human rights[119]. Transitional democracies are particularly most prone to ratify treaties encompassing social rights of the second generation. Within the Council of Europe, almost all regimes have the highest annual ratification rate for treaties with provisions belonging to the first generation of human rights. This distinction might be related to the concept of regionalism and the varying approaches towards human rights protection in individual world regions.

Treaty's Control Mechanism

Having described the overall trends and patterns in international commitments of all states over time, we now continue with the key variable strength of the control mechanism. We begin with a basic descriptive overview and background. Next, we proceed to determine whether transitional regimes behave differently in comparison with other regime types in terms of which types of control mechanism they prefer to commit to.

Figure 3.5 Cumulative number of United Nations' human rights ratifications in relation to treaty's control mechanism

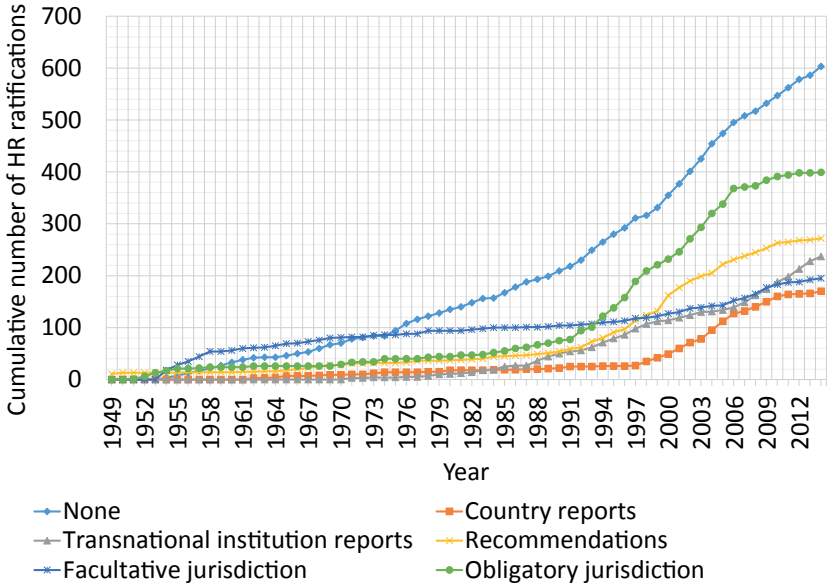


Source: Authors

[119] By definition, of course, the fourth generation would be always tied to at least one of the other generations, because it covers rights of minorities in various fields (social rights of minorities, environmental rights of minorities, etc.).

The types of control mechanism adopted in human-rights treaties (i.e. their strength) differ profoundly: from no control, through an obligation to submit internal reports or being subject to periodic reports from international bodies, to subordination to the jurisdiction of a judicial body. We further divided control mechanism types into two core categories, weak and strong. Strong control is herein defined as judicial or parajudicial control (i.e. the existence of a court or a committee dealing with individual complaints), while weak control means no control at all or oversight solely by means of reports and recommendations from domestic agencies or international treaty bodies. Figures 3.5 and 3.6 suggest that ratifications in the Council of Europe and United Nations differ substantially according to a treaty's control mechanism. So far, most of the UN ratifications are of treaties with the strongest control mechanisms allowing for the jurisdiction of the International Court of Justice (Figure 3.5).

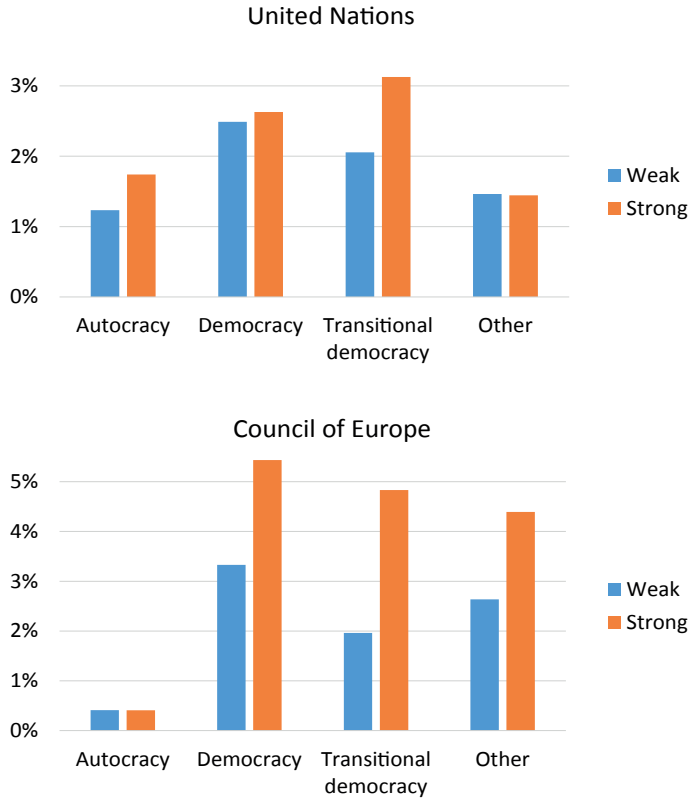
Figure 3.6 Cumulative number of Council of Europe's human rights ratifications in relation to treaty's control mechanism



Source: Authors

On the contrary, a similar figure for the Council of Europe (Figure 3.6) shows a clear dominance and continual growth of ratifications of treaties without any control mechanism. The rising green curve represents four core Council of Europe's treaties, particularly significant for harmonization and cooperation among the CoE's member states within the area of (mostly) criminal law.[120]

Figure 3.7 Annual ratification rate in the UN and CoE in relation to strength of the control mechanism



Source: Authors

120 European Convention on Extradition, European Agreement on the Abolition of Visas for Refugees, European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, and European Convention on the Adoption of Children.

It should be noted that even a weak control mechanism can have a very different effect in the CoE in comparison with the UN. In theory, non-compliance with CoE treaties might be in breach of broader provisions of the European Convention on Human Rights, which is subject to the control of the European Court of Human Rights.

The effect of the control mechanism on the relationships between regime type and ratification behaviour has already been observed, particularly for post-communist countries. The human rights ratification activity of the former Soviet republics and satellites identified in the geographical analysis above, and particularly from 1975 onwards, might seem surprising. It was a common practice, however, for the communist states to commit to strong human rights treaties while opting out of their control mechanisms (i.e. by adopting procedural reservations regarding the jurisdiction of judicial bodies).[121]

Figure 3.7 displays the annual ratification rate according to political regime and control mechanism type. Both in the UN and CoE, treaties with strong control mechanisms are more likely to be ratified. The overall ratification level is generally highest in non-transitional democracies, but it is also relatively high in transitional democracies. Autocracies generally show lower annual ratification rates for both types of treaties. Most interestingly, however, transitional countries show the greatest difference in relation to strong versus weak control mechanisms (i.e. the difference between the orange bar and the blue bar is largest for transitional states both in the UN and CoE).

3.5 Conclusion

Many theories of human rights commitments suggest that commitment patterns are influenced by the character of political regimes.[122] Generally speaking, one of the motivations for undertaking commitments is seen in the boost which international human rights treaties might give to a state's international

121 Goodman, *Human Rights Treaties, Invalid Reservations, and State Consent*, pp. 531–560.

122 Moravcsik, *The Origins of Human Rights Regimes*, pp. 217–252; Hafner-Burton, Tsutsui, and Meyer, *International Human Rights Law and the Politics of Legitimation*, pp. 115–141.

credibility. Moravcsik and Simmons both argue that transitioning democracies take on new human rights obligations in order to lock in desired policies and prove allegiance to democratic norms.[123]

Our research offers an explanation for the observed variation in states' ratification behaviour by contributing and analysing comprehensive empirical data for behaviour of almost all world countries. We started with two core research questions: Do political regimes differ in their commitment patterns? Do political regimes differ in their commitment activity depending on the substantive characteristics of human rights treaties, and especially their control mechanisms?

The comprehensive descriptive analysis presented here leads to the conclusion that treaty content is clearly associated with general ratification patterns. Decisions of states to ratify a treaty seem to be related to the generation of human rights contained within the treaty's provisions. When it comes to the United Nations treaties, all states have the highest propensity to ratify treaties containing rights of the second and the fourth generations. This effect is different for the Council of Europe, where it is strongest for treaties relating to first- and third-generation rights. This interesting distinction definitely merits examination through further, more detailed research. Intuitively, we might find the explanation in regional differences in approaches to human rights. The strong prevalence of the first generation of human rights, especially in how they were perceived and emphasized within the European transitional regimes in the 1990s, was not shared globally. This interpretation, although enticing, might not be sufficient, however. One of the potential problems lies with the categorization of treaties, which usually contain provisions belonging to more than one generation of human rights. In this research, we coded each treaty for the presence of every generation without further weighting the relative or absolute importance of each.

The behavioural patterns of different types of regimes also was examined closely. Our empirical findings are well in line with hypotheses proposed by commitment theories. Different types of regimes do behave differently. Autocratic, partially autocratic, and partially democratic regimes all have lower commitment rates than do full democracies. This effect is moderated,

123 Moravcsik, *The Origins of Human Rights Regimes*; Simmons, *Mobilizing for Human Rights.*

however, by the strength of a given treaty's control mechanism. Both in the United Nations and in the Council of Europe, democracies and transitional democracies tend to ratify treaties more often than do autocracies. This is particularly the case for human rights treaties with strong control mechanisms. The difference between the observed commitment rates for the treaties with strong control mechanisms and those with weak control mechanisms was highest for transitional democracies. This finding suggests that transitioning states might be using the ratification process for human rights treaties to signal their strong commitment to human rights values and their resolve to comply. They may also be using these treaties for which judicial bodies exist as external checks and a means to lock in new policies oriented to human rights.

As mentioned at the beginning of this chapter, the strength of the control mechanism might be potentially diminished by a state's decision to enter a procedural reservation and by opting out of the judicial body's jurisdiction. This practice was particularly relevant during the Cold War in the case of the Soviet republics. Future studies and research into the existence and effect of reservations on the validity of human rights commitments and their relationship to individual regimes would bring a valuable addition to our research findings.

II. CASE STUDY

The part II of the book focuses on the core of the whole research project. The Czech Republic, Slovakia, and their predecessors provide a great laboratory where human rights commitments can be carefully explored. Being part of communist Czechoslovakia, the countries experienced illiberal non-democratic past, then together transitioned to democracy and now both belong to the exclusive club of European democracies – the EU. The Czech Republic and Slovakia share many similarities which helpfully assist to our research design. We observe if the two countries have behaved similarly in the practice of human rights commitments after their dissolution, and if not (despite all the similarities), we try to uncover what accounts for the differences.

First, we provide some basic background information for understanding the specificities of the two states, and especially of the pre-1989 Czechoslovakia. Then, we both quantitatively and qualitatively analyse the practice of Czech and Slovak human rights commitments. We seek to identify factors which influence the decisions to sign or ratify human rights treaties. Moreover, we examine parliamentary debates in order to find reasons for such decisions. The part II proceeds with a highly important issue of reservations which can significantly weaken human rights commitments. We conclude with the analysis of the most important actors in the commitment process.

4 HUMAN RIGHTS COMMITMENTS IN CZECHOSLOVAKIA, CZECH REPUBLIC AND SLOVAKIA – BACKGROUND INFORMATION

4.1 The Socialist Past

The following chapter will present essential information about the context of the human rights treaty obligations in the two countries and their state predecessors. It derives from the idea that any assessment of the attitudes of states belonging to the post-communist world cannot be made without reference to their socialist past and the doctrines valid in this period of their history.

It is a well-known fact that these regimes had been very reluctant about or even hostile to the idea of protecting individual human rights, particularly in the case when human rights to be protected under their international legal obligations should have been applied directly in their national legal systems. This approach had several important features. The official doctrine presented a distinctive socialist theory of human rights that differed from the background ideas of 'bourgeois' human rights set down in international human rights treaties. The regimes insisted on the conviction that the socialist states had their own systems of human rights which were even better developed and relied on different circumstances. As argued by way of Marxist theory, human rights are determined by the economic system and class structure of the society. Every stage of societal development corresponds to a given degree of human rights and freedoms. Rather than being natural and innate features of human beings, human rights are determined by the economic and political system, by the power relationships between social classes, and by the development of material and spiritual culture. The western interpretation of human rights should merely have masked

the class nature of bourgeois-liberal democracy and used them in order to stabilize the domination and monopoly of capital.[124]

These opinions constituted the background for the official stances the Czechoslovak delegation advocated at the UN General Assembly while discussing the Universal Declaration of Human Rights in 1948. Along with other countries belonging to the socialist bloc headed by the Soviet regime, Czechoslovakia rejected the final document and abstained from voting.[125]

These hostile attitudes prevailed until the late-1960s when the regime in Czechoslovakia signed and later ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, after that event the officially recognized approach to the effects of the treaties in the national legal system was based on legal dualism. The domestic (constitutional) law lacked any provision enabling incorporation of the treaties into the domestic legal order, and the official doctrine denied direct applicability of these rights.[126]

These approaches were supported by legal doctrine and by prominent legal scholars even at the end of the 1980s shortly before the collapse of the regime. Both covenants were regarded as 'unification treaties' which imposed merely a binding framework. It was up to the contracting parties, however, to decide how and with what instruments the obligations 'requiring

124 See e.g. the translation of the original Soviet article of V. M. Čchikvadze published in the Czechoslovak legal journal entitled Právník (Jurist) in 1981. Čchikvadze, Viktor M. Základní rysy marxisticko-leninské koncepce lidských práv a svobod. *Právník*, No. 4, 1981, p. 310.

125 Other than the countries belonging to the Soviet bloc, only the Union of South Africa, Saudi Arabia, Yemen, and Honduras declined to support the final text of the Declaration. For details concerning the Czechoslovak attitudes towards the Declaration, see Malenovský, Jiří. Zapomenuté a falzifikované, známé a ještě nenapsané kapitoly šedesátileté epopeje Všeobecné deklarace lidských práv. *Právník*, No. 1, 2009, pp. 1–45.

126 This approach had a tradition even from the democratic period of the first Czechoslovak Republic (1918–1938), however, during which the domestic constitutional regulation of human rights has been called by legal scholars as 'pure monologues of the legislature', i.e. limits that the Constitution passed by the Parliament gave to the same Parliament for the future legislation. The scholars at that time refused the direct applicability of the rights and thus their justiciability. See Weyr, František. *Československé právo ústavní*. Prague: Melantrich, 1937, p. 248. However, the practical jurisprudence of highest courts at that time, mainly the Supreme Administrative Court had not reflected this idea and became on the contrary a rich source of human rights case-law. See Pospíšil, Ivo. Ústavní soudnictví a lidská práva. In *Lidská práva v mezinárodní politice,* edited by Pavel Dufek, and Hubert Smekal et al. Prague: Wolters Kluwer, 2014, p. 363.

to achieve a result' would be achieved in their domestic systems. The material aspect of these rights relied solely on the will of the state, which usually used the provisions of administrative law to implement these international obligations.[127]

Therefore, in the socialist Czechoslovakia the approach preferred rather a system of limited transformation of international obligations through domestic legal norms; the method of automatic incorporation of international treaties was applied to a limited extent only in cases of labour and social rights regulations (a limited number of domestic legal acts contained provisions that automatically incorporated some of the international treaties of the ILO[128], and the domestic authorities were obliged to apply these with priority over the conflicting domestic norms).

In the sphere of international human rights treaties, however, the regime disputed their ability to be incorporated and applied directly in the domestic legal order. Moreover, the state authorities produced additional obstacles, such as by postponing publication of such treaties in the official legal gazette after their ratification. For example, although both the ICCPR and ICESCR were signed by the Czechoslovak representatives in 1968, these were ratified only in 1975 and published domestically only in 1976.

Therefore, the state preferred to sign and ratify treaties that contained rather proclamations than self-executing rights and a weak mechanism of implementation through regular reports.[129] From the 1960s to 1980s, Czechoslovakia signed and ratified some of those universal HR treaties the subjects of which did not represent an internal problem, which supported its foreign policy goals, and which enabled the socialist countries to criticize the Western liberal countries, e.g. the International Convention on the Elimination of all Forms of Racial Discrimination (CERD),[130] the International Convention on the Suppression and Punishment

127 Čepelka, Čestmír. K mezinárodně právním aspektům ochrany lidských práv. *Právník*, No. 6, 1987, pp. 473–474. Or with ironic meaning Šamalík, František. Vyšinskij redivivus? *Právník*, No. 10, 1990, p. 869.

128 The state chose only those HR obligations that did not threaten the official course of the regime, therefore it enabled the direct applicability of some of the ILO conventions dealing with labour and social benefits of workers.

129 See Chapter 5.

130 Signed on 7 March 1966 and ratified on 29 December 1966.

of the Crime of Apartheid,[131] or the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[132] Moreover, when the state ratified the treaties it added accompanying reservations limiting the scope of the obligations.[133] At the end of the 1980s, the state started to adopt even obligations that – if taken seriously – could cause problems in their implementation, such as the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment.[134]

The legal scholarship and doctrine supported the principle of state sovereignty exercised both outwardly and inwardly. Therefore, it denied the legal personality of individuals under international law and the possibility that an individual might present a petition against the state at the international bodies or tribunals and even to become an equal participant in the judicial proceedings against the state. These instruments were viewed as means for destroying state sovereignty and enabling imperialist interference in the internal politics of states belonging to the socialist camp.[135] These ideas supported the official refusal of the socialist states to sign and ratify the Optional Protocol to the ICCPR that enabled individuals to lodge a complaint with the Human Rights Committee.[136]

The regime's rigid stances did not change even after signing the Helsinki Final Act in 1975.[137] The Helsinki Final Act played an important role in the rise of civic protest movements in Eastern Europe. The official representatives of the regimes interpreted the act as a victory for the principle of non-intervention, while the dissidents and other representatives of political opposition saw in the Act a new platform for their attempts to build

131 Signed on 29 August 1975 and ratified on 25 March 1976.

132 Signed on 17 July 1980 and ratified on 16 February 1982.

133 See the Chapter 7.

134 Signed on 8 September 1986 and ratified on 7 July 1988.

135 Outrata, Vladimír. *Mezinárodní právo veřejné*. Prague: Orbis, 1960, p. 55.

136 Hungary was the first socialist country to accede to the Protocol in 1988. Czechoslovakia made this step later, on 12 March 1991. For details, see Malenovský, Jiří. Tři významné souvislosti ratifikace Úmluvy ČSFR. In *Dvacet let Evropské úmluvy v České republice a na Slovensku,* edited by Michal Bobek et al. Prague: C. H. Beck, 2013, p. 5.

137 The Final Act of the Conference on Security and Cooperation in Europe was signed by the representatives of 35 countries on 1 August 1975 in Helsinki. In fact, it represented a compromise in which the socialist countries formally promised to respect human rights and were assured that the Western countries would not interfere in their internal matters and would not question the shifts of the borderlines westwards after WWII.

'small seeds' of civil societies.[138] The Czechoslovak regime made the internal situation even worse after signing the Act. In order to demonstrate the strict course it would pursue, for example, the regime conducted a show trial in 1976 involving several members of the music underground band Plastic People of the Universe. The opponents who first came together in support of the imprisoned musicians later signed the document called *Charta 77* (Charter 77) that reminded the regime of its international HR obligations. The aim was not to fight against the regime but to start an open dialogue about its HR situation.[139] The official policy of the state remained the same: to recognize the HR obligations on the international level but to suppress them in everyday internal life. The Czechoslovak situation in the 1980s lagged behind the changes that were occurring in Poland, Hungary, and even the USSR itself with the emergence of glasnost and perestroika. Czechoslovakia's was among the strictest and most conservative communist party regimes within the socialist bloc.[140]

4.2 Changes in the 1990s during the Initial Stages of Democratic Transition

The imaginary pendulum swung after the collapse of the regime. Inasmuch as the newly established democratic state intended to make up for the delay and loss of time, it was willing rapidly to sign and ratify all the existing international treaties. The state even was enthusiastic about their automatic incorporation into the national legal order.

There were two prevailing trends at that time: to become a significant party within the existing international systems of human rights protection, and to provide for direct application of the international legal norms on human rights into the domestic law.

138 See Thomas, Daniel C. *Helsinský efekt: mezinárodní zásady, lidská práva a zánik komunismu*. Prague: Academia, 2007, pp. 102–112.

139 Ibid., p. 187.

140 For a comparison of the countries, see ibid., pp. 233–269. Comparison of later HR policies within the V4 is presented e.g. in Pospíšil, Ivo, Petr Preclík, and Hubert Smekal. Demokratizace a lidská práva z pohledu výzkumu mezinárodních vztahů. In *Demokratizace a lidská práva. Středoevropské pohledy,* edited by Jan Holzer, and Pavel Molek. Prague and Brno: Sociologické nakladatelství, 2013, pp. 151–166.

The first step led to ratification of the Optional Protocol to the ICCPR. The first official discussions started in Parliament (then called the Federal Assembly) in 1990. Ratification of the protocol was unanimously approved on 19 December 1990, and the final ratification took place on 12 May 1991. Simultaneously, the state acted to become a full member of the Council of Europe and a party to the European Convention on Human Rights and Fundamental Freedoms (ECHR). Czechoslovakia signed the ECHR on 21 February 1991 and it was the first post-communist country to ratify it, doing so on 18 February 1992.[141]

This rapid development, whereby the state ratified the Optional Protocol before it did the ECHR, did not allow for creating a reservation to the protocol which would have avoided duplication of the two mechanisms. Some Czech scholars[142] later criticized this situation as creating a deficiency of the system enabling individuals to make parallel petitions to both the Human Rights Committee and the European Court of Human Rights (ECtHR).[143]

This new attitude of the state to its HR obligations manifested itself also in amendments to the socialist constitution.[144] Art. 2 of Constitutional Act No. 23/1991 newly stipulated: *'Treaties on human rights and fundamental freedoms to the ratification of which Parliament has given its consent and by which the state is bound form a part of the legal order; if a treaty provides something other than that which a statute provides, the treaty shall apply.'* As evident, however, this tendency to allow direct applicability of international treaties covered only a limited number of treaties and only those on human rights protection.[145] From that time, the ordinary courts were obliged to apply the HR treaties directly and

141 It was ratified by Hungary on 5 November 1992 and by Poland on 19 January 1993.

142 Malenovský, *Tři významné souvislosti ratifikace Úmluvy ČSFR*, p. 7.

143 And this situation rarely happens when an individual uses both mechanisms. In some cases it shows the differences and limits of the mechanisms. In the Chapter 9 we illustrate it in greater detail with reference to cases of property restitutions.

144 Originally passed as the constitutional law No. 100/1960, it was first changed in 1968 when the state became the federation. Radical changes were made after 1989 by several constitutional laws, but formally the Constitution survived until the split of the federation in 1992.

145 The situation concerning other international treaties remained the same from the communist past, and the state absolutely ignored the existence of customary international law in domestic law. Therefore, some of the legal scholars considered this situation as insufficient inasmuch as it covered only the HR treaties. They termed the system semi-dualistic. See e.g. Malenovský, Jiří. O "chudokrevosti" mezinárodního rozměru české ústavy a možných terapiích. *Právník*, No. 7, 1996.

the HR treaties represented a criterion for the newly created Constitutional Court of the Czech and Slovak Federal Republic to annul domestic statutory laws that would contravene any treaty provision.

4.3 Developments in the Czech Republic after the Split of the Federation

After the split of the Federation, the newly created Czech Republic continued the HR policies already introduced by the federal state. A provision similar to that of Art. 2 of the Federal Constitutional Law on the direct applicability of HR treaties was transferred into Art. 10 of the Czech Constitution from December 1992. Therefore, the provisions of HR treaties were retained as criteria for the Constitutional Court to annul domestic statutes.

The new Constitution empowered the President of the republic to negotiate, sign, and ratify international treaties. This competence could be transferred to the Government or its individual ministers and, at minimum, could be exercised with the consent of the Government (formally manifested by the co-signature of the Prime Minister or another member of the Government). By decision of President Václav Havel, this competence was transferred to the Government shortly after creation of the Czech Republic.[146]

In practice, the competence of the President seems to be more limited: the main initiatives for negotiations come from the Government or its individual members (ministers).[147] One or more ministries always is responsible for negotiating a treaty, it is the Prime Minister who submits the treaty to the Parliament, and Parliament always gives consent with its ratification.[148] The Constitution demands the consent of both chambers of Parliament – the Chamber of Deputies and the Senate. The chambers have an equal position in this competence and there is no required sequence in which the chambers shall deal with the treaty and vote on it.

146 Decision No. 144/1993 of 28 April 1993.

147 Mlsna, Petr, and Jan Kněžínek. *Mezinárodní smlouvy v českém právu*. Prague: Linde, 2009, p. 222.

148 Válek, Petr. Ministerstvo zahraničních věcí v procesu sjednávání a vnitrostátního projednávání mezinárodních smluv o lidských právech v ČR. In *Mezinárodní lidskoprávní závazky postkomunistických zemí: případy České republiky a Slovenska,* edited by Ivo Pospíšil, and Vladimír Týč et al. Prague: Leges, 2016, p. 71.

Since the so-called Euro-amendment to the Constitution,[149] the chambers, or groups of MPs and Senators, have acquired the right to lodge a motion with the Constitutional Court and to ask for review of an international treaty for its conformity with the constitutional order. The treaty thus can be a subject of such constitutional review before its ratification. The reason for this derives from the idea that if the treaties shall be directly applied in the domestic law with priority over the statutory acts, then they should be screened by the Constitutional Court before the treaty becomes an international obligation. This competence of the Constitutional Court should prevent a situation wherein the state would be bound by an unconstitutional international treaty, or even a situation in which such a treaty would be applied domestically. Although this concentrated a priori (preventive) constitutional review is not trouble-free, it is used only rarely.

First of all, such a procedure is not compulsory – it takes place only when the authorized subjects have doubts about constitutional conformity of the treaty. Therefore, it cannot prevent every case wherein the state might adopt a treaty that is not in conformity with the constitutional order. What is more, the participants usually challenge only some of the treaty provisions and do so using only some of the constitutional legal norms. The Constitutional Court, however, should decide whether ratification of the treaty as a whole does not contravene the Constitution: the question is whether such a decision would in future represent *rei judicatae*, or whether it is possible even after the ratification to challenge the constitutionality of some of the treaty provisions during its domestic application.

149 The Euro-amendment to the Constitution was represented by the Constitutional Act No. 395/2001. Being in force from 1 June 2002, it should have prepared the constitutional system in the Czech Republic to its membership in the EU. However, it also changed the constitutional approach towards international treaties. It removed from Art. 10 of the Constitution the category of international HR treaties as the only treaties incorporated to the domestic legal order and replaced it with the general category of all international treaties to which the Constitution requires the consent of the Parliament with the ratification (these are treaties affecting the rights or duties of persons; treaties of alliance, peace, or other political nature, by which the Czech Republic becomes a member of an international organization, of a general economic nature and those concerning additional matters, the regulation of which is reserved to statutes).

As the Constitutional Court has had only two opportunities in the past to conduct such proceedings,[150] it is probably too early to formulate any definite answer.

The aforementioned Euro-amendment added one more modification inasmuch as it broadened the previous approach of semi-dualism in the direction of legal monism. The Constitution in Art. 1(2) now stipulates that '*the Czech Republic shall observe its obligations resulting from international law*'. Moreover, the newly formulated Art. 10 involves all the international treaties ratified with the consent of Parliament which shall be applied with priority over domestic statutes. Parliament had hoped it would be for the ordinary courts to decide about the discrepancy and apply the international treaty with priority over the domestic law. Parliament expected that the role of the Constitutional Court to decide and annul the domestic legal norms that would collide with the international treaty will be terminated. However, the Constitutional Court insisted on its previous role and decided[151] that the ordinary courts still have an obligation in the cases of non-conformity between the statutory law and international HR treaty to lodge a motion with the Constitutional Court.[152] Therefore, the Constitutional Court preserved the exclusive role of HR treaties in the constitutional system.

Since establishment of the independent Czech Republic, the state has signed and ratified many HR treaties or additional protocols to the treaties, but only some of them have resulted in internal political struggles and their domestic ratification has been accompanied by troubles. Regular difficulties have been provoked especially by treaties that strengthen social rights and mechanisms for their implementation. The most problematic in this sense was ratification of the European Social Charter which had been signed already

150 The Constitutional Court has reviewed in these proceedings the Lisbon Treaty twice and acknowledged that the previous review of some of the treaty provisions was not an obstacle to open the subsequent review of other provisions (the first proceeding was initiated by the whole Senate before giving its consent to the treaty ratification, while the second procedure was opened by a group of Senators after the majority in the Senate agreed with the ratification).

151 Decision No. Pl. ÚS 36/01 of 25 June 2002.

152 The Constitutional Court even used very serious arguments that different interpretations of the constitutional amendment would deteriorate the standard of HR protection already achieved in the Czech Republic and decided that HR treaties are part of the constitutional law.

by the federal state but was ratified by the Czech Republic after more than seven years.[153] The majority in Parliament that belonged to the right-wing political parties rejected many of the social rights in the Charter. At that time, before the Euro-amendment, it was up to Parliament to decide about the qualification of the treaty as an HR treaty. These treaties required a three-fifths majority in both chambers. Most members in the Chamber of Deputies demanded to qualify the treaty as non-HR in order to support its ratification. In its later case law, however, the Constitutional Court has not respected this qualification and has dealt with it as with an HR treaty. The treaty has been finally ratified with a number of reservations to substantive provisions of the Charter. The same reasons relating to rejection of international commitments dealing with economic and social rights resulted in non-ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

The same can be said about the Rome Statute of the ICC,[154] although the reasons for the delay between its signature and ratification were more complicated, as many politicians (represented by President Václav Klaus) opposed the treaty with constitutional objections.[155] And the same hesitation has recently accompanied the ratification of Protocol No. 12 to the ECHR which provides for a general prohibition against discrimination.[156]

153 Signed on 25 July 1992 and ratified on 3 November 1999.

154 Signed on 13 April 1999 and ratified on 21 July 2009. The Czech Republic has been the last member state of the EU that ratified the Statute.

155 They argued it contravened the right of citizens not to be extradited to the international court and the principles of immunity for some state officials.

156 The Czech Republic belonged to the first group of states that signed it on 4 November 2000, however the argument that the Protocol actually redundant as the Czech Republic is already obliged by the Art. 26 of the ICCPR with the same meaning later prevailed (this argument is incorrect to the extent that Art. 26 of ICCPR unlike the Protocol is not a subject of judicial supervision, and actually, this is the most important reason of the denial of ratification). By the way, as concerns the principle of non-discrimination, the Czech Republic faced the same problem with implementation of the relevant EU directives inasmuch as the Parliament passed the Antidiscrimination Act in 2009 after several years of parliamentary debates, after unsuccessful attempts to pass the Act, and after the European Commission had lodged a motion at the European Court of Justice.

4.4 Developments in Slovakia after the Split of the Federation

The situation in Slovakia after the split of the Federation was slightly different. The Slovak Constitution was passed by Parliament more than five months before the break-up of the federation. The wording of Art. 11 of the Slovak Constitution[157] was at first sight very similar to Art. 10 of the Czech Constitution, but the wording of the final sentence in Art. 11 meant that the treaties shall be applied only if they provide for a higher standard of protection.[158] This conclusion was supported by case law of the Slovak Constitutional Court that – unlike its Czech counterpart – held that the treaties are not parts of the constitutional order and have only an indirect impact inasmuch as the Constitution can be interpreted 'in the light' of the treaties. Although the HR treaties could not be used in proceedings on individual constitutional complaints, the Constitutional Court did apply the treaties in proceedings on abstract constitutional review of domestic statutes.[159]

This model has been termed a system of conditionally prioritized treaties.[160] The scope and importance of the HR treaties has been even more limited than in the Czech Republic, and the conditional application of HR treaties caused rather a situation of legal uncertainty as to which source of law shall be applied in certain cases.[161]

As did the Czech Republic, Slovakia adopted its constitutional Euro-amendment in 2001.[162] Like that in the Czech Republic, it not only regulated the methods of delegating competences to the supranational organization

157 '*International treaties on human rights and fundamental freedoms ratified by the Slovak Republic and promulgated in the manner prescribed by law have priority over domestic law if they provide a higher standard of human rights and freedoms protection.*'

158 The question is whether they provide the higher standard of protection than does a statute or the Constitution itself.

159 For more detail, see the Chapter 9.

160 Bobek, Michal, and David Kosař. The Application of European Union Law and the Law of European Convention of Human Rights in the Czech Republic and Slovakia – an Overview. *Eric Stein Paper,* No. 2, 2010, p. 14.

161 Giba, Marián, and Jozef Valuch. Kategorizácia medzinárodných ľudskoprávnych zmlúv v procese ratifikácie. In *Mezinárodní lidskoprávní závazky postkomunistických zemí: případy České republiky a Slovenska,* edited by Ivo Pospíšil, and Vladimír Týč et al. Prague: Leges, 2016, p. 85.

162 Constitutional Act No. 90/2001 of 23 February 2001.

but also reformulated the relationship with international treaties. It seems, however, that the Slovak Parliament has done this in a way that made the situation even more complex and confusing. Unlike in the Czech Republic, the Constitution employed the time criterion for the different regimes of the treaty application. The Constitution distinguished between treaties ratified before the Euro-amendment came into effect and those ratified after this date. This means there are several complicated considerations in the process of direct application: to respect the date of ratification, to decide whether the treaty is an HR treaty, and to recognize whether the treaty brought a higher standard of protection.

Like in the Czech Republic, it is the President who is empowered by the Constitution to negotiate, sign, and ratify international treaties.[163] The President can delegate this competence to the Government or with its consent to an individual member of the Government. This was implemented through decision No. 250/2001, which came into effect from 1 July 2001. The ratification of HR treaties demands previous consent of Parliament. The Minister responsible for negotiating the treaty must, however, inform the President about the content of the treaty before sending its final version to Parliament. The President can express his disagreement with the treaty or can even lodge a motion with the Constitutional Court and ask for its preventive constitutional review.

The Euro-amendment brought a modification, too, concerning the qualification of a treaty as an HR treaty. Art. 86 of the Constitution entrusted Parliament with the power to decide about the qualification of a treaty when it decides about its consent with the treaty ratification. Parliament even passes a special resolution dealing with this question and which is promulgated in the official legal gazette together with the treaty. Such qualification is binding upon all state authorities, including the Constitutional Court.[164]

163 Art 102 (1) of the Constitution.

164 Štiavnický, Ján. Referenčné či preferenčné normy? Postavenie ľudkoprávnych medzinárodných zmúv v Ústave Slovenskej republiky a ich aplikácia a správne alternatívny pohľad na nález českého ústavního súdu Pl. ÚS 36/01. In *Mezinárodní lidskoprávní závazky postkomunistických zemí: případy České republiky a Slovenska,* edited by Ivo Pospíšil, and Vladimír Týč et al. Prague: Leges, 2016, p. 115.

The Euro-amendment introduced – as in the Czech Republic – a new competence of the Constitutional Court to make a preventive review of international treaties prior to their ratification. The rights to lodge such a motion with the Court have been granted only to the President and the Government, who can make this step only so long as Parliament has not decided on its consent with the ratification.[165]

The Slovak development diverged from the Czech very significantly in the first half of the 1990s due to the internal political dominance of then-Prime Minister Vladimír Mečiar's HZDS (Movement for Democratic Slovakia). This period brought an open departure from the democratization process that had been launched, but this was not officially reflected at that time in the willingness to adopt new HR obligations. After the fall of Mečiar's government Slovakia continued its open approach in committing new human rights obligations, on the contrary – like the Czech Republic - hesitated to ratify some of the HR treaties (e.g. Protocol No. 12 to the ECHR). Unlike the Czech Republic, however, Slovakia signed and already ratified the Optional Protocol to the ICESCR.

4.5 Conclusions: From Resistance through Enthusiasm to Pragmatic Approaches

The subtitle above describes the trajectory of attitudes represented by the Czechoslovak and later Czech and Slovak states towards the HR international treaties and HR obligations in different periods of their history.

165 This model is not ideal inasmuch as it places this competence only into the hands of the President or the Government. Apart from the fact that it grants this competence to the state authorities which are in fact responsible for negotiating the treaty (and that is why it is quite illogical they would challenge a treaty which had been negotiated by them or on their behalf), the absence of other bodies that could challenge the treaty is unreasonable. The Czech model seems to be more appropriate because it enables also both parliamentary chambers or even outvoted minority groups of MPs or Senators to challenge a treaty at the Constitutional Court. On the other hand, it creates different problems (e.g. repeated motions lodged by different petitioners who challenge the same treaty). As already mentioned, this occurred in the Czech Republic during the ratification process of the Lisbon Treaty. That was first challenged by the Senate (Proceeding No. Pl. ÚS 19/08) as a whole and later by a group of Senators (Proceeding No. Pl. ÚS 29/09).

Although the socialist regime formally accepted most of the universal HR international treaties between the 1960s and 1990s, it in fact opposed their relevance and resisted their direct domestic application and its subordination to the decisions of international bodies. To support this approach, the regime used the doctrine of non-interference in domestic affairs and argumentation based on the existence of its own (Marxist) theory of human rights.

This was replaced by a completely different stance in the first years after the collapse of the regime, as the newly created democratic institutions made intensive efforts to make up for lost time and promptly to adopt the existing HR obligations. In these years, the Czech and Slovak Federation signed and ratified the optional protocols enabling individuals to petition the international bodies with cases of human rights violations, and it became a participant in the existing ECHR system of human rights protection.

After the split of the federal state, however, and with the enthusiasm melting away, both independent states began thoroughly to consider what obligations were worth accepting. The previous socialist period, which had given preference to social and economic rights while virtually ignoring or even violating civil and political rights resulted in totally opposite ideas being supported by some of the political forces. As concerns the Czech Republic, this meant being very cautious about international obligations connected with the guarantees of social rights and avoiding any obligations that would mean to accept decision-making of international bodies in individual cases concerning social rights guarantees.

Paradoxically, this was not the case of the Slovak Republic, and not even in the years of the so-called 'Mečiarism'. Although formally the state adopted new human rights obligations, this did not correspond with the internal situation on the ground concerning human rights protection.[166] The human rights policies in both countries were quite strongly influenced by the particular

166 The illustrative picture can be deduced from the Human Rights Watch World Reports of 1995 a 1996: '*During 1994 the nature of human rights abuses in the Slovak Republic corresponded to the shifts in political power.*' Or '*The political in-fighting between President Michal Kováč and Prime Minister Vladimir Mečiar during 1995, had a decidedly negative impact on respect for human rights and the rule of law in Slovakia…*'. See Human Rights Watch. *World Reports of 1995: The Slovak Republic.* 1995, https://www.hrw.org/reports/1995/WR95/HELSINKI-14.htm#P579_177632; and Human Rights Watch. *World Reports of 1996: The Slovak Republic.* 1996, https://www.hrw.org/reports/1996/WR96/Helsinki-17.htm#P883_178739.

composition of the governments: In the Czech Republic, the conservative right-wing political parties in governments hesitated to adopt obligations concerning social rights or principles of non-discrimination. After the fall of Vladimír Mečiar's government, the situation in Slovakia shifted repeatedly between the periods of right-wing and centrist governments and that of left-wing and nationalist governments led by the Prime Minister Robert Fico.[167] We can generally conclude, however, that both countries have established rather a pragmatic approach to their human rights obligations.

167 Pospíšil, Preclík, and Smekal, *Demokratizace a lidská práva z pohledu výzkumu mezinárodních vztahů*, p. 158.

5 TREATY CONTROL MECHANISM, LEGITIMACY AND DOMESTIC CHANGE

5.1 Introductory Remarks

As regards motivations of states to ratify international human rights treaties, many tentative explanations for the observed commitment patterns have been proposed, relating, for example, to the character of the political regime of the state;[168] the characteristics of a treaty and how they diverge from a country's practice;[169] and foreign policy goals,[170] especially accession to the EU.[171]

A thorough examination of practices in two post-communist countries, the Czech Republic and Slovakia, contributes to this debate on different commitments patterns (i.e. signatures and ratifications). The data collection and coding of the commitment practice reflects the regime, foreign policy, and treaties specifics introduced in a more detail in Chapter 1. Just as in the other chapters, our in-depth investigation is based on a set of 192 human rights treaties and we understand a human rights treaty to be any multilateral treaty which includes human rights provisions (i.e. both predominantly human rights treaties and treaties dealing with human rights only in parts of their provisions). These are typically treaties which originated in the Council of Europe, the United Nations, or the International Labour Organization.

168 Moravcsik, Andrew. The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe. *International Organization*, Vol. 54, No. 2, 2000, pp. 217–252; Hafner-Burton, Emilie M., Kiyoteru Tsutsui, and John W. Meyer. International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties. *International Sociology*, Vol. 23, No. 1, 2008, pp. 115–141.

169 Hathaway, Oona A. Why Do Countries Commit to Human Rights Treaties? *The Journal of Conflict Resolution*, Vol. 51, No. 4, 2007, pp. 588–621; Cole, Wade M. Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966-1999. *American Sociological Review*, Vol. 70, No. 3, 2005, pp. 472–495.

170 Goodman, Ryan. Human Rights Treaties, Invalid Reservations, and State Consent. *The American Journal of International Law,* Vol. 96, 2000, pp. 531–560; Heyns, Christof H., and Frans Viljoen. The Impact of the United Nations Human Rights Treaties on the Domestic Level. *Human Rights Quarterly*, Vol. 23, No. 3, 2001, pp. 483–535.

171 Guzman, Andrew. *How International Law Works: A Rational Choice Theory*. Oxford: Oxford UP, 2008; Landman, Todd. *Protecting Human Rights: A Comparative Study*. Washington, DC: Georgetown UP, 2005.

Thus chapter has in focus two countries with similar foreign policy incentives as well as a common historical, political, and legal heritage. The political experience of the two countries has included non-democratic, semi-democratic, democratic, and transitional periods. After the fall of the communist regime which had held power through four decades until 1989, the two countries experienced a short intermezzo as a federal democratic republic (CSFR). This republic was dissolved on 1 January 1993 following strong calls for national self-determination. Approximately seven decades of common history meant that the two new states shared a common starting point with regard to their international commitments and domestic legal systems. The Czech Republic set off decisively for liberal political and economic reforms in order quickly to integrate into Western international structures, and it very soon acquired a reputation as a front-runner among post-communist countries. On the other hand, between 1993 and 1998, Slovakia, under the government of Prime Minister Vladimír Mečiar, slowly moved towards a semi-authoritarian system characterized by restrictions of political rights, censorship in the media, and economic scandals. At the end of 1998, Mečiar's government fell due to worsening economic problems and foreign policy failures (pre-accession talks with the EU and NATO in particular were unsuccessful). After 1998, Slovakia caught up with the other EU candidate countries in Central and Eastern Europe and fully reoriented its efforts towards integration into Western structures. In December 2002, both states successfully concluded their pre-accession negotiations with the EU. Both acceded on 1 May 2004.

After thorough consideration, we decided not to break out the period of Mečiar's government for methodological reasons. Its character and position on the democratic vs. non-democratic axis remains disputed.[172] The political developments are nevertheless taken into account when interpreting the data. Experience with different political regimes adds data variability and enables us to focus on the relationship between the character of the regime and a state's commitment activity wherever possible. Academic literature includes regime type among the most important variables influencing the decision

172 See Janos, Andrew C. *East Central Europe in the Modern World. The Politics of the Borderlands from Pre- to Postcommunism*. Stanford, CA: Stanford UP, 2000; Kitschelt, Herbert. *Post-Communist Party Systems: Competition, Representation, and Inter-Party Cooperation*. Cambridge: Cambridge UP, 1999; Linz, Juan J., and Alfred Stepan. *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe*. Baltimore, MD and London: The Johns Hopkins UP, 1996.

to commit. Several authors have pointed out that non-democratic countries with poor human rights records and strong autocratic leaders, typically with lifelong positions, ratify some treaties, and tend to do so at a higher speed[173] in order to demonstrate a low-cost, legitimizing symbolic commitment without any actual willingness to comply.[174] Moreover, this commitment might be further distorted either by the use of reservations[175] or a control mechanism too weak to be seen as a credible threat.[176]

Control and enforcement mechanisms adopted in human rights treaties differ profoundly in terms of their strength, ranging from having no control, through an obligation to submit internal reports, and to subordination to the jurisdiction of a judicial body. In this short contribution, we focus upon the influence of the control mechanism on commitment patterns. Our distinct argument is that the *strength of a treaty's control mechanism moderates the effect of the political regime on how states commit to human rights treaties*, and we test this argument on the Czech and Slovak experience.

In the second part of the chapter, we dig more deeply into the motivations of regimes, as represented by their governments and legislative bodies. We searched the historical records relating to a sample of treaties[177] in order

173 Hathaway, Oona A. Do Human Rights Treaties Make a Difference? *Yale Law Journal*, Vol. 111, No. 8, 2002, pp. 1935–2042.

174 Hafner-Burton, Tsutsui, and Meyer, *International Human Rights Law and the Politics of Legitimation*.

175 Neumayer, Eric. Qualified Ratification: Explaining Reservations to International Human Rights Treaties. *The Journal of Legal Studies*, Vol. 36, No. 2, 2007, pp. 397–429.

176 Dutton, Yvonne. Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms. *University of Pennsylvania Journal of International Law*, Vol. 34, No. 1, 2012, pp. 1–66.

177 The UN points to eighteen treaties as being most important regarding human rights. We chose at least two treaties for every regime – communist Czechoslovakia (until November 1989), transitioning Czechoslovakia (until December 1992), and democratic Czech Republic. For simplicity's sake and due to similarities with the Czech Republic, we do not include Slovakia in this investigation. The sample consists of: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights; the Second Optional Protocol to the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

to identify within the minutes of legislative bodies, government preparatory texts, and in various declarations reasons why the regime ratified a treaty. We sought to uncover any patterns appearing in the argumentation of ministers and parliamentarians. Was rational or ideational argumentation more prevalent? How sincere were the commitments of the regimes?

5.2 Theoretical Expectations

Table 5.1 mirrors our expectations regarding the frequency and speed of human rights commitments undertaken by the Czech Republic and Slovakia under different political regimes. Based on the aforementioned theories and our findings on the behaviour patterns of different types of regimes presented in Chapter 3, we would expect non-democratic communist Czechoslovakia to commit to few human rights treaties, and primarily to those with weak control mechanisms (i.e. with no actual control or mechanisms limited to domestic reports). Although communist Czechoslovakia is defined as a non-democratic regime, the harshness, repressiveness, and non-democratic elements kept changing in time, distinguishing the country from the most autocratic and totalitarian regimes (as, for example, defined by Polity IV). We therefore expect that CSR was rather apprehensive about its human rights commitments: in other words, CSR should comply, but not at extremely high rate as some autocratic regimes, which do not intent to comply and do not care about external control and repercussions for non-compliance. The ratification process for these commitments should have been rather fast, because there was but limited need for deliberation. On the other hand, we expect the post-1989 Federal Republic to have been strongly oriented towards human rights and to commit frequently and quickly in order to boost its international credentials and spur the proverbial return to (Western) Europe. After consolidation of the new democracies, we expect the speed of ratifications to have slowed.

Table 5.1 Theoretical expectations

	Regime	Expected commitment pattern
Communist Czechoslovakia (1948–1989)	Non-Dem	Low commitment propensity, higher for treaties with weak control mechanisms (when compared to democracies). Once started, the commitment process should be medium-fast.
Federal Republic (1990–1992)	Dem	High propensity + fast process for all treaties
Czech Republic (1993 →)	Dem	Medium propensity + slow process for all treaties
Slovak Republic (1993 →)	Dem	Medium propensity + slow process for all treaties

Source: Authors

5.3 Data Analysis

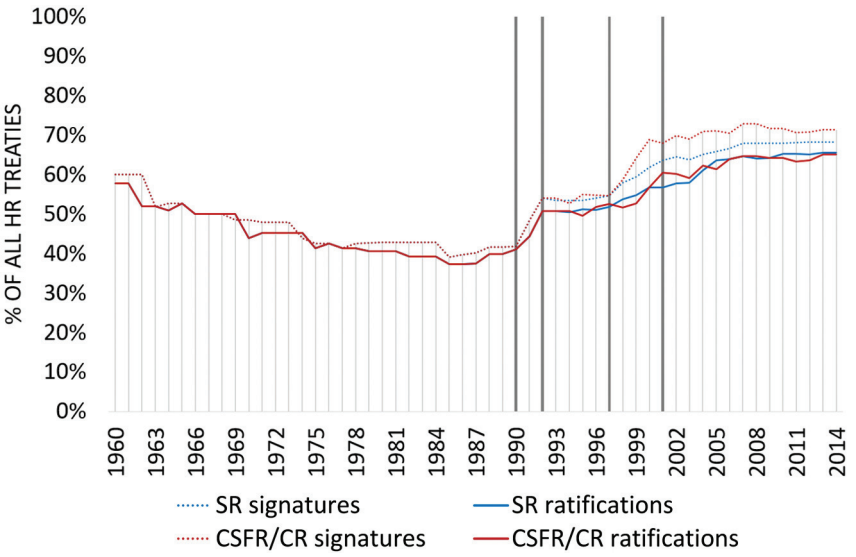
The overall human rights commitment activity of Czechoslovakia and its successors is summarized in Figure 5. 1. The graph shows the cumulative number of human rights treaties signed and the number of those ratified as a percentage of all human rights treaties existent at a given point in time.[178] At the beginning of 1960s, the regime was still committing to quite a few existing human rights treaties, however, it is worth noting that this was partly a result of the overall low number and character of treaties existing at the time. The decreasing trend visible during the communist era means that the number of Czechoslovakia's commitments fell significantly behind the developments in the international human rights system.

The country caught up after 1989, and its commitment curve rose extremely quickly. The first two vertical lines mark the 1990–1992 period. The high commitment propensity of the CSFR suggested by the graph is in line with the theoretical expectation.

178 In order to simplify the graph, Czechoslovakia and the CSFR are both displayed on the 'Czech' line. Chapter 6 contains a figure analogous to Figure 5.1 displaying the same data in absolute terms (actual numbers of treaties signed and/or ratified), not in relative terms as is the case here.

In the first years after their separation, the commitment activity of the two states slowed substantially. Inasmuch as the graph presents information in terms relative to the overall number of human rights commitments existent at each point in time, the fact that the lines remained fairly flat until 1997 does not mean that no human rights treaties were signed or ratified; it means that commitment activity was at a rate similar to the introduction of new human rights treaties within the international system. In this context, it is interesting that there seems to be little to no distortion of the commitment practice under the non-democratic Mečiar's government (1994–1998). Mečiar's government fell behind slightly at the beginning of its term but caught up in 1997, possibly also due to increasing international pressure and criticism.

Figure 5.1 Human rights commitments of Czechoslovakia, the CSFR, Slovakia, and the Czech Republic over time



Source: Authors

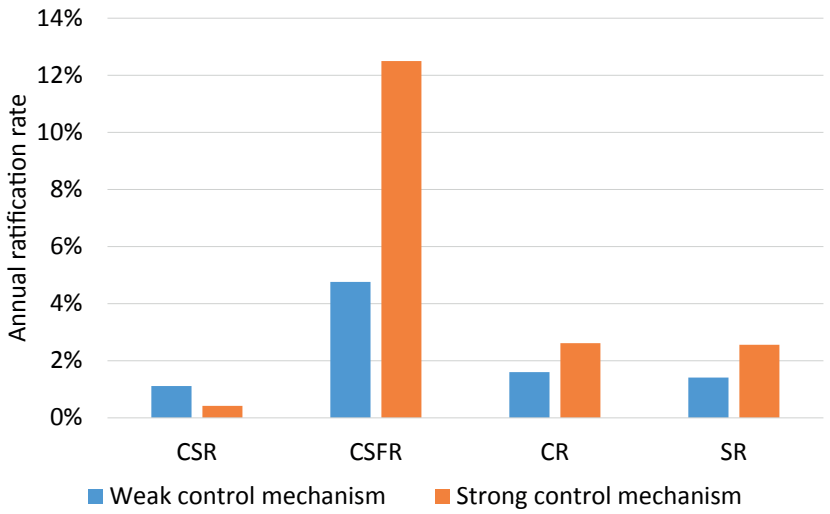
As indicated by the two vertical lines to the right on Figure 5.1, there was a flourishing of commitments between the years 1998 and 2002. This period starts close to the opening of EU accession negotiations in March 1998, when the candidate countries needed to show high levels of support for human rights in order to obtain positive reports from the European Commission. The period ends with the successful conclusion of those negotiations in December 2002. This indicates that foreign policy goals of the two countries might have created a strong incentive inducing commitment practice. Nevertheless, a relatively high commitment rate continued until approximately 2005. The rate slowed thereafter but still remained slightly greater than the rate at which new human rights treaties were introduced within the international system.

Figure 5.2 presents data on ratification practices of different regimes in relation to the strength of treaties' control mechanisms. *Strong control* is herein defined as judicial or parajudicial control (i.e. existence of a court or a committee dealing with complaints), while *weak control* means no control at all or oversight solely via domestic reports or reports by treaty bodies.

Figure 5.2 confirms conclusions stated above that overall the ratification rate was highest for the CSFR, followed by the Czech Republic and Slovakia, and with the communist CSR having been least likely to commit to international human rights treaties. It further suggests that the democratic regimes were more inclined to ratify treaties with strong control mechanisms[179] (the red bar being taller than the blue bar for each of them) whereas communist Czechoslovakia had a higher commitment propensity towards treaties with weak control mechanisms. This is intuitive and in line with our expectations that the non-democratic regime focused its activity on treaties with weak control mechanisms.

179 The overall number of existing human rights treaties with strong vs. weak control mechanisms is in fact fairly balanced.

Figure 5.2 Ratifications of human rights treaties by control mechanism strength

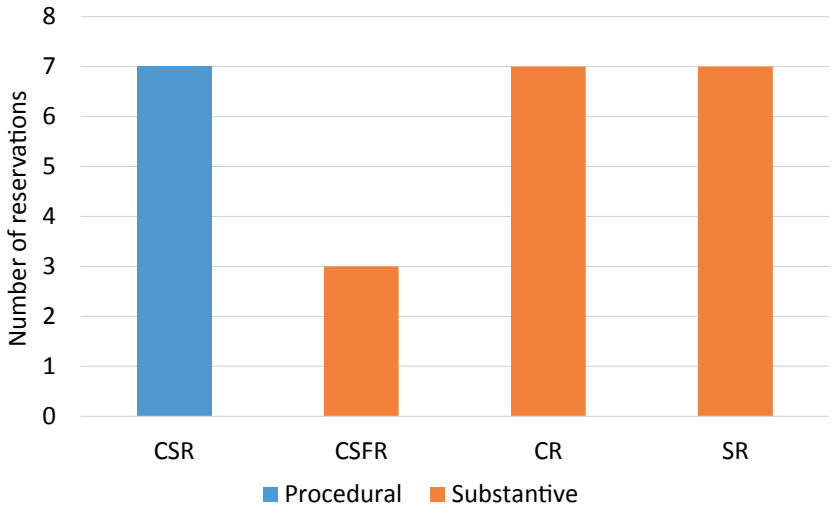


Source: Authors

A question remains as to why a non-democratic regime would commit to any human rights treaties at all having strong control mechanisms. It is important to remember that effects of a treaty can be significantly distorted by the use of reservations. Figure 5.3 shows that communist Czechoslovakia adopted procedural reservations towards the jurisdiction of judicial bodies. This means that when Czechoslovakia committed itself to strong human rights treaties, it usually opted out of the control mechanisms. All these reservations were cancelled soon after the fall of the regime. Nowadays, the two democratic regimes tend to raise substantive reservations in order to ratify a treaty while retaining their (potentially incompatible) domestic legal norms.[180] Negotiating substantive reservations may indicate that the state takes international human rights commitments seriously.

180 Týč, Vladimír, Linda Janků, and Katarína Šipulová. Reservations to Human Rights Treaties: A Case Study on the Practice of Czechoslovakia and Its Successor States. *International Community Law Review*, Vol. 16, No. 3, 2014, pp. 371–398.

Figure 5.3 Character of reservations of Czechoslovakia, the CSFR, the Czech Republic, and Slovakia to the signed human rights treaties



Source: Authors

We now turn our attention to examining the speed of the commitment process. The bars in Figure 5.4 show the typical (median) number of days between signature day and ratification day for each of the four political regimes of interest. The lower the bar the faster the ratification process.

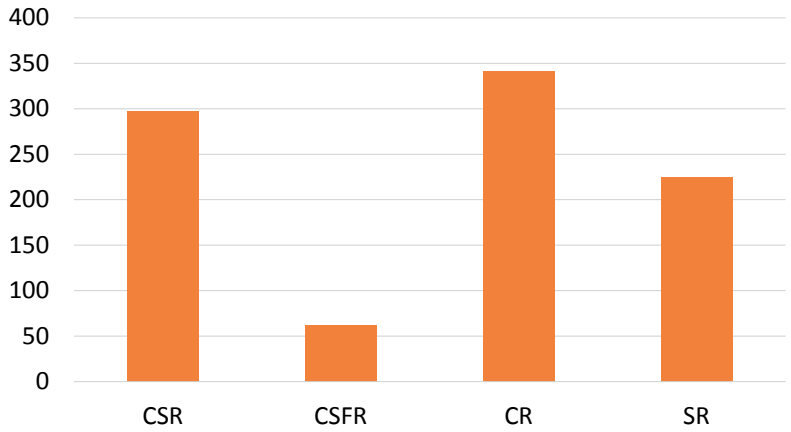
From Figure 5.4, it is immediately obvious that the post-communist federal Czechoslovakia ratified human rights commitments much faster than did its communist or succeeding counterparts. In this period, the CSFR ratified core human rights conventions. The decision to commit was likely motivated by the very strong pro-human rights and democratic political orientation of the new Government.

There is also quite a large difference between the Czech Republic and Slovakia. It should not be too surprising that the ratification process in the Czech Republic was on average longer because the treaties there need to be approved by a bicameral Parliament as opposed to the unicameral Parliament in Slovakia. A further analysis of the data suggested that this

difference might also have been caused in part by the fact that the unrestrained Mečiar's government acted without real political opposition and hence acted faster.

Contrary to our expectations, the commitment speed of the CSR was only slightly quicker than that of the Czech Republic. The CSR was even slightly slower than Slovakia in this respect. This, too, could be related to the fact that the CSR had a bicameral legislature.

Figure 5.4 Length of ratification process (in days) by individual regimes



Source: Authors

5.4 Regimes and Reasons for Human Rights Commitments

All major research in the field acknowledges that a regime's type and its international commitments regarding human rights are very closely related. Stable democracies, transitioning democracies, and non-democracies record different rates of making commitments and are guided by different logics.[181] Similarly, their compliance with the ratified treaties differs to a great extent.

181 Simmons, Beth A. *Mobilizing for Human Rights: International Law in Domestic Politics*. Cambridge: Cambridge UP, 2009, pp. 58–111. Posner, Eric A. *The Twilight of Human Rights Law*. Oxford: Oxford UP, 2014, pp. 59–66.

Our case selection of Czechoslovakia and its successor state the Czech Republic enables thorough study of a clearly bounded set of states which experienced all three types of regimes. Socialist Czechoslovakia was a non-democratic regime from 1948 to 1989. The country then passed through a transitioning phase up to and immediately following the country's dissolution into two successor states in 1993. The Czech Republic and Slovakia eventually developed into stable democracies through the remainder of the 1990s.

Czechoslovakia as well as the Czech Republic and Slovakia adopted a number of international human rights commitments; the theoretical puzzle remains why they did so. Particularly striking is the case of a non-democratic regime which takes on human rights obligations while most probably not sincerely believing these would be fulfilled. This was enabled by weak enforcement mechanisms, ineffectual incentives to expend resources enforcing the treaties, and tremendous problems of collective action.[182] In the following section, we turn our attention to how governments rationalize their decision to put a treaty to the legislative body for ratification. We explore documents and minutes from the meetings of legislatures to determine which arguments the Government and speakers in the parliamentary debate put forward to support a human rights treaty. We focus on treaties which the UN itself characterizes as core human rights treaties and which were ratified by Czechoslovakia and then by the Czech Republic. Based on this historic research, we can contribute to the knowledge as to how the representatives of the regime understood human rights commitments as well as why and how they argued in support of such treaties.

Readers most probably live in the reality of democratic states, which does not require much additional explanation. At least basic information might be required, however, in order to grasp the character of a communist regime and its attitude towards the ideas of human rights and international law.

182 Simmons, *Mobilizing for Human Rights*, p. 122.

5.5 Czechoslovakia 1948–1989 and Its Approach to Human Rights and International Law

Interwar Czechoslovakia stood as one of the few stable democratic states in the region. It had a well-developed legal culture, and the Brno School of normative theory, drawing on Hans Kelsen, contributed to the European legal theorizing. The Communist Party came to power in February 1948 and quickly created conditions far removed from those in liberal democracies. Particularly until the end of 1950s, the new regime established itself aggressively, eliminating its political opponents through show trials and public denunciations. Individual rights were severely curtailed and a combination of censorship and propaganda introduced. Although the situation relaxed in the second half of the 1960s, the so-called Prague Spring did not last for long and the Soviet-led invasion in August 1968 buried any hopes of what had been termed 'socialism with a human face'. The population fell into a phase of general disinterest during the 1970s which only began slowly to change with the overall softening of international tensions in the mid-1980s. Finally, this led to collapse of the Soviet bloc, including the Velvet Revolution of November 1989. The dissident Václav Havel was elected President just one month later, and the first free parliamentary election took place in June 1990.

Despite the existence of constitutions[183] that included provisions on rights during the four decades of communist rule, the conception of rights and of the position of the individual in society (to say nothing of actual compliance with human rights standards) remained in sharp contrast to the liberal conception. The avowed interests of society were given clear precedence over those of the individual. In Czechoslovakia, this found its expression in, for example, far-reaching nationalization and economic planning. The term 'human rights' was not used in a national context; instead, the regime talked about providing fundamental rights to citizens. Although rights and freedoms were proclaimed in constitutions,[184] these required

183 1948 'May Constitution', 1960 'Socialist Constitution' and 1968 Constitutional Act on Czechoslovak Federation.

184 The range of rights and especially freedoms proclaimed in constitutions was somewhat limited. For example, the 'Socialist Constitution' of 1960 omitted freedom of conscience.

to be made concrete in ordinary legislation. An emphasis was put on social rights, such as the right to work and the right to subsistence, which was said to give 'real meaning' to provisions on citizens' equality and democratic freedoms. The function of fundamental rights consisted not in any protection of an individual private sphere against intrusion of the state but, rather, in the distribution of certain material possessions and integration of the individual into society. Judicial protection of fundamental rights was virtually non-existent in the socialist conception. The inclusion of a constitutional court in the 1968 Constitutional Act is emblematic inasmuch as such a court was never established under communist rule. Similarly, legal academia show little interest in studying rights and freedoms.[185]

Socialist constitutionalism rested on such principles as sovereignty of the working class, a leading role for the Marxist–Leninist party, a socialist economy based on common ownership of the factors of production and socialist planning, and proletarian internationalism. The 1948 Constitution expressly favoured the working class and its most active and aware 'vanguard' assembled in the Communist Party. Other political organizations were largely restricted and controlled by the communists; elections were neither free nor competitive.[186]

The machinery of socialist justice and law worked on completely different principles than those of liberal democracies. The concept of separation of powers was abandoned, and oversight by the likes of civil society, public opinion, and the news media was disabled as well. The Communist Party wielded the power and controlled how its aims were to be achieved. Judges cleared the way for prosecutors. Judicial independence vanished and

185 Wagnerová, Eliška. Základní práva. In *Komunistické právo v Československu. Kapitoly z dějin bezpráví,* edited by Michal Bobek, Pavel Molek, and Vojtěch Šimíček. Brno: Masarykova univerzita, 2009, pp. 330–363; Šabatová, Anna. Ochrana základních práv a svobod v teorii a v praxi (1945–1989). In *Komunistické právo v Československu. Kapitoly z dějin bezpráví,* edited by Michal Bobek, Pavel Molek, and Vojtěch Šimíček. Brno: Masarykova univerzita, 2009, pp. 971–981.

186 Šimíček, Vojtěch, and Jan Kysela. Ústavní parvo. In *Komunistické právo v Československu. Kapitoly z dějin bezpráví,* edited by Michal Bobek, Pavel Molek, and Vojtěch Šimíček. Brno: Masarykova univerzita, 2009, pp. 297–329; Šimáčková, Kateřina. Fiktivní, nebo reálná ústava. In *Komunistické právo v Československu. Kapitoly z dějin bezpráví,* edited by Michal Bobek, Pavel Molek, and Vojtěch Šimíček. Brno: Masarykova univerzita, 2009, pp. 123–144.

the decay of law continued with the election of judges[187] and the installation of lay judges without any proper education. The totalitarian regime strove completely to control the judiciary as an important element of state power. A high percentage of judges were members of the Communist Party. They received regular schooling by the Communist Party and were controlled by prosecutors. Moreover, the minister of justice supervised how courts fulfilled their tasks and followed socialist legal theory. Especially in the late 1940s and in the 1950s, the law was used purely instrumentally; even the positive law suffered from breaches by state bodies when it simply contradicted the will of the party. The asserted common interest trumped any other competing considerations. The 1970s and 1980s witnessed a change from judicial (anti-formal) activism of the 1950s to an exaggerated socialist formalism which strictly and literally followed the wording of legal provisions.[188]

As true in other areas of law and politics, communist Czechoslovakia obediently followed the USSR's lead in its relationship with international law. The communist camp progressed from utopian ideas anticipating the extinction of states towards instrumental use of international law. The socialist conception emphasized the equality of states and the right to self-determination, the principle of non-interference in domestic affairs, and the related principles of sovereignty and peaceful coexistence of states. Czechoslovak legal scholars at first denounced the international legal personhood of individuals[189] and international organizations as attempts of imperialist states to weaken the principles of state sovereignty and non-interference, but later they softened their stance.[190] International human rights protection was

187 In practice, the judges were not elected inasmuch as there never were any selection processes among multiple candidates, and their confirmation was merely a charade.

188 Kühn, Zdeněk. Ideologie aplikace práva v době reálného socialism. In *Komunistické právo v Československu. Kapitoly z dějin bezpráví,* edited by Michal Bobek, Pavel Molek, and Vojtěch Šimíček. Brno: Masarykova univerzita, 2009a, pp. 60–92; Kühn, Zdeněk. Socialistická justice. In *Komunistické právo v Československu. Kapitoly z dějin bezpráví,* edited by Michal Bobek, Pavel Molek, and Vojtěch Šimíček. Brno: Masarykova univerzita, 2009 b, pp. 822–847; Baňouch, Hynek. Metody, motivy a cíle studia komunistického práva. In *Komunistické právo v Československu. Kapitoly z dějin bezpráví,* edited by Michal Bobek, Pavel Molek, and Vojtěch Šimíček. Brno: Masarykova univerzita, 2009, pp. 259–294.

189 Bystrický, Rudolf. Lidská a občanská práva v mezinárodním právu. *Právník*, Vol. 92, 1953, pp. 613–639.

190 See e.g. Chaloupek, Jaroslav. Pojem a předmět mezinárodněprávní ochrany lidských práv a základních svobod. *Právník*, Vol. 108, No. 9, 1969, pp. 670–683.

termed unnecessary due to the existence of national guarantees of rights, and it was asserted that only the national law could guarantee the rights of citizens.[191] Direct application of UN International Covenants was resolutely rejected.[192] Moreover, socialist authors denounced human rights treaties as not dealing with the conditions and means for actual realization of rights. Socialist states supported cultural and social rights, which they perceived as being overshadowed by individual and political rights.[193]

5.6 Why States Make International Human Rights Commitments

Richard Nielsen and Beth Simmons recently complained about a lack of empirical evidence when authors discuss states' motivations behind their international human rights commitments.[194] Historical official materials from both communist and transitioning Czechoslovakia and then the Czech Republic provide researchers with an opportunity to learn about the underlying motivations of the regimes when ratifying human rights treaties. The procedure has remained roughly similar over time, with the Government being the decisive actor in the process, the party negotiating the treaty. The Government then prepares a report intended to persuade parliamentarians to support the treaty. Members of legislative bodies discuss the government report in specialized committees as well as in full sessions of the legislature. The Parliament then gives its approval to an international treaty.

191 It is interesting that only treaties were considered as 'real' sources of international law. International customs were acknowledged only later.

192 On the other hand, the ICCPR in particular served as a yardstick for Charter 77, probably the best-known Czechoslovak dissident organization, which criticized the Government for not respecting its own commitments.

193 Molek, Pavel. Mezinárodní právo veřejné. In *Komunistické právo v Československu. Kapitoly z dějin bezpráví,* edited by Michal Bobek, Pavel Molek, and Vojtěch Šimíček. Brno: Masarykova univerzita, 2009, pp. 364–400. Chaloupek perceived as human rights only citizen rights such as equality before the law, personal freedom and security, fair trial, rights to property, family rights, ban of torture, and slavery but not fundamental freedoms such as freedom of conscious, religious freedom of expression, and assembly and voting rights. Chaloupek, *Pojem a předmět mezinárodněprávní ochrany lidských práv a základních svobod*, pp. 676–677.

194 Nielsen, Richard A., and Beth A. Simmons. Rewards for Ratification: Payoffs for Participating in the International Human Rights Regime? *International Studies Quarterly*, Vol. 59, No. 2, 2015, pp. 197–208.

Apparently, international human rights treaties were not perceived as controversial items on the legislative agenda, because no parliamentarians participated in debates relating to the treaties and the government's proposals were unanimously approved. Several features of the government's justifications are repeated constantly and catch the researcher's attention: The communist governments devoted large expanses of text to highlighting the active and decisive role of communist countries in negotiating the treaties. Moreover, the situations in the Eastern and Western blocs were introduced, and deficiencies in Western human rights protection were emphasized; in comparison the communist countries reportedly stood at the forefront of the fight for human rights. The Czechoslovak governments emphasized that international human rights treaties not only formally proclaimed human rights but especially created conditions for their fulfilment. Here lies the paradox of the communist approach, however, because any oversight of the implementation of the treaties' provisions was prevented by disabling any supervisory mechanism. Communist Czechoslovakia typically adopted reservations to any 'suspect' provisions and declined to ratify optional protocols. The principles of sovereignty of states and non-interference into internal affairs were rigidly adhered to.

The Czechoslovak governments apparently strove for self-legitimization in the eyes of the domestic public when it repeatedly emphasized that only the socialist regime could guarantee the full realization of human rights. The Government argued that Czechoslovakia (similarly to other socialist countries) already guaranteed all the rights in the international treaties (and sometimes provided even better protection), and therefore it was the socialist camp which had initiated and pushed through the treaties. Czechoslovakia used the ratification process of human rights treaties quite instrumentally, declaring that the rights were already protected domestically and therefore no adaptation was needed. Moreover, the Government pointed to the superiority of socialist regimes in comparison to the capitalist countries, and this contributed to further solidifying support for the regime. Additionally, the self-presentation (presumably for both internal and external audiences) of the socialist camp as the most active and progressive player in the international arena permeated all historical materials.

By examining several excerpts from explanatory reports and parliamentary debates, we can better demonstrate the spirit of that time. The adoption of the ICCPR and the ICESCR was described at the time as a significant step in the effort for the international legal safeguarding of fundamental human rights and freedoms. Reportedly, because the communist states had played an important role in the process of drafting and adopting the Covenants, these Covenants were not mere declarations of human rights but binding international legal documents.[195] Such a proclamation reads quite paradoxically in the situation wherein the socialist states did not accept any supervision based on the Covenants. With regard to the content of the Covenants, the socialist states proclaimed that they had themselves in many aspects surpassed the level of human rights protection achieved by the Covenants. The following citation uncovers more from the mindset of the socialist regime: '*(…) only the socialist regime can fully safeguard rigorous realization of human rights, because it creates material conditions and secures all preconditions for their realization. Thus, it could only have been the socialist countries who initiated the working out and adoption of the binding international legal documents on human rights and who put through their adoption.*' [196] Czechoslovak Minister of Foreign Affairs Bohuslav Chňoupek had added that national law already safeguarded the content of the two Covenants and often greatly surpassed it, thus making the quality of protection of human rights much better than in capitalist countries, which were failing to guarantee social rights.[197]

During this time, presentations of other important UN human rights treaties in the Czechoslovak Parliament showed recurring patterns. Through the use of procedural reservations, for example, the Government was able to assert its prerogatives to ensure non-interference into the country's internal affairs while retaining sovereignty and full control. Repeatedly, the domestic explanatory reports provided many hints of the instrumental use of treaties in the struggle between the Eastern and the Western worlds. In the case of the CERD, Czechoslovakia again presented itself

195 Ibid.
196 Ibid.
197 Chňoupek, Bohuslav. *Transcript of his speech from the meeting of the Federal Assembly*. 11 November 1975, http://www.psp.cz/eknih/1971fs/tisky/t0093_01.htm.

as one of the main initiators of the treaty, particularly proud of the treaty's 'very progressive' content. Some of the provisions had reportedly been met with tough resistance from the capitalist countries; those countries had to adopt many positive steps in order to conform themselves to the treaty even as the Czechoslovak legislation had supposedly already been in line with the CERD.[198]

The process of the CEDAW ratification from the early 1980s brought even more heated rhetoric. Minister Chňoupek blamed imperialism for worsening international relations and stated that only socialism could bring equal participation of women in the working process. In capitalist countries, meanwhile, women had to fight for rights that had already been achieved elsewhere. Chňoupek proclaimed Czechoslovakia to be one of the most developed countries in the world, and one which did not need to make any changes to its legislation in order to comply with the CEDAW.[199]

With hindsight, signs of the regime's melting are apparent in the second half of the 1980s during ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. For the first time, the Government conceded at that time that changes in legislation were needed in order to harmonize the domestic practice with the treaty. Moreover, the argumentation was not openly anti-capitalist, but rather it focused on the necessity to fight against gross violations of human rights in post-fascist regimes as well as in Greece and Palestine. It showed signs of a universalistic rhetoric calling for more justice.[200]

198 Chamber of Deputies, Parliament of the Czech Republic. *Vládní návrh, kterým se předkládá Národnímu shromáždění Československé socialistické republiky k vyslovení souhlasu Mezinárodní úmluva o odstranění všech forem rasové diskriminace [Governmental Explanatory Report to the CERD]*. 24 October 1966, http://www.psp.cz/eknih/1964ns/tisky/t0097_01.htm.

199 Chňoupek, Bohuslav. *Transcript of his speech from the meeting of the Federal Assembly*. 16 December 1981, http://www.psp.cz/eknih/1981fs/slsn/stenprot/003schuz/s003026.htm. Again, The Federal Assembly approved the Covenants unanimously, without abstentions.

200 Interventions of Chňoupek, Bohuslav, Zoltán Sidó, and František Vymětal. *Vládní návrh, kterým se předkládá Federálnímu shromáždění Československé socialistické republiky k souhlasu Úmluva proti mučení a jinému krutému, nelidskému či ponižujícímu zacházení nebo trestání [Governmental Proposal to the Federal Assembly on the CAT]. Transcripts of speeches from the meeting of the Federal Assembly*. 19 April 1988, http://www.psp.cz/eknih/1986fs/slsn/stenprot/008schuz/s008009.htm.

Dramatic developments, which had already started in some countries of the Eastern bloc, came to Czechoslovakia in November 1989, when the 'Velvet Revolution' kicked off the transition towards a liberal democracy. The role of the international human rights treaties suddenly changed. Still, parliamentary debates were not particularly lively, because there were only a few experts on the subject in Czechoslovakia; moreover, the idea of human rights itself had a high degree of legitimacy, which played an important role during the overthrow of the regime. Czechoslovakia again presented itself as a great proponent of the idea of human rights, but this time more open to the world, in the sense of promoting a single standard of rights internationally. Since that time, the Government has often conceded that the legislation has needed adaptation to the requirements of the human rights treaties and at the same time has taken on some external control mechanisms. Such practices hint that the Government could use reference to international commitments in arguing the necessity for change of laws. At the same time, we find many idealistic proclamations of hope for elevating the quality of human rights protection and the dignity of the people both at home and worldwide.

One of the first important post-1989 international human rights activities was related to the accession of the Czechoslovak Federation to the ICCPR Optional Protocol. This pushed for a widening of the instruments of legal redress, especially the instauration of administrative courts. The Federation argued for the accession while referring to both internal and external factors. The Optional Protocol was expected to increase the quality of decision-making of domestic bodies and the quality of civil and political rights. Moreover, the Federation wanted to express its support for the observance of human rights worldwide.[201]

201 Chamber of Deputies, Parliament of the Czech Republic. *Důvodová zpráva k Vládnímu návrhu, kterým se předkládá k vyslovení souhlasu Federálnímu shromáždění České a Slovenské Federativní Republiky Opční protokol k Mezinárodnímu paktu o občanských a politických právech, přijatý v New Yorku dne 16. prosince 1966, a prohlášení podle článku 41 Mezinárodního paktu o občanských a politických právech [Explanatory Report to the Governmental Proposal to the Federal Assembly on the ICCPR Optional Protocol and on the Declaration according to the Art. 41 of the ICCPR]*. 19 December 1990, http://www.psp.cz/eknih/1990fs/tisky/t0279_00.htm. Not much has changed in terms of approval by the Federal Assembly – no vote against, no abstention.

Similarly, the Convention on the Rights of the Child (CRC) was approved by the Federal Assembly in order to push domestic bodies to comply fully with the text of the treaty and to express support for the fulfilment of children's rights across the world.[202]

The era of the democratic Czech Republic brought changes to the aforementioned patterns. First, the Czech Republic has considered explicit support for universal values and to their worldwide propagation as the main objective of its human rights commitments. Second, the international treaties are no longer undisputed. Compared to the previous periods, the parliamentary discussions on human rights can become heated and the Government has been criticized, for example for supporting a treaty that will not make any difference because the Czech Republic already guarantees the object of its protection in domestic legislation and when it is not believed that the treaty's provisions can be put into practice. In particular, the Government has supported treaties which require no domestic adaptation, thereby silencing conservative critics in the debate voicing sovereignty concerns. The ratification therefore comes at no foreseeable cost, which contrasts to the transitioning period during which Czechoslovakia used international treaties as an instrument for arguing needs for domestic changes. As a result, 'signalling' might be one of the reasons for ratification given greatest emphasis. The view is that explicit support for human rights is one of the constitutive elements of a regime which seeks to promote these internationally.

An example demonstrating such change can be seen in the parliamentary debates on the Convention on the Rights of Persons with Disabilities (CRPD) which attracted more voices in the discussion than did the ratification processes for earlier treaties. The presenters stressed the benefits of the ratification, namely the fact that the Czech Republic did not need to amend its legislation and that it supported a great cause (helping persons with disabilities). On the other hand, some discussants criticized that the Czech Republic

202 Chamber of Deputies, Parliament of the Czech Republic. *Důvodová zpráva k Vládnímu návrhu, kterým se předkládá Federálnímu shromáždění ČSFR k vyslovení souhlasu Úmluva o právech dítěte [Explanatory Report to the Governmental Proposal to the Federal Assembly on the CRC]*. 16 November 1990, http://www.psp.cz/eknih/1990fs/tisky/t0140_01.htm; Chamber of Deputies, Parliament of the Czech Republic. *Transcript from the meeting of the Fedeal Assembly*. 16 November 1990, http://www.psp.cz/eknih/1990fs/slsn/stenprot/008schuz/s008003.htm.

had not committed itself to the Optional Protocol to the CRPD.[203] Similarly, the parliamentary debate on the Optional Protocol to the CEDAW shows the identical pattern – a presenter trying to persuade the parliamentarians that the ratification was close to a costless exercise while further confirming the Czech Republic's high esteem for the protection of human rights.[204]

5.7 Conclusion

The initial expectations derived from the theories are generally supported by the empirical data. Communist Czechoslovakia preferred commitments to treaties with weak control mechanisms. The overall speed of the process did not, however, differ much from the practice of the Czech Republic and Slovakia. On the other hand, the transitional CSFR significantly increased both the commitment activity and the speed of treaties' adoption. The succeeding democratic states have not been capable to maintain the same pace of ratification. Other chapters in this book identify the main actors in the commitment process, mainly those who represent the key veto players, and the reasons why they typically prolong and/or oppose successful closing of the commitment processes.

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203 Senate, Parliament of the Czech Republic. *Těsnopisecká zpráva z 9. schůze Senátu Parlamentu České republiky k Vládnímu návrhu, kterým se předkládá Parlamentu České republiky k vyslovení souhlasu s ratifikací Úmluva o právech osob se zdravotním postižením [Transcript of the Senate meeting to the Governmental Proposal to the Parliament on the CRPD]*. 22 July 2009, http://www.senat.cz/xqw/xervlet/pssenat/htmlhled?action=doc & value=52788; Chamber of Deputies, Parliament of the Czech Republic. *Těsnopisecká zpráva ze schůze Poslanecké sněmovny Parlamentu České republiky k Vládnímu návrhu, kterým se předkládá Parlamentu České republiky k vyslovení souhlasu s ratifikací Úmluva o právech osob se zdravotním postižením [Transcript of the Chamber of Deputies meeting to the Governmental Proposal to the Parliament on the CRPD]*. 11 June 2009, http://www.psp.cz/eknih/2006ps/stenprot/059schuz/s059092.htm#r6.

204 Chamber of Deputies, Parliament of the Czech Republic. *Těsnopisecké zprávy ze schůzí Poslanecké sněmovny Parlamentu České republiky k Vládnímu návrhu, kterým se předkládá Parlamentu České republiky k vyslovení souhlasu Opční protokol k Úmluvě OSN o odstranění všech forem diskriminace žen [Transcript of the Chamber of Deputies meetings to the Governmental Proposal to the Parliament on the Optional Protocol to the CEDAW]*. 4 July 2000, http://www.psp.cz/eknih/1998ps/stenprot/026schuz/s026222.htm#r4; Chamber of Deputies, Parliament of the Czech Republic. *Těsnopisecké zprávy ze schůzí Poslanecké sněmovny Parlamentu České republiky k Vládnímu návrhu, kterým se předkládá Parlamentu České republiky k vyslovení souhlasu Opční protokol k Úmluvě OSN o odstranění všech forem diskriminace žen [Transcript of the Chamber of Deputies meetings to the Governmental Proposal to the Parliament on the Optional Protocol to the CEDAW]*. 25 October 2000, http://www.psp.cz/eknih/1998ps/stenprot/028schuz/s028209.htm#r1.

Table 5.2 Conclusions

	Regime	Commitment pattern	Empirical conclusion
Communist Czechoslovakia (1948–1989)	Non-Dem	Low commitment propensity, higher for treaties with weak control mechanisms (when compared to democracies). Once started, the commitment process should be medium-fast.	Supported but speed was slightly slower than expected.
Federal Republic (1990–1992)	Dem	High propensity + fast process for all treaties	Supported
Czech Republic (1993 →)	Dem	Medium propensity + slow process for all treaties	Supported
Slovak Republic (1993 →)	Dem	Medium propensity + slow process for all treaties	Supported

Source: Authors

The second part of this chapter sought to uncover reasons for making human rights commitments. Study of historical governmental and parliamentarian records brought to light certain patterns appearing in the three periods of different regimes – communist Czechoslovakia, transitioning Czechoslovakia, and democratic Czech Republic. First, human rights treaties became 'business as usual' in the parliamentary debates, with voices criticizing the content of treaties or the decision of the Government to start with the ratification process. Human rights treaties lost the 'untouchable' appeal which they had enjoyed shortly after the Velvet Revolution. Nowadays, as follows from many parliamentary debates on the proposals to sign human rights treaties, governments tend to proceed with ratification particularly when national legislation already protects the rights included in the treaty; this stands in contrast to the transitioning period, when the treaties served as a vehicle for changes in legislation. Accordingly, while communist Czechoslovakia focused on internal self-legitimization, endeavouring to present the socialist camp as the only one capable of protecting rights, and transitioning Czechoslovakia addressed both domestic and foreign

audiences, the democratic Czech Republic today uses ratification particularly for external signalling of its values. Overall, both rational and ideational elements appear in the ratification process and the related argumentation.

6 COMMITMENT DECISIONS: DIFFERENCES BETWEEN LEFTIST AND RIGHTIST GOVERNMENTS

6.1 Introduction and Overview of Theory

The internalization and legalization of post-war human rights discourse has led to a significant increase in the number of HR treaties. At the same time, this growing trend of international commitments has been accompanied by gradual strengthening of international enforcement bodies to which the competences of oversight and enforcement have been delegated. The impact of the international courts' case law on national practice is constantly subjected to broad studies.[205] As early as in 1983, Drzemczewski, in one of the first more complex research studies, ascertained that the ECtHR jurisprudence significantly helped to advance human rights protection in signatory states.[206] It is not just in the change in domestic courts' case law that these improvements are perceptible. International judgements bind all domestic actors from courts to administrative authorities, as well as parliaments when enacting new legislation. It is not uncommon today for the ECtHR to be viewed as a constitutional court sui generis,[207] able to push for systemic change.[208] But if the international courts are able to influence domestic political settings and overrule the will of domestic actors, then the question remains: why and under what conditions are states willing to commit to international HR treaties and limit their own sovereignty?

205 Keller, Helen, and Alec Stone-Sweet (eds.). *A Europe of Rights: The Impact of ECHR on National Legal Systems*. Oxford: Oxford UP, 2008.

206 Drzemczewski, Andrew. *European Human Rights Convention in Domestic Law. A Comparative Study*. Oxford: Oxford UP, 1983.

207 Sadurski, Wojciech. Partnering with Strasbourg: Constitutionalisation of the European Court of Human Rights, the Accession of Central and East European States to the Council of Europe, and the Idea of Pilot Judgments. *Human Rights Law Review*, Vol. 9, No. 3, 2009, p. 397; Stone-Sweet, Alec. On the Constitutionalisation of the Convention: The European Court of Human Rights as a Constitutional Court. *Revue trimestrielle des droits de l'homme*, Vol. 80, 2009, pp. 923–944.

208 Smekal, Hubert, and Katarína Šipulová. DH v Czech Republic Six Years Later: On the Power of an International Human Rights Court to Push through Systemic Change. *Netherlands Quarterly of Human Rights,* No. 3, 2014, pp. 288–322.

This chapter steps back from effects of international law and international courts and focuses on a preceding stage, when the national decision-makers decide whether or not to take on a new commitment. Contemporary theories of human rights commitments provide several accounts of state behaviour. While constructivists concentrate on the autonomous influence of international law and its persuasive power,[209] rationalist approaches assess commitment practice on the basis of expected costs and benefits. Most theories building on rationalist premises have based their explanations either upon external factors (such as foreign policy goals), upon various internal factors (such as content of the treaty and its compatibility with national policy practice, domestic polity settings, and the constellation of national decision-makers' preferences), or upon their combinations.

Theories which emphasize external factors for HR treaty ratification anticipate that states adopt human rights instruments independently of any domestic characteristics,[210] usually in order to boost their international credibility[211] and facilitate integration into the international community[212] (e.g. in order to improve the chances of accession to the EU, as was the case with the Central and Eastern European countries).[213] The 'external factors theories' do not see a necessary link between the decision to commit to a treaty and the decision to comply with it. They point to widespread instances of states with bad human rights records taking on commitments.[214] If the cost of ratification is very low, as in the case of treaties

209 Hawkins, Darren. Explaining costly international institutions. Persuasion and enforceable human rights norms. *International Studies Quarterly*, Vol. 48, No. 4, 2004, pp. 779–804.

210 Meyer, John W. et al. World Society and the Nation-State. *American Journal of Sociology*, Vol. 103, No. 1, 1997, pp. 144–181.

211 Goodman, Ryan. Human Rights Treaties, Invalid Reservations, and State Consent. *The American Journal of International Law*, Vol. 96, 2000, p. 544.

212 Heyns, Christof H., and Frans Viljoen. The Impact of the United Nations Human Rights Treaties on the Domestic Level. *Human Rights Quarterly*, Vol. 23, No. 3, 2001, p. 497; Wotipka, Christine Min, and Kiyoteru Tsutsui. Global human rights and state sovereignty: State ratification of international human rights treaties, 1965–2001. *Sociological Forum*, Vol. 23, No. 4, 2008, pp. 724–754; Meyer, et al., *World Society and the Nation-State,* pp. 144–181.

213 Guzman, Andrew T. *How International Law Works: A Rational Choice Theory*. New York, NY: Oxford UP, 2008; Landman, Todd. *Protecting Human Rights: A Comparative Study*. Washington, DC: Georgetown UP, 2005, pp. 22–25.

214 Hafner-Burton, Emily M., and Kiyoteru Tsutsui. Human Rights in a Globalizing World: The Paradox of Empty Promises. *American Journal of Sociology*, Vol. 110, No. 5, 2005, pp. 1373–1411.

which establish no enforcing mechanism,[215] then states are not really concerned with the consequences of non-compliance.

On the other hand, the second branch of theories concentrates directly on the 'commitment motivation' of states, supposing that there is an actual relationship between the decision to commit and the decision to comply.[216] This holds especially for states with effective domestic judicial systems.[217] Some of these theoretical approaches suggest that transitioning democracies take on international obligations to 'lock in' desired policies in the face of future political uncertainty[218] or to prove their allegiance to democratic norms.[219] The cost of compliance is seen as directly proportionate to the divergence of the country's actual practice from the treaty's requirements.[220] In other words, the content of the treaty matters. The smaller the gap between governmental policy and the content of the treaty, the higher the probability of ratification. States usually ratify treaties whose norms they already follow. Willingness to ratify is therefore predetermined by domestic practice, as states will invest their time and resources only in agreements with which they have some interest in complying.[221]

A systematic examination of commitment practices in two post-communist countries, the Czech Republic and Slovakia, contributes to the discussion on the different ratification patterns introduced above. In contrast to the existing theories concentrating on the macro level (many states ratifying a few of the most important treaties), this chapter focuses only on two

215 Hathaway, Oona A. Why Do Countries Commit to Human Rights Treaties? *The Journal of Conflict Resolution*, Vol. 51, No. 4, 2007, p. 608.

216 Hathaway, *Why Do Countries Commit to Human Rights Treaties?,* p. 590; Hathaway, Oona A. International delegation and state sovereignty. *Law and Contemporary Problems*, Vol. 71, 2008, pp. 115–149.

217 Powell, Emilia J., and Jeffrey K. Staton. Domestic Judicial Institutions and Human Rights Treaty Violation. *International Studies Quarterly*, Vol. 53, No. 1, 2009, pp. 150–151.

218 Moravcsik, Andrew. The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe. *International Organization*, Vol. 54, No. 2, 2000, pp. 228–229.

219 Simmons, Beth A. International Law and State Behaviour: Commitment and Compliance in International Monetary Affairs. *The American Political Science Review*, Vol. 94, No. 4, 2000, pp. 819–835.

220 Cole, Wade M. Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966-1999. *American Sociological Review*, Vol. 70, No. 3, 2005, p. 476.

221 Von Stein, Jana. Do Treaties Constrain or Screen? Selection Bias and Treaty Compliance. *American Political Science Review,* Vol. 99, No. 4, 2005, p. 611.

countries committing to a large number of treaties. Drawing upon the theories emphasizing the correlation between domestic policy and the content of HR treaties (i.e. the smaller the misfit, the higher the probability of a smooth ratification), the chapter closely examines the impact of governments' ideological positions on their willingness to commit to HR treaties. Furthermore, other elements potentially predictive of governmental decisions to commit to an international HR treaty (such as references to human rights in government's manifestos) are assessed.

6.2 Research Design and Research Questions

6.2.1 Case Selection

The Czech Republic and Slovakia stand as ideal candidates for studies searching for similar cases in terms of shared basis of international treaties. Czechoslovakia was established in 1918 and the two countries shared a common fate (with a short intermezzo during World War II), including through the four post-war decades under a communist regime which fell in November 1989. Czechoslovakia, as the Czech and Slovak Federal Republic, then experienced more than three years in a democratizing regime which strove to establish itself in the international arena also by committing itself to HR treaties. On 1 January 1993, after strong calls for national self-determination resurging during the democratization process, the federation split into two independent states, the Czech Republic and Slovakia. Approximately seven decades of common history put the two new states at the same starting line as regards their international commitments and domestic legal systems. In the short period between 1993 and 1998, the Slovak regime changed under the government of Prime Minister Mečiar, and slowly moved towards a semi-authoritarian system,[222] characterized

222 Classifications of Mečiar's regime differ from being an example of a 'troubled democracy' (Kitschelt, Herbert. *Post-Communist Party Systems: Competition, Representation, and Inter-Party Cooperation*. Cambridge: Cambridge UP, 1999, p. 42) to a one-party authoritarian system (Linz, Juan J., and Alfred Stepan. *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe*. Baltimore, MD and London: The Johns Hopkins UP, 1996, pp. 38–55; Przeworski, Adam. The Games of Transition. In *Issues in Democratic Consolidation. The New South American Democracies in Comparative Perspective,* edited by Scott Mainwaring, Guillermo O'Donnell, and Samuel J. Valenzuela. Notre Dame: University of Notre Dame Press, 1992, pp. 105–152).

by severe restrictions on political rights, the suppression of opposition, censorship of the media, economic scandals, and corruption. At the end of 1998, Mečiar's government fell due to worsening economic problems and external pressure (especially unsuccessful pre-accession talks with the EU and NATO). After 1998, Slovakia fully reoriented its foreign policy towards integration into the Western structures. In December 2002, both states successfully concluded their pre-accession negotiations with the EU.

With both countries having the same long-term foreign policy goals and sharing accession to the EU as one of their top foreign policy priorities, this empirical research focuses particularly on the theories stressing the internal factors (content of the treaty and domestic political settings) to provide potential explanations for the commitment practice of the two states. The chapter elaborates on this set of theories and ascertains those conditions under which governments are most prone to committing to HR treaties, specifically seeking relationships between the ideological position of governments and HR commitments.

6.2.2 Research Aims

The aim of the chapter is to find whether there is consistency between the ideological position (the left–right division) of a Government as the agenda-setter and its international human rights commitments. The stance of individual governments towards taking on new international HR commitments is ascertainable from 'governments' manifestos' in the form of governments' official programmes setting out key aims, strategies, and policy goals. In Czech and Slovak reality, a government's manifesto usually represents a compromise between the parties of the government coalition. It outlines the government's agenda and policy for its term in office.[223] After successful negotiation of the manifesto within the coalition, the Prime Minister is obliged to bring it to the Parliament and ask the MPs for a vote of confidence. Even though the manifesto is not legally binding, the Government is in practice expected to act according to its contents. Building upon the analysis of governments' manifestos, we examine the impact of the ideological position of governments on the level, content,

223 Essentially, it is an equivalent of the Speech from the Throne, or the Throne Speech.

and speed of their commitment practice (i.e. how frequently, how quickly, and to which HR treaties they commit). We endeavour to answer the following questions:

- Is there a correspondence between the ideological position of the Government and the type ('generation') of rights that the Government supports? For example, do leftist governments commit to social rights treaties more than rightist governments?)
- Does the ideological position of the Government translate into the attention given to human rights issues in the government's manifesto? For example, can one see any patterns of leftist governments emphasizing human rights issues more than rightist ones?

6.3 Empirical Research

6.3.1 Introductory Remarks on Data Analysis

As was already mentioned in Chapter 1, this study works with a data set of 192 HR treaties[224] opened for ratification to Czechoslovakia and it successor states. The term 'commitment practice' encompasses two separate acts: signature and ratification.[225] It is important to distinguish these because of their consequences as well as the different sets of actors involved. Ratification stands as an act of final commitment and a deliberate decision of a state as a whole to bind itself by the treaty, apply it, and respect its effects. All HR treaties must be ratified in order to become binding. Once ratified, they are understood as a part of the national constitutional order, thus constituting rights and obligations without any need for further transposition into the national law. Both in the Czech Republic[226] and Slovakia, a treaty is ratified by the President after approval by the Parliament in simply majority voting. However, as the human rights treaties are approved by both chambers of the Parliament, all governments have get the approval

224 The data set includes treaties created mostly within the Council of Europe, the United Nations, and the International Labour Organisation. By treaty dealing with human rights we understand any multilateral treaty encompassing human rights provisions. We further distinguish between the treaties in terms of their 'human rights content', i.e. the extent of human rights provisions in the treaty.

225 For other relevant procedures of commitments, as accession and succession, we treat the act of submitting a treaty to Parliament as equivalent to the act of signature.

226 Since the 2003 Constitutional amendment.

of the Senate and then must also secure the President's signature. A specific position is held by both constitutional courts, which are endowed with the authority to decide ex ante on the compatibility of an international treaty with domestic constitutional provisions and even to block the ratification. Nevertheless, this review has never been used in the case of an international HR treaty in either Slovakia or the Czech Republic.

On the other hand, signature, typically the first step leading to ratification, remains a political decision entirely in the hands of the Government, which stands as a key agenda-setter for international commitments. Signature does not translate into explicit positive legal obligations, but it signifies the intention of the state to become bound by the treaty in the near future (i.e. to ratify the treaty).[227]

While the legal research typically focuses on ratifications of treaties (i.e. the acts relevant for future compliance practice), our research deals with the signatures, identifying the act of signing as a crucial political decision of commitment. Moreover, there is evidence for both Czech and Slovak settings that once a treaty is signed there is a very high probability that it will be ratified.[228] For these reasons, commitment is for the purposes of this chapter defined as an expression of political will made exclusively by the Government to become bound by the treaty. In other words, instead of working with the dates of treaties' ratifications, we use the dates when the treaties were *signed* by the governments. The decision to sign a treaty rests completely with the Government, while the ratification is influenced also by other actors. Furthermore, it should be clarified that, depending on the type of treaty, this formal act of the Government as a key decision-maker might take the form of either signature or submission for parliamentary negotiation and ratification without previous signature. This second term ('submission') is relevant for treaties to which a state accedes (i.e. treaties already in force and no longer open for signature). It is also used for treaties entering the ratification process for the second (or subsequent) time due to its previous rejection by the Parliament.

227 Aust, Anthony. *Modern Treaty Law and Practice*, 3rd ed. Cambridge: Cambridge UP, 2013, pp. 89–90.

228 See Chapter 8 for more detail.

The classification of human rights treaties and collection of metadata used in this chapter were based on the *internal factors theories* emphasizing the content of the treaties. We conceptualize this according to the view that there exist distinct generations of human rights, which were introduced in more detail in Chapter 1. The first generation of rights includes civil and political rights; the second economic, social, and cultural rights; and the third collective-developmental rights. The fourth generation includes group human rights (e.g. rights of children, women) and is combined with the previous three generations. If a treaty includes examples of all generations of rights, then it is coded as a treaty with the presence of four generations of rights. See Christian Tomuschat for more about the general concept of human rights generations and its criticism.[229]

We also classified the governments as left or right[230] based on the ideological position of the strongest coalition party. As most Czech and Slovak governments were formed by coalitions of parties, the validity of the classification based on the position of the strongest party was double-checked by analysing the content of the government's manifesto while searching for the compatibility between the classification and the proclaimed political priorities. Furthermore, interim or caretaker governments form a third category which complements the left and right classification.

Similarly, governmental manifestos were analysed (quantitatively and qualitatively) with the intent of identifying human rights policy agendas. We scored the manifestos according to several criteria: explicit human rights content (evaluated both generally and for particular human rights generations), references to specific HR treaties, stress on individual human rights generations, use of the 'language' of human rights, the positioning of the human rights agenda in the manifesto, and the length of the elaboration on human rights policy within the manifesto.

6.3.2 Commitments to Human Rights Treaties

Having explained the theoretical background of the research and the particular historical context, we can now move to directly addressing the research

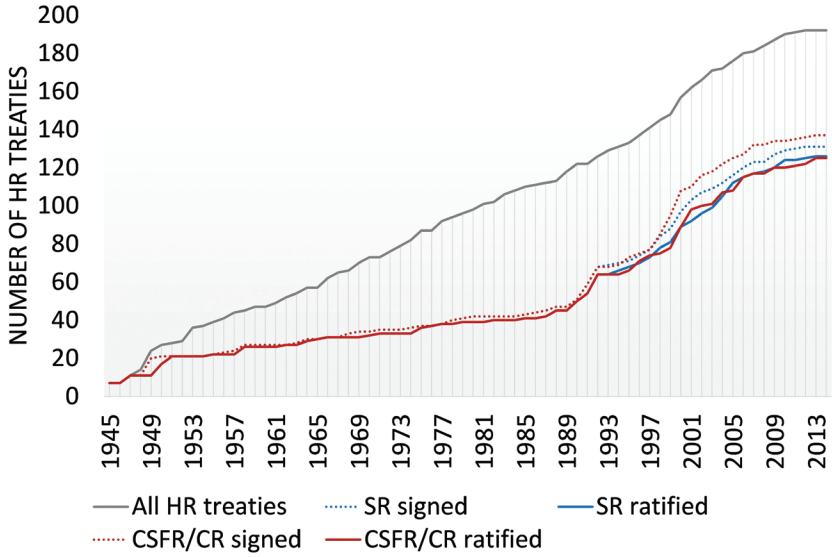
229 See e.g. Tomuschat, Christian. *Human Rights: Between Idealism and Realism*, 3rd ed. Oxford: Oxford UP, 2014, pp. 136–154.

230 The left–right division is based on the conventional left–right political spectrum according to parties' positions on socio-economic issues (von Beyme, Klaus. *Political Parties in Western Democracies.* Ann Arbor, MI: Ashgate Publishing, 1985).

aims of this study. We start by answering the first set of research questions, which relates to the governmental ideological position (i.e. left–right division) and its position in the context of human rights commitments practice.

The overall commitment activity regarding HR treaties of Czechoslovakia and its successors is displayed in Figure 6.1. During the communist era, the number of commitments fell significantly behind the general rise in the number of existing international HR treaties (grey line), but after 1989 the countries caught up and their commitment curves (solid line for signatures and dotted for ratifications) are rising faster than the line representing all HR treaties. In order to simplify the graph, the CSFR is reflected on the red 'Czech' line. It is necessary to note, however, that Slovakia, as a new state emerging in 1993, started its legal life with exactly the same legacy and same set of already signed and/or ratified treaties.

Figure 6.1 Human rights commitments (signatures and ratifications) of Slovakia and the Czech Republic over time



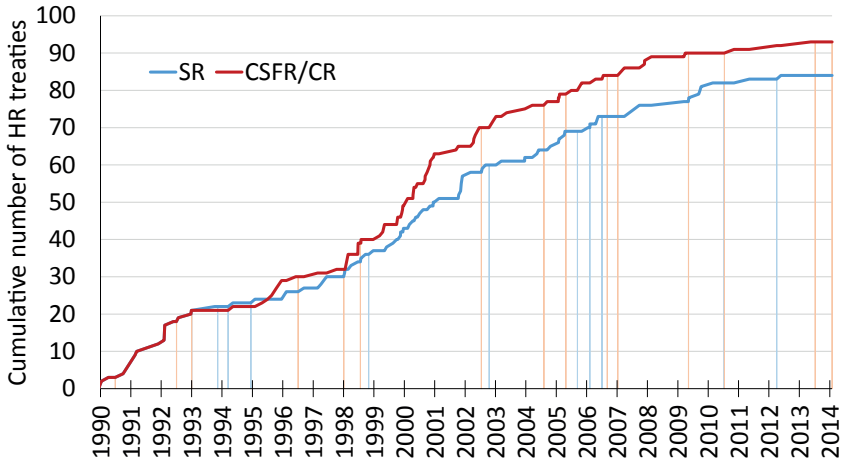
Source: Authors

Figure 6.2, read together with Table 6.1, shows the overall commitment activity of all individual (federal, Czech, and Slovak) governments cumulatively from 1990 onwards. The vertical lines indicate the dates on which

the governments assumed office. The points at which the curves cross the vertical lines indicate the total number of treaties to which a country was committed on the date a particular government assumed office.

The area left of Jan-93 in Figure 6.2 represents the commitment practice of the three Czechoslovak federal governments (Čalfa 1989 to Stráský 1992). After 1989, the CSFR strove to return to democratic Europe and to invigorate its image as a credible international actor. While the overall number of HR commitments adopted during 1992–1994 is not particularly high (twenty-one),[231] these treaties contain some of the most important human rights instruments of the Council of Europe[232] and the United Nations.[233]

Figure 6.2 Cumulative number of HR treaties committed to by federal, Czech, and Slovak governments



Source: Authors

The data from 1993 onwards represent the behaviour of governments of the individual, separated states and this is captured in Table 6. 1. Each

231 After all, apart from its international and foreign policy agenda, the young federation had to deal with questions of internal institutional arrangements and Slovak demands for autonomy within the federation.

232 In addition to the European Convention on Human Rights and its additional Protocols, these also included the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Social Charter with the Additional Protocol, and others.

233 For example, the Convention relating to the Status of Refugees, the Optional Protocol to the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child.

row in the table corresponds to a different Government. The second and third columns reflect the term and length of office. The fourth to the sixth columns show the number of treaties signed or submitted to Parliament for ratification. The total number of individual decisions in which the government could have been active can be found in the seventh column. The eight column is calculated by dividing the number of commitments (sixth column) by the number of decisions (seventh column). The last column shows the average activity of the government per year.

As shown in Table 6.1, a flourishing of new commitments is noticeable in the years 1998–2002 (Tošovský 1998 and Zeman 1998 for the Czech part and Dzurinda 1998 in Slovakia), peaking in 2001. This period corresponds to (i) the opening of negotiations for accession to the EU in March 1998, when the countries needed to show high levels of support for human rights in order to obtain positive reports from the European Commission, and (ii) their successful conclusion in December 2002. Strikingly, distortion of commitment practice under the non-democratic Mečiar's government (1994–1998) seems to be insignificant.[234]

Table 6.1 Governmental commitment activity on HR treaties in the CSFR, CR, and Slovakia[235]

Government	Assumed office	Length in days	HR treaties committed to			Total decisions	% Committed to	Committed to per year
			Signed	Submitted	Total			
CSFR		**1,118**	**15**	**6**	**21**	**206**	**10%**	**6.9**
Čalfa 1989	1989-12-10	199	0	3	3	72	4%	5.5
Čalfa 1990	1990-06-27	736	12	3	15	73	21%	7.4
Stráský 1992	1992-07-02	183	3	0	3	61	5%	6.0

234 Two other governments standing out in Table 6.1 are the Tošovský's government in 1998 and Dzurinda's in 2006. Their exceptional activism is in both cases explained by committing to a 'package' of related treaties. Tošovský's government only committed to seven treaties, but, because it only served for six months, it has the highest per-year activity. Similar observations may be made for Dzurinda's government in 2006.

235 The table captures governments at each time point when there was a change in coalition parties. For one treaty we were unable to locate the exact signature date of when it was signed by Slovakia and this treaty is therefore excluded from the above table. Each of the two treaties which entered the ratification process in the Czech Republic twice is also counted twice in the above table. One treaty was submitted to the Parliament in the Czech Republic is also included above even though this did not result in the treaty's signature.

Government	Assumed office	Length in days	HR treaties committed to			Total decisions	% Committed to	Committed to per year
			Signed	Submitted	Total			
CR		**7,912**	**53**	**19**	**72**	**763**	**9%**	**3.3**
Klaus 1993	1993-01-01	1,280	5	4	9	69	13%	2.6
Klaus 1996	1996-07-04	547	1	1	2	64	3%	1.3
Tošovský 1998	1998-01-02	201	7	0	7	65	11%	12.7
Zeman 1998	1998-07-22	1,454	25	6	31	78	40%	7.8
Špidla 2002	2002-07-15	751	5	1	6	57	11%	2.9
Gross 2004	2004-08-04	264	3	0	3	52	6%	4.1
Paroubek 2005	2005-04-25	497	1	4	5	53	9%	3.7
Topolánek 2006	2006-09-04	127	0	0	0	51	0%	0.0
Topolánek 2007	2007-01-09	850	4	2	6	55	11%	2.6
Fischer 2009	2009-05-08	431	0	0	0	54	0%	0.0
Nečas 2010	2010-07-13	1,093	2	1	3	57	5%	1.0
Rusnok 2013	2013-07-10	203	0	0	0	54	0%	0.0
Sobotka 2014	2014-01-29	214	0	0	0	54	0%	0.0
SR		**7,912**	**47**	**16**	**63**	**716**	**9%**	**2.9**
Mečiar 1993	1993-01-01	313	1	0	1	61	2%	1.2
Mečiar 1993	1993-11-10	125	0	0	0	60	0%	0.0
Moravčík 1994	1994-03-15	273	1	0	1	62	2%	1.3
Mečiar 1994	1994-12-13	1,417	9	4	13	75	17%	3.3
Dzurinda 1998	1998-10-30	1,447	17	7	24	82	29%	6.1
Dzurinda 2002	2002-10-16	1,061	8	1	9	68	13%	3.1
Dzurinda 2005	2005-09-11	150	0	1	1	59	2%	2.4
Dzurinda 2006	2006-02-08	146	2	1	3	59	5%	7.5
Fico 2006	2006-07-04	1,467	7	2	9	68	13%	2.2
Radičová 2010	2010-07-10	634	1	0	1	61	2%	0.6
Fico 2012	2012-04-04	879	1	0	1	61	2%	0.4

Source: Authors

One of the advantages of our research design is the ability to compare the two cases under investigation at virtually any point in time. This is only possible because we are focusing on countries with histories as similar

as they could possibly be. Hence, only a handful of factors are different at any point in time, and that makes it easier to isolate interrelationships of commitment practice with other variables. It should not be surprising, then, that the two lines in Figure 6.2 are virtually parallel after 1993 (i.e. the overall commitment practice is very similar in these two states). The only period with a substantial difference in commitment rates between the two countries is the 1998–2002 EU accession period. Although both countries had a strong interest in showing what might be termed 'a commitment to commit', it was the leftist Czech government (Zeman 1998) which substantially outperformed the rightist Slovak government (Dzurinda 1998). This can be seen by comparing the lines in Jan-98 (where they intersect) and in Jan-03 (where they are far apart). One possible explanation for this pattern is tied to political ideology. Leftist governments might be more likely to adopt human rights commitments.[236]

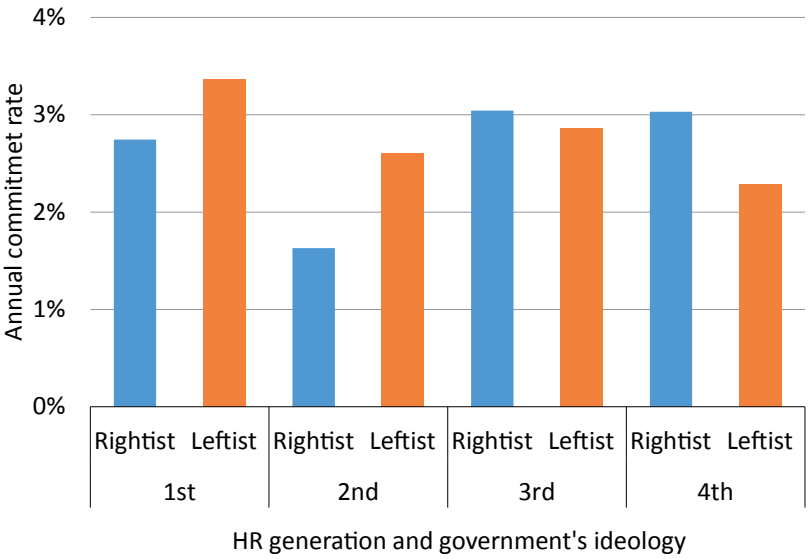
Figure 6.3 summarizes the data from Table 6.1 in a way that is useful for answering our research question. It pools the data for Slovakia and the Czech Republic together and focuses on the differences between the leftist and rightist governments. The CSFR is excluded, and caretaker governments also are excluded. The bars then show the average annual commitment rate for treaties of each HR generation. The higher the bars the more active the given governments were in terms of committing to the treaties of the given generation.

The chart suggests that leftist governments were typically more active in committing to treaties of the first and second generations than were rightist governments. The difference is largest for the second generation, which is in line with the theoretical expectation that leftist governments should be more likely to commit to such human rights treaties.[237] There seems to be little difference for the treaties of the third generation. The fourth generation displays a higher rate for the rightist governments.

236 Another possible explanation is that after the Mečiar's government, Slovakia needed first to implement more changes in domestic laws.

237 This key finding holds when more variables are accounted for in a statistical model. For more detail see Šipulová, Katarína, Jozef Janovský, and Hubert Smekal. Ideology and International Human Rights Commitments in Post-communist Regimes: the Cases of the Czech Republic and Slovakia. In *International Courts and Domestic Politics*, edited by Marlene Wind. Cambridge: Cambridge UP, forthcoming.

Figure 6.3 Annual commitment rates for treaties of each HR generation split by government's ideology. Czech and Slovak data is pooled together



Source: Authors

6.3.3 Governmental Manifestos

The second aim of this chapter is to determine whether the ideological position of the Government on the left–right axis is reflected in the human rights agenda of its manifesto. For that purpose, we thoroughly examined the manifestos of all CSFR, Czech, and Slovak governments in terms of their human rights content. A basic summary of our findings is provided in Table 6.2. It contains a description of each of the main human rights indicators that we measured in the manifestos. These indicators were designed to capture comprehensively the different ways in which human rights may be reflected in government manifestos.

Table 6.2 Human rights features in Czech, Slovak, and CSFR governments' manifestos

	Rightist	Leftist	Other	R %	L %	O%
Explicit reference to an HR treaty	2	6	0	25%	50%	0%
Rule of law[238]	8	5	3	100%	42%	75%
HR language[239] substantially present	6	7	0	75%	58%	0%
Establishment of a new domestic HR institution	1	6	0	13%	50%	0%
Special emphasis on first HR generation	8	7	0	100%	58%	0%
Special emphasis on second HR generation	5	10	0	63%	83%	0%
Special emphasis on third HR generation	0	0	0	0%	0%	0%
Special emphasis on fourth HR generation	6	9	1	75%	75%	25%
Total	8	12	4	100%	100%	100%

Source: Authors

In total, there were eight rightist and twelve leftist manifestos in the CSFR, the Czech Republic, and Slovakia during the 15-year period under review.[240] The remaining four manifestos were of caretaker governments which did not originate from elections but only served as transitional governments during times of political crisis (referred to as 'Other' in Table 6.2). The fourth column ('Other') displays zeros and other low values for all human rights features. This demonstrates that these governments did not particularly emphasize human rights. Their manifestos did not, for example, contain explicit references to HR treaties (row 1), and human rights language was not present (row 3).

The number of occurrences of certain topical human rights terms (fundamental rights, human rights, freedom, discrimination, solidarity, dignity,

238 We use a narrow definition of 'rule of law' meaning support for fair trial, judicial independence, and other procedural safeguards of human rights.

239 Emphasis on human rights policies present in the manifesto.

240 The total number of manifestos is slightly lower than the number of governments because several governments used the same manifesto. When a political party leaves the Government or the Prime Minister changes, we code this as a new Government although the manifesto may stay the same.

and equality) is more than twice as high in leftist and rightist government's manifestos as in the manifestos of caretaker governments. Caretaker governments typically handle everyday issues to bridge a certain transitional period until the next election, and hence such a result is well in line with our expectations.

The distinction between the manifestos of rightist and leftist governments shows some interesting patterns. Strikingly, every rightist government has put great emphasis on the rule of law (row 2); on the other hand, less than half of the leftist governments have done so. Leftist governments have also been much more likely to state in their manifestos that they would establish new domestic HR institutions (row 4). This suggests there are distinct ways in which political ideologies translate into the human rights arena within governments' manifestos.

When classifying the content of a manifesto in more detail using the concept of human rights generations, differences appear between the left and right. The data support the intuition that rightist governments emphasize the first generation in their manifestos while leftist governments emphasize the second. Interestingly, the third generation of rights does not get support even from leftist governments, and this might show some local insensitivity towards issues of global justice.

To complement the quantitative analysis just reported, it is helpful also to elaborate on the substantive aspects of the matter. We showed in Table 6.2 that the content analysis of governments' manifestos uncovered several differences in the human rights rhetoric of governments depending on their different ideological stances on the left–right axis. Most importantly, we found that governments with dominant leftist parties tend to stress the importance of social and welfare rights (i.e. second-generation rights).

Looking into history, we see that the CSFR's governments concentrated predominantly on democratic development and the construction of new federal structures, with the exception of promoting the right to free elections, which formed a vital part of the new democratic regime.

In a similar fashion, the first Czech governments of Václav Klaus emphasized the importance of rule of law and political freedoms, i.e. the values

scarce in pre-1989 Czechoslovakia. The change in power from a rightist to a leftist Government in 1998 also brought a more balanced approach to human rights, including the participation of citizens, solidarity, and equality. However, the subsequent governments, led by the social democrats, did not maintain a strong human rights rhetoric and were more occupied with economic issues. The next ideological governmental shake-up, from a leftist to rightist Government in 2006, brought more emphasis back to freedoms and political rights, but it retained the references to civil society, solidarity, support for disadvantaged groups, etc. Finally, the return to Government of a strong leftist party in 2014 translated into more references to dignity, as compared to rightist governments. To conclude, Czech governments' manifestos have gradually developed to include references to various components of human rights, sometimes almost independently of the ideological leaning of the Government. Nevertheless, one is more likely to observe more emphasis on freedoms and political rights by rightist governments and more rhetoric focused on social rights, dignity, and equality from leftist governments. The topics have not been monopolized by either of the two camps, however, and substantial differences have been seen even between governments from the same ideological background.

In Slovakia, very strong human rights language was found in the manifesto of the first democratic Government from 1998, but afterwards human rights language decreased, except in the case of Radičová's rightist government. The emphasis on human rights, especially of the first generation, was used by the Government as an ad hoc political tool to distinguish itself from previous governments. Similarly, we can see a strong human rights accent present in the manifesto of the first Dzurinda's government (1998), which served to distinguish it from Mečiar's practice. However, Dzurinda's second government of 2002 had a much more pragmatic manifesto, having lost much of its human rights language.

6.4 Conclusion

This study of the commitment practice of the Czech Republic and Slovakia contributes to the current scholarly discussion seeking to identify factors influencing states' decisions to commit to international HR treaties. Our analysis

on patterns of commitments to such treaties builds on an in-depth analysis of domestic political settings. In line with the research aims, we searched for consistency between the ideological position of a Government as the agenda-setter, its manifesto commitments, and its international human rights commitments. When analysing human rights preferences in governmental manifestos, our data supported the intuitive conclusion that rightist governments rhetorically emphasize the first generation of rights while leftist governments emphasize the second. Overall, leftist governments also used human rights language in their manifestos more frequently than did rightist governments.

Examination of the relationship between a government's ideological position and its commitment activity revealed that the ideological position of a Government is related to its performance in HR commitments. The most striking conclusion shows that governments do behave differently based on their ideological positions, with leftist governments generally being much more active in taking on human rights commitments in terms of both first- and second-generation rights. This claim is further supported by findings based on our 'most-similar cases' research design: comparison of commitment practice of the Czech Republic and Slovakia showed that the only substantive difference was found – rather surprisingly – during the 1998–2002 EU accession period. Although both countries had a strong interest in showing 'a commitment to commit', and even more so in the case of Slovakia, which had to fight for more international credibility after the fall of the Mečiar's government, it was the leftist Czech government (Zeman 1998) which outperformed the rightist Slovakian government (Dzurinda 1998).

It would be interesting to test the validity of the discovered relationships and hypotheses on other sets of countries. However, the general usability of this chapter's findings might be limited by country specifics. The Czech Republic and Slovakia are perhaps unique in terms of the character of their party systems; the common legacy of a communist regime; attitudes towards international law as such; and the process of integration – not only into the EU, but generally into the club of developed democracies, the influence of which might transcend the accession process itself.

7 MODERATING THE COMMITMENT DECISION WITH RESERVATIONS: EXPLAINING WHAT IS MISSING IN COMMITMENT PATTERNS[241]

7.1 Introduction

As mentioned in previous chapters, the motivations behind the decisions of national states to commit to international human rights treaties are various: some of them derive purely from foreign policy goals, some are in line with internal policies and ideological motivations of governments as the key decision-makers. Prior chapters also suggested, however, that the effect of human rights commitments, and therefore also inferences about states' motivation, might be severely distorted by the existence of reservations.

Submission of a reservation might soften the commitment to a particular provision which would otherwise be problematic for a state to fulfil. Indeed, should the state enter a reservation to a treaty's control mechanism, that might even preclude verification of its future compliance. As suggested in Chapter 5, even an initial examination of Czech and Slovak practice showed that when communist Czechoslovakia committed itself to strong human rights treaties it often opted out of the control mechanisms.[242]

The gradual expansion of research on commitments and human rights practice kept bringing the spotlight also back to reservations. Speaking generally, the theoretical perspectives differ in their understanding of reservations and their acceptability under international human rights law. Liberal theories consider reservations mostly harmful to the legitimacy and credibility of human

241 This chapter uses the data collected for Týč, Vladimír, Linda Janků, and Katarína Šipulová. Reservations to Human Rights Treaties: A Case Study on the Practice of Czechoslovakia and Its Successor States. *International Community Law Review*, Vol. 16, No. 3, 2014, pp. 371–398. We would like to express our heartfelt thanks to Linda Janků for her help with collection of the data.

242 See Chapter 5.3.

rights regimes.[243] On the other hand, neorealist and rationalist schools[244] point out that reservations constitute a natural part of the commitment process through which states entering into a treaty with a serious interest to comply with its provisions try to negotiate the best conditions compatible with their understanding of human rights, other commitments, or domestic procedural constraints. [245] For these reasons, some authors hypothesize that democracies are expected to enter more reservations than do authoritarian and totalitarian regimes inasmuch as non-democracies do not approach international human rights commitments with serious intent to change their domestic human rights performance and comply in future.[246]

Unfortunately, the empirical research on reservations is still very sparse and underdeveloped. That means we so far lack wider confirmation for either of the theories. In that sense, this chapter offers both an innovative and valuable addition to the existing scholarship because it challenges the very mixed expectations produced by the various commitment theories. The chapter maps correlations between the strength of commitments and submission of reservations. It suggests that reservations might constitute one of the factors subtly influencing the nature of commitments for different types of regimes.

7.2 Research Puzzle

As in previous chapters, we are interested in the differences in behaviour between Czechoslovakia and its two successor states in different phases of regime development. As already emphasized, the historical development of Czechoslovakia, its 1989 transition to democracy, and the episode of the Mečiar's government in Slovakia in the early 1990 s allow us to observe correlations between the changes in regime type and changes in commitment practice.

243 Neumayer, Eric. Qualified Ratification: Explaining Reservations to International Human Rights Treaties. *The Journal of Legal Studies*, Vol. 36, No. 2, 2007, pp. 403–404.

244 Goodman, Ryan. Human Rights Treaties, Invalid Reservations, and State Consent. *The American Journal of International Law,* Vol. 96, 2000, p. 544.

245 Ibid., p. 489.

246 Cole, Wade M. Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966-1999. *American Sociological Review*, Vol. 70, No. 3, 2005, p. 484; Neumayer, *Qualified Ratification*, p. 401.

In our previous research, we determined that different regimes do behave differently when it comes to human rights commitments, although the difference between democratic and non-democratic regimes might not be as robust as one would expect. Nevertheless, the observations of practice change a lot if we bring into the picture the different characteristics of treaties and especially their enforcing mechanisms.[247] As we later found out, this argument stands also for human rights commitments of the Czech Republic and Slovakia. While communist Czechoslovakia had a high commitment propensity for international human rights treaties with weak control mechanisms, the federal CSFR was extremely rapid in undertaking commitments, irrespective of the treaty characteristics (possibly due to momentum to ensure its transition to democracy and a desire for symbolic gestures to secure the country's image as a credible liberal state). Both successor states committed to all kinds of treaties, with no significant differences according to their types of control mechanism (i.e. external control of compliance), although the process of commitments did slow down somewhat.

Starting from these results, we are interested to see how these patterns change with the existence of reservations. We seek to discover differences in the use of reservations by individual Czech and Slovak regimes and also look for possible relationships between reservations and the other treaty characteristics: human rights content (first, second, third, or fourth generation of human rights) and strength of control mechanism. We are interested whether in the case of some types of treaties the possibility is greater that a state would lodge a reservation.

Apart from these general observations, we also are interested to observe behavioural patterns of communist Czechoslovakia, the federal CSFR, the Czech Republic, and Slovakia.

We have based our empirical expectations upon the presented theories. As the democracies are expected to be more active in submitting reservations because they do want to comply and are deeply invested in the negotiation process on the content of the provision, we also expect the Czech Republic and Slovakia to begin lodging more reservations from 1993 onwards. Due to its transitioning status, however, we do not expect the same

247 For an in-depth analysis, see Chapter 3.

behaviour from the CSFR. On the other hand, communist Czechoslovakia is expected to enter only few reservations and if so, mostly of a procedural character, which means reservations further moderating the effect of the strength of control mechanism on the commitment decision. In other words, we expect communist Czechoslovakia to have entered reservations only in cases when the reservations would have strengthened its decision not to adhere to the treaty in future.

We are working with two general types of reservations: those which are of a substantive and those which are of a procedural character. Substantive reservations are tied directly to the content of a treaty's provisions while the procedural reservations are aimed at exclusion of the control body's jurisdiction. The reservations were coded based on their content. Therefore, a few declarations, which have, in fact, the character of reservations, were included into the dataset as well. This was the case, for example, of the reservation to the European Social Charter (revised) or to the Protocol amending the European Convention on the Suppression of Terrorism, both of which were marked as declarations but have a clear character of reservations in relation to the relevant treaty provisions.

Furthermore, it is quite common practice that a state reflects on several articles in a single reservation, or, on the contrary, that it lodges several reservations all of which are tied to a single provision of the treaty. Here, we took inspiration from Neumayer's research[248] and coded reservations based on their text, meaning that reservations to several provisions within a single submission were coded each as a separate reservation while several reservations to the same article (content-wise) were coded as a single reservation.

As regards the rest of our methodology, many questions relevant for the empirical research of reservations already have been discussed. The set of human rights treaties which we characterize as such and with which we work remains the same (i.e. 192 treaties). A few remarks are in order regarding the International Labour Organisation's treaties. Even though submitting reservations to treaties concluded within the ILO is formally prohibited by that organization, this position is untenable from the perspective of international law on treaties because many of these treaties contain

248 Neumayer, *Qualified Ratification*, p. 406.

opt-out clauses which effectively enable states to submit declarations with the effect of reservations. Therefore, because we identify reservations by their actual content and legal effects, ILO conventions are also included into our research.[249] Similarly to the rest of our research, individual treaties were again coded with metadata on their human rights content, generation of human rights to which they belong, and strength of their control mechanism.

7.3 Historical Overview of the Reservations Practice and Its Relationship to the Character of Commitments

As mentioned in previous chapters, our research works overall with a set of 192 treaties. For purposes of examining reservations, however, the relevant set is actually smaller, because we are interested only in those treaties which were at least signed by the given country.

As follows from Table 7.1, this relevant set consists of 137 treaties for the Czech Republic and 132 for Slovakia. Both of these sets include treaties originally signed by communist Czechoslovakia and maintained in force by the respective independent republics after 1993. Out of these, the Czech Republic has had, together with reservations of the CSR, reservations to 17 treaties targeting 32 different provisions and rights, and Slovakia, once again together with reservations of the CSR, has lodged reservations to 17 treaties encompassing 26 different rights. The distribution of substantive and procedural reservations is just the same for both countries: 10 substantive and 7 procedural. It is noteworthy that procedural reservations as we understand them (i.e. reservations excluding the control mechanism overseeing compliance with a treaty's provisions) were only ever negotiated by communist Czechoslovakia.

249 See UN. *Yearbook of the International Law Commission, Volume I. Summary records of the meetings of the fifty-second session*. 2000, p. 157. For a more in-depth explanation of the data collection process, see for Týč, Janků, and Šipulová, *Reservations to Human Rights Treaties*.

Table 7.1 Development of Reservations[250]

	Signatures	Ratifications*	Reservations	Withdrawals
CZECH REPUBLIC	**137**	**125**	**17**	**8**
Communist Czechoslovakia	47	45	7	0
CSFR	21	19	3	7
1993–2013[251]	69	61	7	**1
SLOVAKIA	**132**	**126**	**17**	**8**
Communist Czechoslovakia	47	45	7	0
CSFR	21	19	3	7
1993–1998	15	13	1	**1
1998–2013[252]	49	49	6	0

Source: Authors

Table 7.1 provides also a more detailed breakdown of reservations practice by individual regimes. Historically, communist CSR made seven reservations, all of which were procedural, relating to the jurisdiction of the International Court of Justice. Only in two cases were the reservations followed by objections from other member states.[253] All procedural reservations were withdrawn by a notification to the Secretary-General of the United Nations from 26 April 1991. The CSFR entered three reservations of a substantive character (all of which are still in effect), and this was a rather high number compared to the overall number of 21 signatures which occurred during 1989–1992 (Figure 7.1). None of the reservations submitted by the Czech and Slovak Republic after 1993 were ever objected to (Figure 7.1).

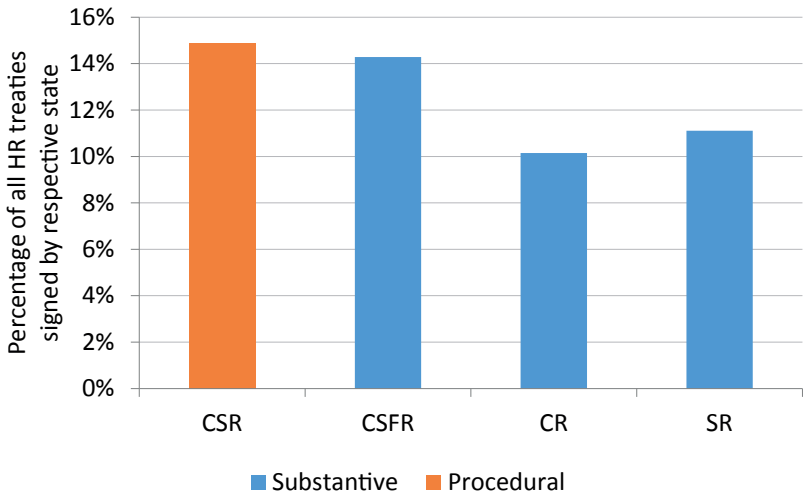
250 * For the purposes of this study, the category ratifications covers also accessions to the treaty. ** This regards a withdrawal of reservation to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The reservations were originally entered by communist CSR. The reservation to Article 30 was withdrawn by the CSFR, the reservation to Article 20 by both independent republics in 1995 (SR) and 1996 (CR) respectively.

251 The time period under our review ends in July 2013.

252 The time period under our review ends in July 2013.

253 Several states objected against the reservation to the jurisdiction of the International Court of Justice in the Convention on the Prevention and Punishment of the Crime of Genocide and Convention on the Political Rights of Women.

Figure 7.1 Character of reservations entered by respective states



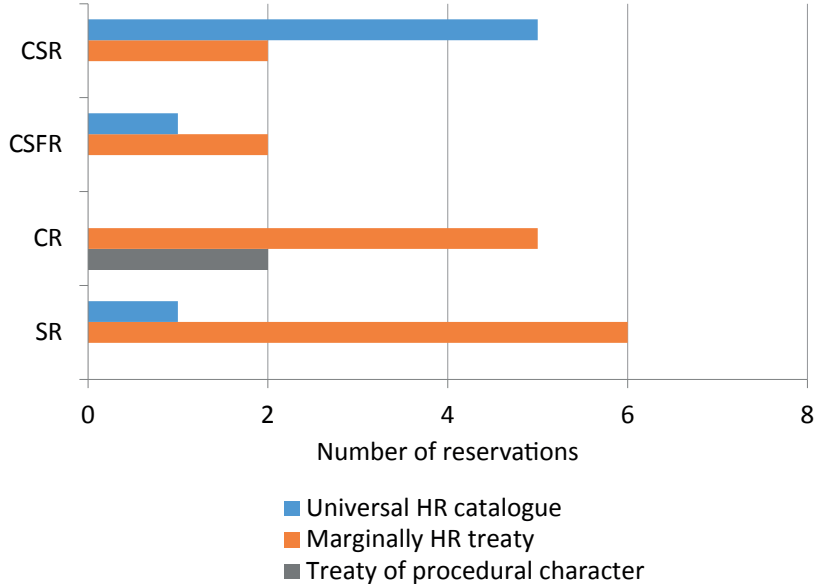
Source: Authors

After this general overview of the use of reservations over time, we proceed to an analysis of the relationship between a decision to enter a reservation and the content of the treaty. In other words, we search for patterns and ask whether states are more prone to lodge a reservation to treaties having certain characteristics.

As already explained, we define a human rights treaty rather broadly, and therefore the treaties in our data set vary in content and importance. While some of them regulate one human right and technical aspects of its execution, others are large general human rights catalogues.

We are therefore interested whether the respective states lodge reservations more frequently to some types of treaties, either in accordance with their importance or content. For example, we ask whether communist Czechoslovakia entered more reservations to treaties regulating civil and political rights (i.e. rights of the first generation).

Figure 7.2 Reservations according to their 'human rights intensity'



Source: Authors

Figure 7.2 captures changes as to the importance of human rights treaties to which states entered reservations. While communist Czechoslovakia lodged reservations mostly to big, universal human rights catalogues (Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Political Rights of Women; International Convention on the Elimination of All Forms of Racial Discrimination; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and others), the independent democratic republics entered more reservations to smaller catalogues, typically regulating a specific area of human rights protection or the procedural aspects of its execution (e.g. Convention on the Civil Aspects of International Child Abduction, European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, or the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters).

Both the Czech Republic and Slovakia had the most reservations overall to treaties regulating civil and political rights and rights of minorities (i.e. treaties of the first and fourth generations). Most of the first-generation treaties' reservations were concluded by communist Czechoslovakia, which clearly used reservations to modify the binding effect of the most important human rights commitments. This observation is even more valid if we consider the character of those reservations, which were related mostly to the powers and jurisdiction of international judicial bodies. All seven reservations submitted by communist Czechoslovakia related to treaties regulating the first generation of human rights or the 'mixed' treaties regulating the first and fourth generations of human rights. This fact changes the commitment performance of communist Czechoslovakia in a significant way: although the non-democratic state ratified some human rights treaties, and even some of high relevance and importance, the commitment was more or less invalidated by the existence of a reservation excluding any sort of international control over the CSR's compliance. Moreover, as will be shown in the next section, most of those reservations were entered for treaties encompassing strong control mechanisms.

The Czech and Slovak Federal Republic is the first democratic state in our study. Although it signed and ratified quite many international human rights treaties, it did turn to entering substantive reservations, as predicted by theories, but the overall number remained low. This is to be expected and is in line with our first intuition because the CSFR needed to establish itself as a credible actor and boost its image as a state respecting human rights. Two of the reservations lodged by the CSFR related also to first-generation (the European Convention on Mutual Assistance in Criminal Matters) and first- and second-generation human rights treaties (the Convention for the Protection of Human Rights and Fundamental Freedoms). Most importantly, however, CSFR immediately withdrew all procedural reservations of the previous communist regime, thereby signalling even more openly its preparedness to take seriously its future human rights commitments.

Both independent republics entered only substantive reservations, with one exception which relates to Mečiar's government and the controversial

reservation to the European Convention on Transfrontier Television.[254] Our data overall do not suggest any particular pattern in the relationship between entering a reservation and the generation of human rights regulated by the treaty to which the reservation is entered. In other words, there is an equal distribution of reservations lodged to treaties regulating the first, second, and fourth generations). Interestingly, no reservation was ever entered for a treaty belonging to the third generation of human rights. This might, however, be related to an overall low representation of treaties of third-generation rights in our dataset (just 21 out of 192 treaties).

Nevertheless, it is worth pointing out that for the purposes of our study, we coded reservations to several treaty provisions as a single 'reservation decision'. That means that the reservation in treaties which contain rights of several generations were not paired with individual reservations. A qualitative sample study of the content of reservations suggests that generally, these 'more than one generation' treaties are mostly treaties with reservation targeting treaty as a whole, different technical and procedural aspects, or the control mechanism, so we expect our suggestion regarding the lack of relationship between the generation of human rights and entering a reservation to hold. Nevertheless, a more in-depth study of the content of the reservations and its relationship with human rights generations to would be worth conducting in future.

7.4 Commitments, Regimes, and Control Mechanisms – How the Reservations Change Existing Patterns

The core aim of the study was to find out to what extent the relationships between commitment patterns, regimes which undertake them, and the strength of the control mechanisms are distorted by the practice of entering reservations. As we concluded in Chapter 5, the strength of a treaty's control mechanism influences commitment patterns. Communist Czechoslovakia had an overall low commitment propensity and ratified mostly treaties with weaker control mechanisms. Federal Czechoslovakia (CSFR), the Czech Republic, and Slovakia all have had medium to high commitment propensity

254 The reservation was of substantial character.

to undertake all types of treaties irrespective of their control mechanisms. Interestingly, we found no significant change for Slovakia under Prime Minister Mečiar's regime (1993–1998).

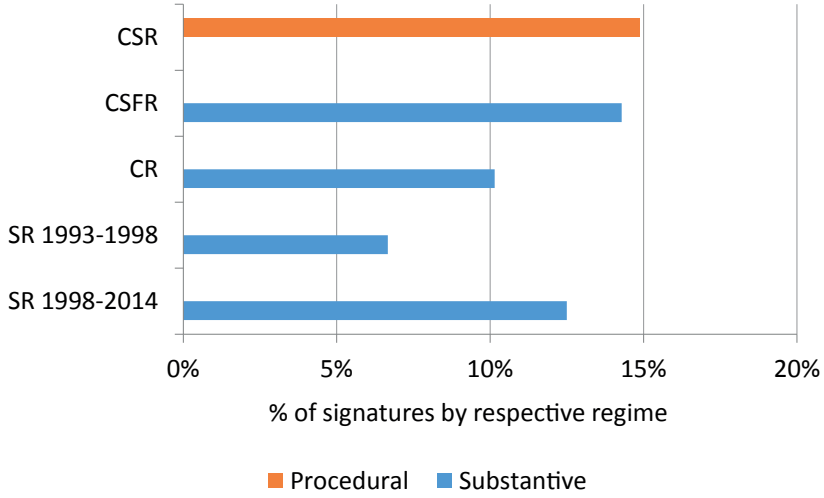
Figure 7.3 presents our results relating to the specific issue of reservations. Communist Czechoslovakia had the highest proportion of reservations compared to the number of signed treaties (15%), but the most important difference compared to the successor states was their character.

Figure 7.3 shows almost the same percentage for CSFR, although numerically, the federal republic lodged only three reservations (out of 21 signatures). All three of them were of substantive character (the European Convention for the Protection of Human Rights and Fundamental Freedoms – exemption of soldiers out of article 5 and 6 the European Convention on the Transfer of Proceedings in Criminal Matters – articles 22 and 23; and the European Convention on Mutual Assistance in Criminal Matters). The commitment activity of the CSFR is particularly high in view of the short period of time during which it existed. Moreover, the existence of the federal republic was marked by deep internal struggles, because shortly after the fall of the communist regime the Government had to address rising calls and claims for autonomy from the Slovak part. During 1990–1992, the question as to the future configuration of the federation prevailed over other political issues. This culminating in a dispute over what exactly should be the name of the federation, often referred to as the 'hyphen war'.[255] Much energy was invested, too, into designing the skeleton of a new constitutional system and its relationship to international law. The CSFR originally chose a dualist conception, although this was later changed by both republics to one of monism.

In 1991, the CSFR withdrew all procedural reservations lodged by the communist regime. This was an important moment for the new democratic republic and a gesture made by new elites towards the international community, especially in relation to an approaching integration into the Council of Europe.

255 An argument on the new form of the name of the federation, with a hyphen between the Czech and Slovak adjectives, was brought by a proposal on the official English translation. Slovakian politicians demanded that the name of the country reflects the equal position and federal composition of the republic in a more precise way. See Suk, Jiří. *Labyrintem revoluce. Aktéři, zápletky a křižovatky jedné politické krize (od listopadu 1989 do června 1990)*, 2nd ed. Prague: Prostor, 2009, p. 451.

Figure 7.3 Distribution of types of reservations entered by respective regimes



Source: Authors

The Mečiar's government entered, quite surprisingly, only one substantive reservation, although the regime's overall commitment performance was significantly lower as well (15 signatures). This single reservation was nevertheless quite controversial on its own. It was lodged to the European Convention on Transfrontier Television, limiting the transmission on Slovakia's territory. This was particularly significant, as Mečiar's government heavily censored any opposition media in the later years of its rule[256]. Still, this suggests that Mečiar's government did not behave as a typical autocratic regime in the international human rights arena and did not try to isolate his country or disregard the development of the international community altogether. This is, surely, related to a specific character of the state and the foreign policy circumstances. First, the Government did not sign or ratify a large number of treaties (15 signatures, 13 ratifications). Therefore, there were not many possibilities to negotiate reservations. Most of Mečiar's international commitments were made shortly before 1998 elections, during the period

256 Human Rights Watch. *Human Rights Watch Helsinki. Slovak Republic, Restrictions on Press Freedom in the Slovak Republic.* Vol. 6, No.9, 1994, p. 5, http://www.hrw.org/sites/default/files/reports/SLOVAK946.PDF.

of EU accession reports, when Mečiar probably tried to appease the rising European criticism by appearing as an approachable actor. Moreover, Mečiar had to deal with a significant legacy of federal Czechoslovakia, which had withdrawn all reservations made by the communist regime. Challenging this legacy would undoubtedly have damaged the international image of the country[257].

What is surprising when referring back to theories relating to reservations and commitment patterns is that, generally, the level of activism of the Czech Republic and Slovakia in entering reservations remained more or less the same as before the revolution. The character of reservations changed, but, compared to other European countries, both states remain somehow passive[258] and do not attempt all that often to change the results of the negotiations on the content of a treaty. Once again, this might suggest the existence of subtle differences in behaviour of democratic countries. As Andrew Moravcsik[259] suggested in his 2000 work, Central and Eastern European democracies behave differently than do consolidated democracies in their commitment activity, and this, most possibly, reflects also on the practice of reservations. It is possible that post-communist states acceding to the European Union were trying to come across as more pliant in relation to international law and organizations in order to be seen positively by the European Commission. It is noteworthy, however, that no significant change occurred after the end of the accession process in 2004.

The last question we were raising in this chapter is whether the reservations somehow influence the approaches of different regimes to treaties with strong or weak control mechanisms. Reservations in relation to a treaty's monitoring body can modify the binding effect of the commitment and future compliance in a very significant way. This holds especially for nondemocratic states, which often ratify treaties without any serious intent to comply with them, as we suggested in Chapter 3.

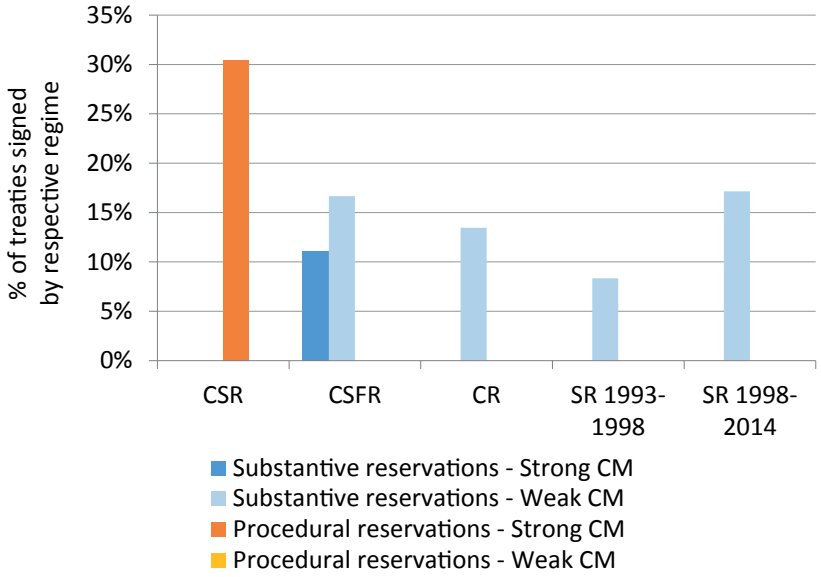
257 Pridham, Geoffrey. The European Union's conditionality and domestic politics in Slovakia: the Mečiar and the Dzurinda's government compared. *Europe-Asia Studies,* Vol. 54, No. 2, 2002, pp. 203–227.

258 See e.g. Neumayer, *Qualified Ratification*, pp. 420–421.

259 Moravcsik, Andrew. The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe. *International Organization*, Vol. 54, No. 2, 2000, pp. 217–252.

Figure 7.4 reports the practice of entering reservations to treaties according to different types of control mechanism and individual regimes. Once again, it is confirmed that when the communist CSR did enter reservations these were of a procedural character to exclude the jurisdiction of the International Court of Justice and other bodies. Therefore, the CSR in this way further modified its human rights commitment performance. More than 30% of the CSR commitments to treaties with strong control mechanisms were invalidated by procedural reservations. It follows that while the CSR did commit also to human rights treaties with strong external control mechanisms, it kept submitting procedural reservations excluding the jurisdiction of this control mechanism so that it could avoid external control over its compliance with the treaties.

Figure 7.4 Distribution of Reservations Made in Different Transitional Periods



Source: Authors

None of the other regimes ever used the possibility to enter a reservation limiting the jurisdiction of a judicial control body (or any other form

of monitoring for that matter). It might therefore be concluded that both states after their independence did show an interest in building their images as democratic states committed to the proliferation and protection of human rights even under strong external control.

7.5 Concluding Remarks

Using the Czech Republic, Slovakia and their predecessors as the basis for a case study, this chapter presented research analysing the practice of different regimes in entering reservations to international human rights treaties. We asked whether there is any pattern in the lodging of reservations, whether this pattern varies by regime type, as some theories of international commitments suggest, and whether these regimes behave particularly differently when it concerns treaties encompassing different control mechanisms and methods of compliance monitoring.

In analysing the content of treaties and the reservations, we did not find strong evidence of correlation between the content of the provisions (human rights generations) and the number of reservations. On the other hand, when it comes to human rights intensity, or the importance of the treaty, as such, communist Czechoslovakia clearly lodged reservations to the big universal human rights catalogues while democratic successor states usually entered reservations of a more technical character to smaller treaties. This is also well in line with previous findings that democratic republics were prone to commit to a more diverse composition of human rights treaties (as regards the regulated human rights generations), whereas the governments in non-democratic periods tend to ignore certain generations (in our cases it was mainly the second generation).

Generally, the results of our research fit the theoretical expectation that democratic states are more active than non-democratic countries in their human rights commitments. When it comes to reservations, however, the correlation with type of regime is a little bit foggy. First, the democratic regimes did not in fact show a greater propensity to enter reservations, although the character of reservations changed significantly when compared to those of the communist CSR. The overall activity remained

more or less on the same level. Interesting, however, is to look more closely at the character of these reservations and their relationship to treaties with control mechanisms of different strength. The results here suggest that non-democratic Czechoslovakia lodged reservations for the sole purpose of negating the commitment itself and excluding its subordination to external control and monitoring. This practice was never repeated by succeeding states, although Slovakia went through a brief semi-democratic period of government during 1993–1998 (albeit under very close international observation).[260]

The findings of the study contribute significantly to the debate on the behaviour of regimes and commitment patterns. Our results suggest that control mechanism might indeed be one of the strongest predictive variables influencing the commitment behaviour of different regime types, and especially when supported by reservations. Not all neorealist and rational theory-based expectations fit our findings, however. The case study of Czechoslovakia and its successors shows that commitments are influenced by many more subtle factors, including historical events, foreign policy considerations, as well as differences in the nature of the regimes themselves.

260 The problematic character of Slovak 1993-1998 regime is explained at length in Chapters 1 and 4.

8 WHO AND WHAT IMPACTS THE PROCESS OF ADOPTING HUMAN RIGHTS COMMITMENTS? VETO PLAYERS AND INTERNATIONAL HUMAN RIGHTS COMMITMENTS

8.1 Introduction

We already have written about the form and implications of governmental decisions to enter into international human rights commitments. The aim of this chapter, then, is to take the analysis of the 'commitment decision' process one step further by examining the other actors involved.

This chapter therefore seeks to identify veto players in domestic political arenas and assess their impacts on the legislative process for ratification of human rights treaties. Drawing on George Tsebelis's definition, we understand an institutional veto player to be an actor whose approval is required for a policy decision. In line with Tsebelis's concept of institutional veto players and political change, we perceive the duration of the process of taking on a new international commitment (i.e. treaty ratification) as directly proportional to the configuration and number of actors who must agree to the proposed change.[261]

Based on detailed analysis of ratification processes, the positions of individual actors and their veto powers, we address the following questions:

- Who are the key veto players in the ratification process? The Government, the Parliament, or the President?
- Does the pattern of ratification change with an increase or decrease in the number of veto players? Do the differing structures of the Slovak and Czech parliaments give rise to a difference in length of the ratification process? Were there any significant differences in the smoothness and speed of the ratification process under Prime Minister Vladimír Mečiar's regime in Slovakia?

261 Tsebelis, George. Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism. *British Journal of Political Science,* Vol. 25, No. 3, 1995, pp. 289–325.

8.2 Veto Players and Commitment Activity

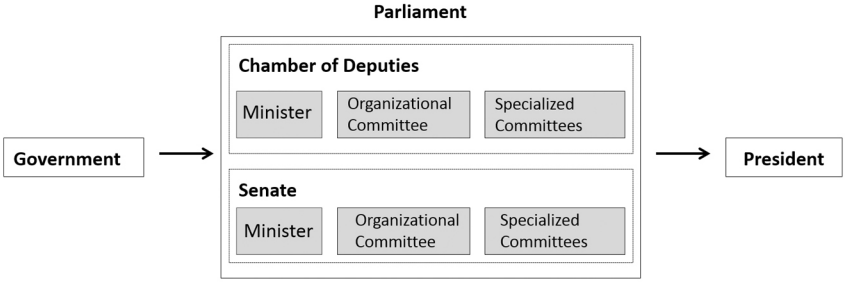
Fundamental political decision-making processes and actors are usually specified in constitutions. In the Czech Republic, the Government, both parliamentary chambers (i.e. the Chamber of Deputies and the Senate),[262] and the President[263] count as veto players in the ratification process. In Slovakia, the group of veto players changes only slightly due to its having a single-chamber Parliament. As follows from Figures 8.1 and 8.2, the ratification processes in both parliaments are very similar, with the Government submitting the proposal for ratification to the chamber(s). The Government enjoys a specific position as the exclusive agenda-setter responsible for signing the treaty and thus establishing it as a relevant policy topic and directing it into the ratification process. Moreover, the Government can also become a veto player by blocking ratification in case of a change of Government in the period between signature and ratification.[264] Approval by both chambers in the Czech Republic is needed for advancing a treaty to the President for his signature.

262 The condition that a human rights treaty is to be approved by both chambers of Parliament is established directly in the Constitution (article 49). Prior to the 2003 amendment of the Constitution (the so-called Euro-amendment) this was true only for international human rights treaties, hence the classification of the treaty as one on human rights was of an utmost importance. The Czech practice from 1993 until 2002 differentiated between the effects and adoption processes of multilateral political, economic, and human rights treaties and prescribed affirmative votes by different majorities in the chambers for each category. The decision as to whether a given treaty is or is not a human rights treaty was within the power of parliamentary committees. Therefore, it might have happened that a treaty was intentionally miscategorized in order to achieve a smoother acceptance (or prevent acceptance) in Parliament. From 1993 to 1997, the Czech Parliament labelled a mere four treaties as being of a human rights character, even though the real number of human rights treaties signed or ratified by the Czech Republic in this period was incomparably higher.

263 The Czech Constitutional Court ruled in 2009 that the President has to ratify an international treaty approved by the Parliament without any unnecessary delay (see Pl. ÚS 26/09). We nevertheless identify the President as a veto player and examine whether or not he uses his power to decline or delay the ratification process.

264 In other words, we are interested whether a Government with different ideological position pushes through ratification of a treaty signed by a previous Government.

Figure 8.1 Ratification process in the Czech Republic



Source: Authors

Figure 8.2 Ratification process in Slovakia

Source: Authors

A specific position is held by both constitutional courts, which are endowed with the authority to decide ex ante on the compatibility of an international treaty with domestic constitutional provisions and even to block ratification. We view the constitutional courts as veto players of a second order, however, because they can be activated only by one of the primary veto players who has submitted a proposal for review. Moreover, the ex ante constitutional review has never been used in the case of an international human rights treaty either in Slovakia or in the Czech Republic. It is furthermore worth noting that the power the constitutional court might wield in both countries is limited also by the fact that its jurisdiction relates only to constitutional review, i.e. the review of a treaty's compatibility with the Constitution. This is one more reason why the courts could act only as second-order veto players in both countries.

Detailed examination of commitment activity patterns between individual veto players uncovered surprising results. The practice of using a veto in the ratification process is almost non-existent. On the Czech side, we identified only four cases in which one of the actors exercised its veto power. In 1995, the Government unsuccessfully asked the Chamber of Deputies for its recommendation on the signature of the Part-Time Work Convention.[265] In September 2001, the Government tried to initiate the ratification process on the Convention Relating to the Status of Stateless Persons. The Convention was discussed at the Foreign Affairs Committee of the Chamber of Deputies, which recommended its approval but advised the Government to submit one procedural reservation. However, the Chamber of Deputies rejected the approval of ratification. Dominant voices in the parliamentary debate raised concerns about adopting international obligations with regard to sensitive issues such as homelessness and immigration.[266] The third example of the Chamber of Deputies employing its veto power authority relates to ratification of the revised European Social Charter signed by Prime Minister Miloš Zeman's leftist government in November 2000. To this date, the Charter has never been submitted into the ratification process. The treaty itself was signed with a reservation to ratification. During negotiations on others of the Charter's protocols, the members of the Chamber of Deputies acknowledged the pressure from the EU to commit to this treaty, but they did not agree upon its classification as a human rights treaty. The ratification was denied due to fears regarding direct applicability of the treaty's provisions.[267]

In the last case, concerning the turbulent ten-year ratification process of the Rome Statute to the International Criminal Court,[268] the veto was employed by the Government itself. Zeman's government signed the Rome Statute in April 1999 and submitted it for ratification to the Parliament for the first time in October 2001. The Foreign Affairs Committee of the Chamber

265 The Chamber did not recommend the signature due to potential incompatibility with EU law.

266 Chamber of Deputies, Parliament of the Czech Republic. *Transcript of the 46. Meeting.* 15 February 2002, http://www.psp.cz/eknih/1998ps/stenprot/046schuz/s046469.htm.

267 Chamber of Deputies, Parliament of the Czech Republic. *Transcript of the 10th debate.* 1 April 1999, http://www.psp.cz/eknih/1998ps/stenprot/010schuz/s010275.htm#r3.

268 In sharp contrast, Slovakia ratified the Rome Statute very smoothly during the post-Mečiar era of democratic credible commitments.

of Deputies recommended a significant change to the Constitution as a consequence of the ratification, however, and the Government subsequently withdrew the proposal. Fierce parliamentary discussions took place about the competency of the International Criminal Court and its compatibility with rights protected by the Czech constitution, e.g. guaranteed protection of parliamentary immunities, amnesties, and the prohibition against extradition for the next eight years.[269] The last mentioned obstacle relates also to a prohibition against forcing someone to leave his country of origin, provided for by Article 14.4 of the Czech Republic's Charter of Fundamental Rights and Freedoms, which was essentially overcome by the interpretation of the Constitutional Court in case no. Pl. ÚS 66/04.[270] The Rome Statute was finally ratified in July 2009.[271] Although it was the Government which had formally applied the veto, its doing so merely reflected the political atmosphere and attitudes in both chambers of the Parliament, which expressed negative opinions towards ratification during the debates over the constitutional amendment advised by the Foreign Affairs Committee. It is also worth noting that ratification of the Rome Statute and the revised Charter was an explicit part of the two governments' programmes. After two unsuccessful attempts to push the ratification through, however, no other Government has to this date referred to the treaty in its programme.

269 For a more detailed explanation, see The President's Office. *Stanovisko Odboru legislativy a práva KPR k ratifikaci Římského statute Mezinárodního trestního soudu*. 2009, https://www.hrad.cz/cs/pro-media/informace-k-soudnim-sporum/stanovisko-odboru-legislativy-a-prava-kpr-k-ratifikaci-rimskeho-statutu-mezinarodniho-trestniho-soudu-12092.

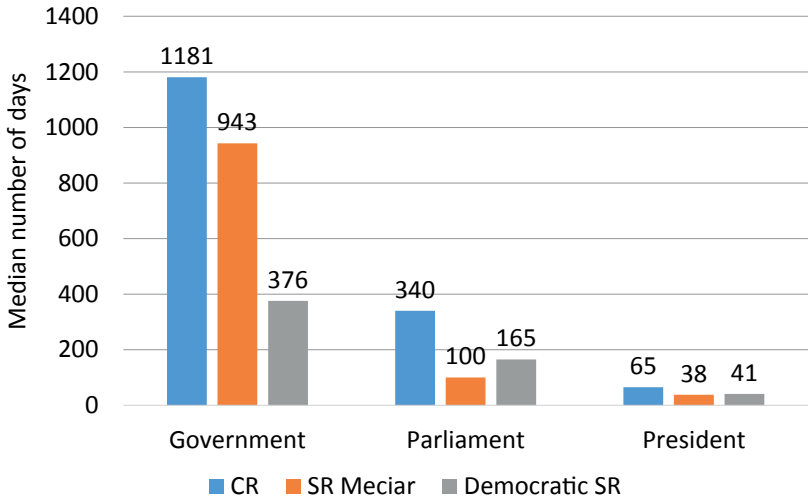
270 Pl. ÚS 66/04, 5 March 2006. The Constitutional Court stated that '*The petitioners' assertion that the adoption into domestic law of the European arrest warrant would disrupt the permanent relationship between citizen and state is not tenable. A citizen surrendered to an EU Member State for criminal prosecution remains, even for the duration of this proceeding, under the Czech state's protection. The European arrest warrant merely permits a citizen to be surrendered, for a limited time, for prosecution in an EU Member State for a specifically defined act, and after the proceeding is completed there is nothing preventing her from returning again to Czech territory. In the case of a surrender pursuant to a European arrest warrant, a citizen has the right to defend herself against measures by criminal justice bodies, by means of remedial measures, including even a possible constitutional complaint. (…) the surrender of citizens for a limited time for criminal proceedings being held in another EU Member State, conditioned upon their subsequent return to their homeland, does not and cannot constitute forcing them to leave their homeland in the sense of Art. 14 par. 4 of the Charter.*'

271 The Minister of Foreign Affairs defended the need to ratify the Statute in the parliamentary discussion especially with reference to the negative influence non-ratification would have upon the international credibility of the Czech Republic. Chamber of Deputies, the Parliament of the Czech Republic. *Transcript of the 30th debate*. 6 May 2008, http://www.psp.cz/eknih/2006ps/stenprot/030schuz/s030210.htm#r2.

In Slovakia, no player has ever used its veto power. Overall, the findings for both countries suggest that constitutional veto players do not tend to use their veto power. This means that the act of commitment is almost exclusively the political decision of the Government. Once the Government decides to sign a treaty and submit it for ratification, sooner or later the treaty is ratified.

Tsebelis's conception of veto players suggests a linear relationship between the number and consistency of veto players on the one hand and the smoothness of the ratification process on the other hand. The more players in the game, the more difficult the ratification process can be. We examined the validity of these hypotheses by comparing the data from all Czech and Slovak ratification processes. The differing structure of the Czech and Slovak Parliaments also implies a different number of veto players in the game. Slovakia's single-chambered Parliament should show faster approvals than does the Czech Parliament of treaties submitted both into the ratification and accession processes.

Figure 8.3 Length of individual veto players' involvement in successful ratification and accession processes



Source: Authors

Figure 8.3 provides evidence in support of the aforementioned hypothesis. Most important is the middle section showing the length of time needed to reach approval by the Parliament (measured from the time of the treaty's submission until its approval). The single-chambered Slovak Parliament is on average twice as fast as its Czech counterpart. The Czech institution needs to seek the agreement of both chambers, which are often of different ideological compositions. An even shorter approval time has been observed in the Slovak Parliament during Mečiar's non-democratic era, at which time Parliament usually approved treaties not much longer than three months after the beginning of the ratification process. A similar pattern emerges for the presidents, with the data confirming the weaker position of the Slovak President in terms of his constitutional powers as compared to the Czech President. In the semi-authoritarian era, both the Parliament and President had very little room to counterbalance Mečiar's power and policies. This was especially the case for the Parliament, which concentrated on pressing economic issues, post-communist reforms, and privatization. Hence, although Mečiar's government signed a rather small number of human rights treaties, they managed smoothly to ratify nearly all of them. The only two exceptions concern treaties signed at the very end of his term.

8.3 Conclusion

The aim of this chapter was to identify key veto players in domestic political arenas and to assess their impacts on human rights commitments. Examination of legislative processes uncovered findings which support the hypothesis that the number and consistency of veto players matter. Ratification processes in the single-chambered Slovak Parliament are almost twice as fast as those of its Czech counterpart. Mečiar's nondemocratic regime also confirmed stronger internal consistency in decision-making processes. Although not many human rights treaties were signed, once they were signed the ratification was concluded in a very rapid manner.

More importantly, veto players (the Government, Parliament, and President) do not in practice generally use the veto power assigned to them by the constitution. The only exceptions were found in the case of the Czech Parliament (or the Government upon indirect pressure due to the Parliament's position),

which vetoed treaties identified as a possible threat to state sovereignty. However, these exceptions represent only an insignificant proportion of all ratification processes. We therefore conclude that an international human rights commitment is essentially a political, governmental decision. While legal science usually stresses the importance of ratification over signature due to its binding effect, from a political point of view, the essential time point of commitment might be identified as the signature. Once a treaty is signed, it is highly probable that the ratification process will also succeed, even though there may be certain delays in the most controversial cases. Therefore, the Government is the key player in the process of committing to human rights treaties.

III. INDIRECT INFLUENCES (MICRO-LEVEL ANALYSIS)

While the previous chapters addressed the creation of human rights commitments and concentrated on the role of governments and other actors directly influencing the ratification process, the aim of the part III of the book is to take a closer look on the life of these commitments in practice. Application of treaties has far reaching impact on the creation of environment in which the society and actors, public bodies and individuals including, understand, acknowledge, and use human rights derived (among others) from the international law. National courts are an important proxy of international human rights bodies. On one hand, by applying the international law, they can strengthen the level of human rights compliance. On the other, a direct application and interpretation of international law puts more constrains on the political actors. In this sense, extensive application of human rights treaties by courts, especially an application giving the treaties precedence over the national law, may significantly influence future decisions of the Government to ratify human rights treaties, making it more apprehensive about the content and extent of future commitments.

Part III covers the use of human rights treaties by the constitutional and supreme courts in the Czech Republic and Slovakia. These courts are generally considered very strong institutions in both countries which considerably influence legal and political reality. While supreme court judges and constitutional justices usually enter positions in advanced stages of their careers, the judicial clerks and analysts often join the staff in young age, often shortly after the graduation from a law school. Similarly, clerk positions in the public administration typically hold younger cadres. However, their inputs to the final 'products' are not to be underestimated. With young alumni of law schools holding positions with potentially important outcomes of their work, we were interested to what extent Czech and Slovak law schools educate young lawyers in international human rights, i.e. field largely unknown to their older colleagues from their university studies.

9 HUMAN RIGHTS TREATIES BEFORE CONSTITUTIONAL COURTS: IDENTICAL STARTING POINTS, SLIGHTLY DIFFERENT OUTCOMES

9.1 Constitutional Courts and Human Rights Treaties before and during the Transitional Period to Democracy

The position of HR treaties under the socialist regime has been explained in Chapter 4. Although the Czechoslovak state became a party to both international covenants, the reality of their domestic application was different from the state's promises. The regime officially recognized its human rights obligations, but it refused to apply these directly in the domestic legal order and denied individuals the right to lodge their individual petitions to the corresponding international bodies. The situation was the same concerning domestic adjudication of human rights. The state included the institution of Constitutional Court in the constitutional amendment from 1968, but the Constitutional Court was not initially established and this situation continued until the start of democratic changes in 1990. Therefore, we can speak about the implementation of international HR treaties before constitutional courts only directly within the context of democratic changes that began soon after the 1989 Velvet Revolution.

The democratic legislature in the Czechoslovak Federation decided at the very beginning of the transition to incorporate human rights treaties into the domestic legal order and to accord them direct applicability with priority over domestic laws. This was enacted through federal Constitutional Law No. 23/1991 introducing the domestic Charter of Fundamental Rights and Freedoms. From that time, the human rights treaties existed in the Czechoslovak Federation alongside the domestic catalogue of human rights. From this point of view, the treaties played a crucial and invaluable role in the legal and political transformation. The treaties put the domestic catalogue into a broader context and, above all, the case law of international bodies helped the national authorities in adjudicating human rights.

At the beginning of the democratic transition, the former Czechoslovakia lacked a tradition of human rights adjudication before courts. Indeed, it even had no long-lasting tradition of constitutional adjudication as such.[272] In this situation, it was essential to search for some foreign national or international examples. Although the federal Czechoslovakia included its own domestic catalogue of human rights in the constitutional legal order, the approach chosen by the constitution makers granted the HR treaties a specific and unique position as supplementary, additional, or 'shadow' catalogues.[273] This role of HR treaties, and especially of the European Convention of Human Rights and Freedoms (ECHR), was a special one.

A commonly shared ethos regarding human rights was reflected during the democratic transition in the specific and unique position of HR treaties within the constitutional system. This exclusive position was acknowledged, too, by the favourable approach taken by the Constitutional Court of the Czechoslovak Federal Republic and by the constitutional courts of both successor countries after the split of the Federation.

In the Czech Republic, federal Constitutional Law No. 23/1991 was 'deconstitutionalized' and pronounced to be an ordinary law in the country's new constitution of 1992. The exclusive position of HR treaties was nevertheless preserved through Art. 10 of the Constitution, which stipulated that '*[r]atified and promulgated treaties on human rights and fundamental freedoms that oblige the Czech Republic are directly applicable with priority over ordinary laws*'. The newly created Constitutional Court of the Czech Republic was granted

272 Although the former Czechoslovakia (together with Austria) was one of just two European countries that established concentrated and specialized judicial review by constitutional courts after World War I, the Constitutional Court ceased to exist in Czechoslovakia after World War II. It was re-established after the so-called Prague Spring amendment to the federal constitution in 1968. After that time, however, it was not recreated until the period after the 1989 Velvet Revolution (in 1991). This means that although Czechoslovakia had its short interwar tradition of judicial review of legal norms it had it no tradition of judicial application of human rights by constitutional justice. See Langášek, Tomáš. *Ústavní soud Československé republiky a jeho osudy v letech 1920–1948*. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2011, p. 28; or Pospíšil, Ivo. Ústavní soudnictví a lidská práva. In *Lidská práva v mezinárodní politice,* edited by Pavel Dufek, and Hubert Smekal et al. Prague: Wolters Kluwer, 2014, pp. 361–363.

273 Keller, Helen, and Alec Stone-Sweet. Assessing the Impact of the ECHR on National Systems. In *A Europe of Rights: The Impact of ECHR on National Legal Systems,* edited by Helen Keller, and Alec Stone-Sweet. Oxford: Oxford UP, 2008, p. 683.

competences to annul laws that would contravene not only constitutional laws but also this category of international treaties and to invalidate any individual legal act that would infringe upon fundamental rights and freedoms set down not only in the domestic Charter of Fundamental Rights and Freedoms but also in the international HR treaties ratified by the state.[274]

The fact that this approach covered only HR treaties provoked strong criticism from several academic scholars. It is true that the situation concerning other international treaties remained similar to that in the communist past and that in the domestic law the state absolutely ignored the existence of customary international law. For example, Jiří Malenovský characterized the system as anaemic and semi-dualistic, as it covered only the HR treaties.[275]

In Slovakia, meanwhile, the federal concept has been replaced by a slightly different one. The Slovak constitution stipulated in Art. 11 that '*international treaties on human rights ratified and promulgated by the Slovak Republic have priority over statutes insofar as they provide a greater protection of fundamental rights*…'. It also preserved this specific category of treaties but enabled their application only when they brought a higher standard of protection.[276] Therefore, this approach has been called a concept of conditionally prioritized treaties).[277] In contrast to the Czech example, the HR treaties were never a component of the Slovak constitutional system. On the other hand, they did constitute criteria for abstract judicial review of legal acts by the Constitutional Court.

274 For details see the Chapter 4.

275 Malenovský, Jiří. O "chudokrevnosti" mezinárodního rozměru české ústavy a možných terapiích. *Právník*, No. 7, 1996, p. 537.

276 Practicle problems concerning this apporach are well described in Štiavnický, Ján. Referenčné a preferenčné normy? Postavenie ľudskoprávnych medzinárodných zmlúv v Ústave Slovenskej republiky a ich aplikácia a správne alternatívny pohľad na nález českého ústavného súdu Pl. ÚS 36/01. In *Mezinárodní lidskoprávní závazky postkomunistických zemí: případy České republiky a Slovenska,* edited by Ivo Pospíšil, and Vladimír Týč et al. Prague: Leges, 2016, p. 114.

277 Bobek, Michal, and David Kosař. The Application of European Union Law and the Law of the European Convention of Human Rights in the Czech Republic and Slovakia – an Overview. *Eric Stein Paper*, No. 2, 2010, p. 14.

9.2 Doctrines and Case Law of the Constitutional Court of the Czech Republic

9.2.1 Initial Starting Point: An Exclusive but 'Anaemic' System

As already mentioned, some scholars have regarded the incorporation of constitutional regulation of HR treaties into the domestic legal order in the 1990s as less than optimal. The reasons why the constitution makers limited the effects of incorporation only to this category of international treaties are nevertheless obvious: the HR treaties should have stabilized the constitutional and legal environment and implementation of values stemming from such treaties. This step was proven necessary early after creation of the Czech Republic: In the debates about the new constitution, some politicians rejected the inclusion directly into the constitution of a catalogue of human rights. They argued that the federal Charter of Fundamental Rights and Freedoms would remain a source also in the Czech Republic. However, the aforementioned 'deconstitutionalization' of federal Constitutional Law No. 23/1991 soon led to serious doubts about the Charter's legal position.

Since that time, the role of the Constitutional Court of the Czech Republic has been substantial inasmuch as it acknowledges the constitutional relevance of both the domestic Charter and the HR treaties. What is more, it adopted a practice of regarding the HR treaties as establishing constitutional criteria for reviewing legal norms in the procedure on constitutional review of norms and individual legal acts within the procedure on constitutional complaints. In other words, it regarded the treaties as a de facto part of the so-called constitutional order.

As mentioned above, many aspects of this model became targets for criticism in the course of the 1990s. For example, the direct application has been conditioned upon a decision of Parliament in the ratification procedure. Because the constitution required qualified majority consent for ratification of such treaties, it was Parliament that qualified an international treaty as an HR treaty (in cases of treaties ratified prior to 1993, on the other hand, the qualification rested in the hands of the Constitutional Court. Thus, the Court would decide whether or not to apply the treaty as such in individual cases). Another disputed question dealt with the formal position

of HR treaties within the domestic legal order. A part of the legal doctrine claimed that the treaties occupied a position somewhere between ordinary laws passed by Parliament and constitutional law. Another part put them on the same level as constitutional law, and finally, some scholars thought this question to be moot inasmuch as the logic of incorporation dealt with the priority of application without any necessity to decide upon the formal position of the treaties.[278]

9.2.2 The So-called Constitutional Euro-amendment: from Anaemia to 'Gleichschaltung' of Treaties and Back

During the preparations for EU membership, the Czech Parliament passed a constitutional amendment (termed the 'Euro-amendment') that broadened the previous approach towards legal monism. The Constitution stipulates in Art. 1(2) that, '*[t]he Czech Republic shall observe its obligations resulting from international law*'. Art. 10 adds that '*[p]romulgated treaties, to the ratification of which the Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order; if a treaty provides something other than that which a statute provides, the treaty shall apply*'. In other words, the amendment abolished the existence of the special category of HR treaties and, simultaneously, the following provisions of the Act on the Constitutional Court deprived the Court of the competence to make a constitutional review as to the conformity of ordinary laws with the HR treaties. Parliament had hoped that it would be a responsibility of ordinary courts to decide on the discrepancy and to apply the international treaty instead of the domestic law. Parliament had wanted to strip the Constitutional Court of its role to decide and to strike down any domestic legal norm colliding with the international treaty.[279]

However, the Czech Constitutional Court insisted upon retaining its previous role and upon the necessity to retain the exclusiveness of the HR treaties. In case No. Pl. ÚS 36/01, it decided that the ordinary courts still had an obligation in the case of nonconformity between the statutory law

278 Malenovský, Jiří. *Mezinárodní právo veřejné. Jeho obecná část a poměr k vnitrostátnímu právu, zvláště k právu českému,* 4th ed. Brno: Masarykova univerzita and Doplněk, 2004, pp. 413–420.

279 Kühn, Zdeněk, and Jan Kysela. Je Ústavou vždy to, co Ústavní soud řekne, že Ústavou je? Euronovela Ústavy ve světle překvapivého nálezu Ústavního soudu. *Časopis pro právní vědu a praxi*, Vol. 10, No. 3, 2002, p. 203.

and an international HR treaty to petition the Constitutional Court with a motion for a judicial review. Any different interpretation of the constitutional amendment, the Constitutional Court argued, would diminish the standard of HR protection already achieved in the Czech Republic and undermine the system of concentrated judicial review.[280] In fact, the idea of Parliament was to introduce a 'dispersed judicial review' of legal norms while the Constitutional Court emphasized its role in the concentrated judicial review.[281]

The Constitutional Court preserved the specific position and role of HR treaties within the constitutional system and let them remain as criteria for review of ordinary legal norms as a part of the constitutional legal order.[282] It held that in cases of their having doubts about an ordinary law's conformity with an HR treaty, judges of ordinary courts cannot resolve such conflicts on their own by preferential application of the treaty but rather they are obliged to make a motion to the Constitutional Court. As already mentioned, the reasons for such conclusions were at least twofold: First, the Court argued that any different interpretation of the Euro-amendment would diminish the standard of human rights protection already achieved in the Czech Republic. Second, the Court regarded the HR treaties

280 Decision No. Pl. ÚS 36/01 of 25 June 2002 and its commentary in Baroš, Jiří, and Ivo Pospíšil. Pojem ústavního pořádku. In *Ústava České republiky. Komentář*, edited by Pavel Rychetský et al. Prague: Wolters Kluwer, 2015, pp. 1110 – 1134.

281 The concentrated model of judicial review means that only a constitutional court has the capacity to decide on constitutionality of ordinary laws and the competence to annul them. On the other hand, the dispersed model permits any ordinary court deciding a case to consider the conformity between legal norms and decide not to apply nonconforming lower norms.

282 As a result of the 2002 decision of the Constitutional Court, there are three types of international treaties in the Czech legal order: a) HR treaties that are considered a part of the constitutional order, b) other treaties that were ratified with the consent of Parliament and are part of the domestic legal order, and c) other treaties whose ratification does not require the consent of Parliament and which are not incorporated into the domestic legal order. In the last case, therefore, the application of such treaties requires reception (transformation) through domestic statutory acts. The domestic direct application of such a treaty is conditioned upon publication of the treaty in the domestic legal gazette.

as comprising a part of the constitutional legal order as defined by Art. 112 of the Constitution.[283]

In our opinion, it is possible to assert additional reasons beyond those presented by the Court. The risk of the Euro-amendment has been in its threat to the principle of legal certainty and inconsistent application and interpretation of HR treaties by different courts should they decide to apply them with precedence over domestic law in cases where conflict between the treaty and a statute would occur. It is difficult to expect that judges in courts of first instance will have capacity closely to follow developments in case law of international courts of human rights and other bodies and their recent interpretations of treaty provisions, and then correspondingly apply them with priority over a national law. What is more, the rules stemming from the HR treaties are usually so general and vague that there exists serious risk of discrepancy in their domestic application among different judges and courts.[284] The method of gradual unification through case law made by the ordinary courts themselves could be inefficient in implementing an HR treaty.[285]

One of many examples illustrating the aforementioned risk might be found also in the Constitutional Court's case law. The approach applying an HR treaty directly rather than by annulling a law that contravenes the HR treaty was followed by the Constitutional Court in Decision No. I. ÚS 573/02, which demanded direct application of Art. 5(4) of the ECHR contrary to the explicit wording of the domestic code on criminal

283 Art. 112 of the Constitution: '*The constitutional order of the Czech Republic is made up of this Constitution, the Charter of Fundamental Rights and Basic Freedoms, constitutional acts adopted pursuant to this Constitution, and those constitutional acts of the National Assembly of the Czechoslovak Republic, the Federal Assembly of the Czechoslovak Socialist Republic, and the Czech National Council defining the state borders of the Czech Republic, as well as constitutional acts of the Czech National Council adopted after the sixth of June 1992*.' For criticism of the constitutional courts interpretation that this provision brought a 'numerus clausus' of the components of constitutional order see e.g. Mlsna, Petr, and Jan Kněžínek. *Mezinárodní smlouvy v českém právu*. Prague: Linde, 2009, pp. 198 – 199.

284 See the summary of limitations of the ordinary court judges in their work with the ECHR and the jurisprudence of the ECtHR in Bobek, and Kosař, *The Application of European Union Law*, p. 23.

285 Already held in Pospíšil, Ivo. Vliv Úmluvy a její aplikace ESLP na judikaturu Ústavního soudu. In *Dvacet let Evropské úmluvy v České republice a na Slovensku,* edited by Michal Bobek et al. Prague: C. H. Beck, 2013, p. 99.

procedure. The interpretation of the ECHR provision made in the case law of ECtHR demanded not only that the court had to hear the convicted person in the situation when she or he was brought into detention (custody) but also that the requirement for a personal hearing be applied when courts decided about prolongation of that custody. This requirement could not be met if the court would apply the explicit wording existing in relevant provisions of the criminal procedure code. The Constitutional Court decided that the rule of Art. 5(4) of the Convention as interpreted by the ECtHR has priority over the domestic provision.[286] This conclusion was not accepted by some ordinary courts, however, and this experience finally forced the Constitutional Court to strike down the provisions of the code in its Decision No. Pl. ÚS 45/04.[287]

A similar example can be demonstrated by the implementation of Art. 1 of the Protocol (No. 1) to the ECHR in the cases of property ownership restitutions, in particular regarding compensation for people who had obtained real estates confiscated by the previous communist regime and in the course of property restitutions had to hand these over to the original owners. Although the domestic law on property restitutions granted these people compensation equal to the prices they had paid to the communist state, the ECtHR held in several decisions against the Czech Republic that these people should have received compensation corresponding to the market prices at the time they had to return the real estates. The domestic courts were for nearly 20 years not able to implement this conclusion within the prior application of Art. 1(2) of the Protocol to the law on property restitutions until one of them asked the Constitutional Court for judicial review of this provision of law.[288]

These examples show that direct application of the treaty has not proven to be an effective way to enforce an international human right commitment.

The doctrine of the Constitutional Court on the exclusive position of HR treaties within the constitutional system and on their 'derogative capacity' is further supported by the fact that the Act on the Constitutional

286 Decision No. I. ÚS 573/02 of 23 March 2004.
287 Decision No. Pl. ÚS 45/04 of 23 March 2005.
288 Decision No. Pl. ÚS 33/10 of 23 April 2013.

Court vests this function in domestic law in a situation when the international court that is authorized to adjudicate the treaty had found the application of that law to be in conflict with the treaty. One might say that the constitution 'downgraded' the HR treaties until such time and situation as the state will face up to its international responsibility as found in the decision of the international court.

9.2.3 Prospective Difficulties of the Constitutional Court Doctrine

Despite the fact that the Constitutional Court argued that the HR treaties constitute a part of the constitutional order, the general concept in the Constitution is based on judicial (i.e. constitutional) review of international treaties prior to their ratification. If the treaties shall be directly applied in the domestic law with priority over statutory acts, then the Constitution enables its review by the Constitutional Court before the treaty becomes an international obligation. This aim is achieved by the special judicial procedure before the Constitutional Court which is termed preventive constitutional review of international treaties, and it can be invoked by one of the parliamentary chambers, a group of MPs or senators, or by the President but only until such time as the treaty's ratification. The Constitutional Court should prevent a situation wherein the state would be bound by an unconstitutional international treaty or even a situation wherein such a treaty would be applied domestically.

As concerns the HR treaties, this constitutional review gives rise to a paradoxical situation. The Constitutional Court is competent to make its review prior to treaties' ratification and to decide whether they are constitutional, but after the ratification they become a part of the constitutional order and hypothetically could serve as constitutional criteria for reviewing other international treaties, including HR treaties in advance of their ratification. If the Constitutional Court is not asked for the judicial review, however, then there might be a risk that an HR treaty which has not been reviewed in the test of constitutional conformity can serve as a criterion for review in future; once ratified, it is a component of the constitutional order.

Another difficulty concerns the qualification of treaties as HR treaties. This has been a questionable aspect since even before the Euro-amendment

inasmuch as qualification depended on the date the treaty became obligatory for the state: as concerned treaties being ratified after 1993, it was a task of Parliament during a ratification process, while treaties already ratified before 1993 have been qualified as HR treaties in the proceedings before the Constitutional Court. Because Parliament had ratified such treaties by a qualified majority, the decision-making about the qualification of a treaty itself used to be politicized (e.g. in some cases the MPs required that a treaty not be qualified as an HR treaty as a condition for their consent to its ratification, because they wanted to avoid its direct application).[289] It was questionable whether the Constitutional Court could be bound by such a 'political' and not legal qualification in its procedures, especially if the treaty would without any doubt include an HR provision. This practice of Parliament contrasted with the open and HR friendly approach of the Constitutional Court in the 1990s. For example, the Constitutional Court qualified as HR treaties a group of ILO conventions, and it has not even hesitated to apply directly a non-binding UN UDHR (despite being aware of the fact it was not, strictly speaking, an international treaty) in a decision concerning the criminal rehabilitation of persons sentenced under the communist regime during the 1950s.[290]

The Euro-amendment intended to avoid these difficulties through 'downgrading' the exclusive role of HR treaties and to create just one category of international treaties within the constitutional order. But the Constitutional Court, by preserving the special type of HR treaties, made the situation even more complicated. Now, there exists no formal criterion that could enable the identification of an international treaty as an HR treaty. Even as the qualification is made by any ordinary court when deciding whether

289 An example is seen in the case of ratification of the European Social Charter in which the MPs decided not to qualify it as an HR treaty and only then was it supported by more than three-fifths of the MPs. See Malenovský, *Mezinárodní právo veřejné*, p. 418. However, this qualification did not present an obstacle to the Constitutional Court's considering the European Social Charter as an HR treaty in its case law (compare e.g. Decision No. Pl. ÚS 19/14 of 27 January 2015). On the other hand, there have been contrary situations wherein Parliament ratified a treaty as an HR treaty but the Constitutional Court decided in its case law that the treaty contained no directly applicable human right provision (see e.g. a case regarding the Charter of Local Self-government – Constitutional Court's Decision No. Pl. ÚS 34/02 of 5 February 2003).

290 Decision No. II. ÚS 285/97 of 7 October 1998.

to present a motion to the Constitutional Court, so far as other, 'non-HR' treaties are concerned, there is still the constitutional obligation that these be applied with preference to domestic law in case of a conflict between the domestic and international law.[291]

The Constitutional Court has no means for enforcing its doctrine in relation to ordinary courts.[292] This doctrine has been bypassed by the Supreme Administrative Court, for example, in its case No. 6 As 55/2006 wherein it identified the conflict between Art. 6 of the ECHR and a domestic legal provision that excluded a decision concerning the salaries of secret service employees from judicial review. It applied Art. 6 of the Convention directly and came to the conclusion that it must ensure judicial review of such administrative decisions.[293]

9.2.4 Impact of Exclusive Position of HR Treaties for Domestic HR Adjudication

To preserve a specific position of HR treaties means not only that such treaties are directly applicable and must be applied in preference over domestic law but also that they have 'derogative'[294] capacity in proceedings before the Constitutional Court. Both functions constitute legitimate tools for ensuring the implementation of an international commitment

291 Kokeš, Marian. The Application of the Law of the Human Rights Treaties in the Czech Republic (from the point of view of the day-today practice of the Czech Constitutional Court). Never-ending Theoretical Conflict, but Convergence and Harmony in Practice? *Vienna Journal of International Constitutional Law*, Vol. 5, No. 2, 2011, p. 185.

292 The Constitutional Court can start the proceedings on judicial review of laws only after it has received a qualified motion from an ordinary court. It has no legal means to induce the activity of the ordinary court.

293 Such a technique that contravenes the Constitutional Court doctrine opens another question as to whether an ordinary court can apply it in cases when there is a similar HR provision in the domestic Charter of Fundamental Rights and Freedoms that is infringed by one or more provisions of a legal act. In this particular case, it would be Art. 36(2) of the Charter, which also requires judicial review of an administrative decision. However, this Supreme Administrative Court decision contrasts with a vast number of later motions of this court seeking constitutional review before the Constitutional Court in cases when the legal regulation excluded judicial review of administrative decisions. See, for example, proceedings No. Pl. ÚS 10/07, Pl. ÚS 12/07, Pl. ÚS 26/07, Pl. ÚS 32/08, Pl. ÚS 46/10, Pl. ÚS 23/11, Pl. ÚS 15/12, and Pl. ÚS 12/14.

294 The jurisprudence of the Constitutional Court provided the HR treaties with the capacity to serve similarly to the domestic constitutional norms as criteria for striking down domestic legal acts. This function means not only that the HR treaties are directly applicable but that they can provide the formal reason for annulment of domestic laws.

in everyday legal (i.e. judicial) practice. The derogative function supports a higher degree of effectivity as it has an immediate and statewide effect from the time the Constitutional Court annuls a law contravening a provision of an HR treaty.

One must nevertheless admit that the Constitutional Court occasionally failed to identify the proper interpretation of a treaty provision by a respective treaty body, especially when the provision guaranteed a higher human right standard. We can again point to decisions dealing with the condition of citizenship and permanent residence of persons who claimed their property restitution rights. The Constitutional Court ignored the difference between Art. 14 of the ECHR and Art. 26 of the International Covenant on Civil and Political Rights as concerns the anti-discrimination requirement. The substitutive character of Art. 14 in relation to Art. 1 of the Additional Protocol led to the conclusion that there is no discrimination on the grounds of citizenship, although the UN Human Rights Committee in applying Art. 26 of the Covenant found this regulation to be discriminatory.[295]

Preserving exclusiveness for HR treaties in the constitutional system brings one more advantage: it enables interpretational techniques which are not so enabled in the international law. In particular, it enables balancing different international commitments and sorting them hierarchically. The most notable is the Constitutional Court requirement that preference be given to HR commitments before other international obligations. Thus, if an HR commitment collides with another international obligation, then the Constitutional Court automatically prefers the human rights obligation. This was first adjudicated in a case wherein the Court considered the extradition of a Moldavian citizen according to the European Convention on Extradition which – in the opinion of the Court in this particular case – would have collided with the right not to be tortured and become a subject of inhuman and degrading treatment.[296] A similar, more recent example can

295 See the opinions of the Human Rights Committee No. 857/1999 (Human Rights Committee. *Communication No. 857/1999*. 12 July 2001, CCPR/C/72/D/857/1999); or No. 747/1997 (Human Rights Committee. *Communication No. 747/1999*. 30 Oct. 2001, CCPR/C/73/D/747/1997), contrasting with the Constitutional Court cases No. I. ÚS 409/97 of 12 May 1998 and Pl. ÚS 33/96 of 4 June 1997.

296 Decision No. I. ÚS 752/02 of 15 April 2003.

be seen in a decision which is based on the argument that the international commitments arising from the Geneva Convention Relating to the Status of Refugees must be applied with priority over the obligation to extradite. Therefore, the procedure on asylum has priority over the procedure on extradition.[297]

9.3 Doctrines and Case Law of the Slovak Constitutional Court

9.3.1 Constitutional Relevance without Hierarchy

Unlike in the Czech Republic, HR treaties have never been a part of constitutional law in Slovakia and, in contrast to its Czech counterpart, the Slovak Constitutional Court has never decided contrary to the will of the constitution maker. It accepted that the HR treaties occupy a unique position within the system of legal sources in the Slovak Republic and that, under the conditions stipulated in Art. 11 of the Constitution, they have priority over statutes but not over the Constitution itself.[298] Inasmuch as the HR treaties were not considered a part of the constitutional legal order, the Slovak Constitutional Court was inclined to interpret the Constitution 'in the light of' these treaties.[299] As concerns the most important of the treaties – the ECHR – the Constitutional Court stipulated that this treaty operates even as an interpretative guideline of the Constitution.[300]

Inconsistently with this non-constitutional position, the HR treaties at the same time constitute a criterion for abstract judicial review of legal acts.[301] Paradoxically, the HR treaties were not reference sources in the procedure on individual constitutional complaints, because Art. 127 of the Constitution did not include them among the reference norms.[302]

297 Opinion No. Pl. ÚS-st. 37/13 of 13 August 2013.
298 See Decision No. II. ÚS 91/1999 of 16 December 1999.
299 Decision No. PL. ÚS 5/93 of 18 May 1994.
300 Decisions No. I. ÚS 49/01 of 19 December 2001, I. ÚS 3/01 of 20 December 2001, etc.
301 See Art. 125 of the Constitution before the Euro-amendment: '*The Constitutional Court decides on the review of generally binding legal acts with international treaties promulgated in the same manner as domestic laws.*'
302 Therefore, such individual motions based solely on the rights deriving from HR treaties have been dismissed by the Constitutional Court for the lack of jurisdiction (see e.g. Decision No II. ÚS 91/99).

This may seem paradoxical, because, on the other hand, the Slovak Constitutional Court compelled the ordinary courts to follow Art. 11 of the Constitution and to apply HR treaties with priority over domestic statutes. Therefore, the situation in Slovakia seems to be less conceptualized and clarified as well as more chaotic than that in the Czech Republic.

9.3.2 The Constitutional Euro-amendment and HR Treaties: Much Ado about Nothing?

Like the Czech Republic, Slovakia had prepared an amendment to its Constitution before acceding to the European Union. Although the main aim was to create a constitutional basis for the accession, it also tried to resolve the relationship between international treaties and the domestic legal order. It created several categories of treaties that are directly applicable and had priority over domestic laws. The new Art. 7(5) differentiated the HR treaties into two new categories: those international treaties whose implementation does not require a law and treaties directly establishing rights and obligations of natural or legal persons. However, Art. 154c(1) of the Constitution preserved the previous category of HR treaties which had been ratified before this amendment came into effect and that were incorporated only if they provide greater standard of protection. As a result, the constitutional amendment introduced a differentiation of international treaties according to the period when they were ratified. As concerns the HR treaties specifically, meanwhile, the amendment distinguished between unconditional and conditional HR treaties, their incorporation depending upon whether or not they bring a higher standard of protection.

As regards the competences of the Constitutional Court, although the amendment maintained the role of HR treaties as criteria for constitutional review of domestic legal acts both in the proceedings on abstract as well as concrete review initiated by any ordinary court. It therefore preserved a paradoxical situation wherein the HR treaties are not situated on the same level as is the Constitution or are constitutional laws, the treaties' role is to replace domestic laws through their direct application by ordinary courts, but, simultaneously, inasmuch as they may be used in the review by the Constitutional Court, they have derogative effects in relation to domestic laws. The treaties

have been simultaneously inserted into Art. 127 among other sources of law constituting criteria for reviewing individual acts in the procedure for constitutional complaints.[303] As will be illustrated later, this makes the situation of the Constitutional Court more complicated. The judges must decide whether merely to apply an HR treaty provision in preference to a national law and to force ordinary courts to do the same or to use an HR treaty in a constitutional review of such a law as a basis for its annulment.

What is more, like in the Czech Republic, the Constitution established a new competence of the Constitutional Court – preventive constitutional review of international treaties before their ratification. This creates the same absurd situation as already described in the Czech example wherein the treaties could be subject to review by the Constitutional Court, but, after clearing such review, they could then be used in the constitutional review of domestic laws.[304]

9.3.3 Practical Implications for Constitutional Court Case Law

The Slovak Constitutional Court's jurisprudence reflects the position of the HR treaties in the constitutional system and all the troubles explained above. In fact, the approach and the case law oscillates between the direct and preferential application of HR treaties in the procedures on constitutional complaints and using the treaties as criteria for annulling laws in the abstract judicial review. It is nevertheless quite rare that a decision of the Constitutional Court striking down a legal regulation will rely solely

303 Despite this requirement of direct applicability, the Constitutional Court tests in these proceedings whether the relevant treaty provision is self-executing and capable to be directly applied. See e.g. Decision No. II. ÚS 737/2015 of 11 November 2015 in which the Court refused to apply Art. 19 of the Convention on Rights of Persons with Disabilities.

304 In contrast to the Czech Republic, this procedure has not yet been used in Slovakia. It could be a result of the limited scope of subjects legitimized to challenge a treaty – only the Government and the President can initiate the complaint. As these actors are responsible for negotiating and ratifying the treaty, it could be absurd if they would challenge the treaty they negotiated for its inconsistency with the Constitution. See Giba, Marián, and Jozef Valuch. Kategorizácia medzinárodných ľudskoprávnych zmlúv v procese ratifikácie. In *Mezinárodní lidskoprávní závazky postkomunistických zemí: případy České republiky a Slovenska,* edited by Ivo Pospíšil, and Vladimír Týč et al. Prague: Leges, 2016, pp. 87–88.

on a provision of an HR treaty. Usually, it deals with cases of direct implementation of ECtHR decisions against either Slovakia or other countries whose legal regulation has been the same as in Slovakia.

These examples can be demonstrated by case No. PL. ÚS 6/08, which implemented the ECtHR judgement Hirst v. United Kingdom (No. 2) concerning the right of imprisoned persons to vote. In such case, the law in Slovakia has been very similar to that in the UK. This Constitutional Court decision might seem paradoxical inasmuch as in implementing the ECtHR judgement the statement on annulment was based solely on the domestic Constitution and not on Art. 3 of the Additional Protocol to the ECHR which had served as the basis for the ECtHR judgement.

Direct implementation of an ECtHR judgement appeared also in Decision No. PL. ÚS 1/2010, reflecting the judgement Paulík v. Slovakia and annulling, solely on the basis of Art. 8 of the Convention, the domestic legal regulation of the period within which a father could deny his fatherhood.

On the contrary, and similarly to Czech practice, the method for preferentially applying HR treaties instead of annulling domestic law conflicting with the treaty provisions was shown to be an inefficient way to implement HR commitments. In this regard, we can mention the case law concerning the requirements for prolonging criminal custody after delivering the pertinent charge to the court. While the Criminal Procedure Code had presumed the delivery of the charge as such to have created a legitimate reason to keep the charged person in custody (so-called indictment custody), the Constitutional Court held in contrast on the grounds of Art. 5(1) ECHR that it is necessary to consider the reasons for the custody separately. Delivering the charge could only strengthen the reasons for maintaining the custody, but the custody cannot be continued automatically.[305] Because this was stated only in the procedure on constitutional complaints, however, this opinion was not accepted generally and had finally to be approved by Parliament in the form of Act No. 5/2009. A similar example existing in the case law concerns criminal custody imposed in order to prevent the accused from influencing witnesses in their testimonies. The Slovak regulation has not enabled to substitute the custody in this case by other

305 Decision No. I. ÚS 6/02 of 4 December 2002.

guarantees, and this was found by the Constitutional Court to be contrary to Art. 5(3) of the ECHR. Again, it held this opinion in the decision only on the basis of a constitutional complaint[306] in which it required from the ordinary courts to apply the treaty provision with priority over the provision of domestic regulation and to accept other guarantees when deciding about the commitment to custody. Although Parliament did consider to change the pertinent legal regulation, it did not accept this legal opinion and this remains a disputed issue in legal practice.[307]

9.4 Conclusions

This chapter has shown that both countries faced gradual changes in their approaches concerning the relationship between the HR treaties and national constitutional law. The common starting points in the federal state were as follows: a) a commonly shared ethos oriented towards human rights during the transformation era and efforts to redress deficiencies under the previous communist regime, b) efforts to quickly implement values deriving from the HR treaties directly into the constitutional system, and c) steps leading to stabilization of constitutional settings as safeguards of the transformation process towards democracy.

Although after the split of the Federation both countries pursued these points, they pursued slightly different means for achieving them. What they had still in common is that they took advantage of the opportunity to make changes shortly before their accessions to the European Union. The reforms towards incorporating HR treaties within their domestic legal orders occurred hand in hand with the constitutional adjustments concerning the relationships between EU law and the national constitutions.

In the Czech Republic, Parliament decided to downgrade the exclusive position of HR treaties in the Constitution. The Constitutional Court

306 Decision No. I. ÚS 100/04 of 8 October 2004.

307 Štiavnický, Ján. …lebo Štrasburg tak povedal. Niekoľko poznámok o vzťahu autorít Slovenskej republiky k autorite ESĽP. In *Dvacet let Evropské úmluvy v České republice a na Slovensku,* edited by Michal Bobek et al. Prague: C. H. Beck, 2013, p. 119.

sharply criticized the move and finally decided to preserve the exclusive role of the treaties even against the explicit wording of the constitutional text and the will of the constitution-giver.

The situation in Slovakia has been slightly different. Although the HR treaties have never been regarded there as components of the constitutional legal order, they had a constitutional relevance due to Constitutional Court's case law which looked to them as inspiration and guidelines for interpreting the Constitution itself. Their role has been strengthened inasmuch as they constituted criteria for reviewing domestic laws within the procedure for judicial review before the Constitutional Court. Their ambiguous position created a dilemma for the Court in how to deal with them, however, and the Court oscillated between preferential application and their use as a reference for annulling laws that have been found inconsistent with one or more provisions of an HR treaty. The approach of the Czech Constitutional Court is more consistent inasmuch as it always requires the ordinary courts to submit a motion to the Constitutional Court when they detect such a conflict. The issue is then resolved solely within the proceedings on judicial review of domestic law and the HR treaty may be used for immediate cancellation of an offending law.

Table 9.1 Overview of main differences between the positions of HR treaties in the domestic constitutional orders and competences of constitutional courts

	State/Constitutional Court		
	Czech and Slovak Federal Republic	Czech Republic	Slovak Republic
Legal Basis	Constitutional Law No. 23/1991 Art. 2: 'International Treaties on human rights and fundamental freedoms, ratified and promulgated by the Czech and Slovak Federal Republic are generally binding on its territory and are directly applicable.' Constitutional Law No. 91/1991 on the Constitutional Court of the Czech and Slovak Republic Art. 2: 'The Constitutional Court decides…b) on the conformity of laws passed by the Federal Assembly, constitutional and other laws passed by the Czech National Council or Slovak National Council with international treaties on human rights and fundamental freedoms, ratified and promulgated by the Czech and Slovak Federal Republic,' Art. 6: The Constitutional Court decides on the constitutional complaints against arrangements, decisions or other interference committed by the public authorities, if the complainant claims a breach of fundamental rights and freedoms guaranteed by the constitutional law of the Federal Assembly or international treaties mentioned in Art 2 letter b).	Constitutional Law No. 1/1993, Constitution of the Czech Republic Art. 10 (wording until 31 May 2002): 'International Treaties on human rights and fundamental freedoms that oblige the Czech Republic are directly applicable and possess priority over ordinary laws.' Art. 87, par. 1 (wording to 31 May 2002): 'The Constitutional Court decides on a) annulment of laws or their individual provisions if they are inconsistent with constitutional law or international treaty according to Art. 10 of the Constitution…' Art. 10 (wording from 1 June 2002): 'Promulgated treaties, to the ratification of which the Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order; if a treaty provides something other than that which a statute provides, the treaty shall apply'. Art. 87, par. 1 (wording from 1st June 2002): 'The Constitutional Court decides on a) annulment of laws or their individual provisions if they are inconsistent with constitutional order…' Art. 95, par. 1 (wording from 1st June 2002): 'In making their decisions, the judges are bound by statutes and international treaties which form a part of the legal order; they are authorized to decide whether enactments other than statutes are in conformity with statutes or with such treaties.'	Constitutional Law No. 460/1992, Constitution of the Slovak Republic Art. 11 (wording until 30 June 2001): 'International treaties on human rights and fundamental freedoms ratified by the Slovak Republic and promulgated in the manner prescribed by law, have priority over domestic laws if they provide a higher standard of human rights and freedoms protection.' Art. 127 (wording to 30 June 2001): 'The Constitutional Court decides on the complaints against decisions of central authorities of state administration, local authorities of state administration and authorities of territorial self-governments which breached fundamental rights and freedoms of citizens, provided this competence has not granted to other courts.' Art. 7, par. 5 (wording from 1 July 2001): 'International treaties on human rights and fundamental freedoms, international treaties whose executions do not require a law and international treaties which directly establish rights or obligations of natural persons or legal persons and which were ratified and promulgated in a manner laid down by law shall have priority over the laws.' Art. 127 (wording from 1 July 2001): 'The Constitutional Court decides on complaints by natural persons or legal persons objecting to violation of their basic rights and freedoms, or the basic rights and freedoms ensuing from an international treaty ratified by the Slovak Republic and promulgated in a manner laid down by law, unless another court makes a decision on the protection of such rights and freedoms.' Art. 154c (wording from 1 July 2001): '(1) International treaties on human rights and fundamental freedoms that were ratified by the Slovak Republic and promulgated in a manner laid down by law before this constitutional law comes into effect are a part of its legal order and have primacy over the law if they provide greater scope of constitutional rights and freedoms. (2) Other international treaties which were ratified by the Slovak Republic and promulgated as required by law before this constitutional law comes into effect are a part of its legal order, if so laid down by law.'

Preventive judicial review of international treaties	No	Yes (from 1 June 2002)	Yes (from 1 July 2001)
Direct applicability of HR treaties in the proceedings on constitutional complaints	Yes	Yes	Yes
HR treaties as criteria for judicial review of domestic legal norms	Yes	Yes Special obligation of ordinary courts to lodge a motion to the Constitutional Court in the case of inconformity of domestic law with an HR treaty	Yes

Source: Authors

10 INTERNATIONAL HUMAN RIGHTS TREATIES IN THE CASE LAW OF DOMESTIC COURTS: SUPREME COURT AND SUPREME ADMINISTRATIVE COURT[308]

While the Chapter 9 examined approaches of constitutional courts towards the international human rights law, this chapter steps on a lower level and takes a look at a 'day to day' life of international treaties and their application by ordinary courts outside of the constitutional review. We look at the case law of the apex courts of the Czech judicial system, the Supreme and Supreme Administrative Court, asking whether, how often, and in what quality they apply international treaties ratified by respective countries, embedding the international human rights protection in everyday reality.

10.1 National Life of International Treaties Applied by Courts

The academic sphere has dedicated almost two decades to examining international human rights obligations. So far, the European scholarship has put significant emphasis on the European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter only the 'ECHR') and its effect on national law, with a touchstone presented by comparative publications from Keller and Stone-Sweet (2008)[309] or Gerards and Fleuren (2014).[310]

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308 The chapter draws on a more elaborate research on the domestic application of the international HR law which was published under Šipulová, Katarína, and Jan Petrov. Mezinárodní lidskoprávní smlouvy v judikatuře obecných soudů: Nejvyšší soud a Nejvyšší správní soud. In *Mezinárodní lidskoprávní závazky postkomunistických zemí: případy České republiky a Slovenska,* edited by Ivo Pospíšil, and Vladimír Týč et al. Prague: Leges, 2016, pp. 161–165. The text is published with Jan Petrov's approval and we would like to express our heartfelt thanks for his comments and help with data collection and analysis.

309 Keller, Helen, and Alec Stone-Sweet (eds.). *A Europe of Rights: The Impact of ECHR on National Legal Systems*. Oxford: Oxford UP, 2008.

310 Gerards, Janneke H., and, Joseph Fleuren (eds.). *Implementation of the European Convention on Human Rights and of the Judgments of the ECtHR in National case-law*. Cambridge: Intersentia, 2014.

None of those, however, cover the practice in the Czech Republic.[311]

The Czech literature mostly pursues the interpretation of the ECHR[312] along with individual judgements of the European Court of Human Rights (hereinafter only the 'ECtHR') and their implementation[313], with almost incidental references to the case law of the constitutional or supreme courts. A number of Czech authors have examined the position of the ECHR and other major human rights treaties within the Czech constitutional order[314] or a small sample of the implementation of selected treaties in a single year.[315]

A few academic works have suggested that the national courts have paid limited attention thus far to the implementation of international human

311 A chapter on the Czech Republic by Dalibor Jílek and Mahulena Hofmann is included only in *Fundamental Rights in Europe: the ECHR and its Member States 1950 – 2000,* edited by Robert Blackburn, and Jörg Polakiewicz (Jílek, Dalibor, and Mahulena Hofmann. Czech Republic. In *Fundamental Rights in Europe: the ECHR and its Member States 1950 – 2000,* edited by Robert Blackburn, and Jörg Polakiewicz. Oxford: Oxford UP, 2001, pp. 241–258). With respect to the development in the given field since it was published (2001), it does not cover many new trends.

312 Literature The literature includes, in particular, Repík, Bohmil. *Evropská úmluva o lidských právech a trestní právo*. Prague: Orac, 2002; Hubálková, Eva. *Evropská úmluva o lidských právech a Česká republika: judikatura a řízení před Evropským soudem pro lidská práva.* Prague: Linde, 2003; Čapek, Jan. Česká republika před štrasburským soudem. *Soudce*, Vol. 14, No. 1, 2012; Kmec, Jiří et al. *Evropská úmluva o lidských právech*. Prague: C. H. Beck, 2012.

313 Smekal, Hubert, and Katarína Šipulová. DH v Czech Republic Six Years Later: On the Power of an International Human Rights Court to Push through Systemic Change. *Netherlands Quarterly of Human Rights,* No. 3, 2014, 288–322, or also Boučková, Pavla. Česká republika v judikatuře ESLP v letech 1993-2011. *Jurisprudence*, Vol. 20, No. 7, 2011.

314 Bobek, Michal, and David Kosař. The Application of European Union Law and the Law of the European Convention of Human Rights in the Czech Republic and Slovakia – an Overview. In *The National Judicial Treatment of the ECHR and EU Laws. A Comparative Constitutional Perspective,* edited by Giuseppe Martincio, and Oreste Pollicino. Groningen, Europa Law Publishing, 2010, pp. 157–190; Kokeš, Marian. The Application of the Law of the Human Rights Treaties in the Czech Republic (from the point of view of the day-today practice of the Czech Constitutional Court). Never-ending Theoretical Conflict, but Convergence and Harmony in Practice? *Vienna Journal of International Constitutional Law*, Vol. 5, No. 2, 2011, pp. 175–187.

315 Kokeš, *The Application of the Law of the Human Rights Treaties in the Czech Republic*, pp. 175–187.

rights.[316] All in all, it can be said that comprehensive empirical research on the implementation of international human rights by national courts is still lacking in the Czech scholarship.

Therefore, this chapter fills gaps within the current knowledge and serves as an exploratory study regarding the application of international human rights law by national courts. It does so by analysing case law of the Supreme Court (hereinafter only the 'SC') and the Supreme Administrative Court (hereinafter only the 'SAC'). Our objective is to provide a basic summary of the application of international human rights treaties by both apex courts and uncover patterns emerging as courts work with human rights treaties having various characteristics in real life.[317]

Towards this end, we ask several research questions: Do the SC and SAC apply international human rights treaties in their decision-making practice? If so, in what manner? Do their approaches differ with regard to treaties of various content and origin? In what manner do international human rights treaties affect Czech law through the case law of national courts? What is the purpose of the most frequent line of reasoning by an international human rights treaty in the case law of the SC and SAC?

316 See Molek, Pavel. Judikatura ve správním právu. In *Judikatura a právní argumentace,* 2nd ed., edited by Michal Bobek, and Zdeněk Kühn et al. Prague: Auditorium, 2013, pp. 377–416; Lasák, Jan, and Helena Bončková. Judikatura v občanském a obchodním právu. In *Judikatura a právní argumentace,* 2nd ed., edited by Michal Bobek, and Zdeněk Kühn et al. Prague: Auditorium, 2013, pp. 417–448; Vyhnánek, Ladislav. Judikatura v ústavním právu. In *Judikatura a právní argumentace,* 2nd ed., edited by Michal Bobek, and Zdeněk Kühn et al. Prague: Auditorium, 2013, pp. 333–376; Bobek, and Kosař, *The Application of European Union Law*; and Kmec et al., *Evropská úmluva o lidských právech*. Further also, Camrda, Jakub. Úmluva a judikatura ESLP v ČR pohled správních soudů. In *Dvacet let Evropské úmluvy v České republice a na Slovensku,* edited by Michal Bobek et al. Prague: C. H. Beck, 2013, pp. 131–138; Simon, Pavel. Zjevené pravdy v judikatuře ESLP. In *Dvacet let Evropské úmluvy v České republice a na Slovensku,* edited by Michal Bobek et al. Prague: C. H. Beck, 2013, pp. 127–130; and special issue of the magazine *Jurisprudence* dedicated to the 20th anniversary of the European Convention in CR and Slovakia (Magazine Jurisprudence. Special issue dedicated to the 20th anniversary of the European Convention in CR and Slovakia. *Jurisprudence,* Vol. 21, No. 7–8, 2012).

317 With respect to the mentioned degree of non-completion of the given topic in relation to Czech courts, we present a basic summary of applying the international human rights treaties by the SC and SAC and concurrently, we provide preliminary conclusions related to some issues of more specific character (see below).

10.2 Several Methodological Notes

Before we look at introductory summaries of application practice, we should make several remarks on the systematics of our work. The empirical research into the application of international human rights treaties was carried out with respect to the case law of the SA and SAC. For the purposes of our study, we reviewed all those decisions which each court itself considers the most significant. Regarding the SAC, this concerns all decisions published in the Collection of Judgements. In the case of the SC, we examined decisions described as being of 'A' and 'B' significance.[318] Subsequently, we selected all those decisions including at least one reference to any of the 192 human rights treaties which are part of our data set.[319] This method left us with 278 SC judgements with 332 individual treaty references[320] and 318 SAC judgements with 406 treaty references.

The greatest challenge in carrying out the empirical study of case law was to classify the manner in which international human rights treaties were applied by national courts. A certain perspective may be acquired through searching the case law for the purpose of identifying the number of references. For various reasons, however, a result acquired in such manner can be misleading. Such approach would not show, for example, whether a given reference was originally used by a party to the proceeding or if the court had applied it in its own reasoning. Similarly, such a general overview would be silent on the significance and effect of the international treaty application. Due to these concerns, we subjected the selected decisions to deeper content analysis and coded them for the presence of certain characteristics (variables).

318 The different methodology of selection was used due to the fact that collections of Supreme Court judgements are not representatively spread across all the chambers. Therefore, in some areas, the decisions do enter the selection. At the Supreme Court, the category 'A' includes decisions which are being published in the Collection of Judgements and Opinions. However, these decisions are sent for review to selected institutions (for example the central bodies of state administration, Supreme Public Prosecutor's Office, Faculty of Law, Bar Association) and then they are discussed at the session of the relevant division of the Supreme Court. If the decision is not approved for publishing, it is reassigned to the lower category. The category 'B' is formed by significant decisions which are not assigned the A status.

319 See Chapter 1, Introduction.

320 That is to say, in one decision there can be a reference to more than one treaty. Concurrently, if there are two or more references to the same treaty in one decision, then the treaty will be coded as if it was used only once.

First of all, we were interested in the characteristic of the reference to the treaty: Was a given reference used only in the summary of facts and petitioner's claims, hereby defined as a 'recital', was it included in the basis for the decision while merely quoting the international treaty or its clause, or did the reference include a more detailed explanation of the cited clause? This stratification helped us to structure the data better, and, in particular, to eliminate those cases in which the decision is referred to only in the recital and the relevant court does not in any manner reflect the treaty in the basis for the decision.

The key question we asked while carrying out the content analysis of decisions was the manner in which the court applied the relevant international treaty. For this purpose, we created what can be termed the 'manner of treaty application' with the following categories: (1) non-application, (2) reference in recital only, (3) supporting argument, and (4) cardinal importance for the result of the case. The last category consists of the following subcategories: (4a) direct application, (4 b) conform interpretation of the national law in a manner complying with the treaty, and (4c) other cases of cardinal importance.

These categories are further defined as follows:

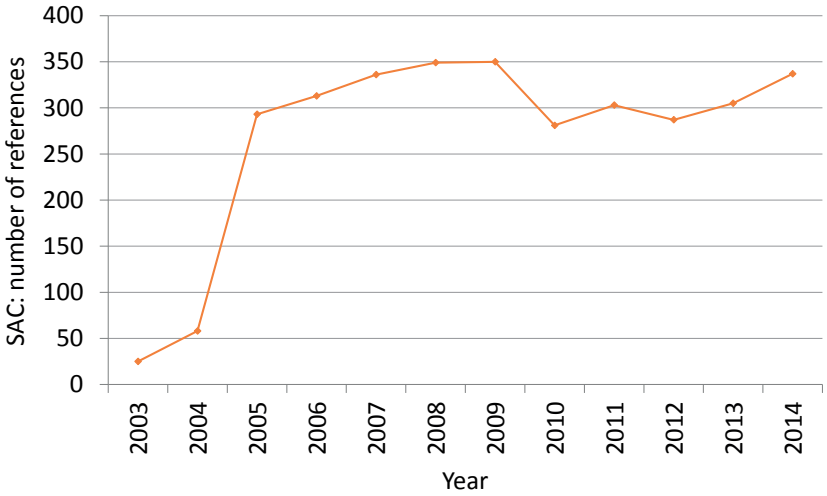
1. *Non-application*: the court explains explicitly why it is not possible to implement the treaty in the respective case. One of the examples belonging to this category is material scope of the treaty.
2. *Reference in the recital*: supreme court repeats a reference originally made either by claimant or a court of lower instance but does not use it in its own reasoning. This allows us to see whether supreme courts do or do not always acknowledge and explicitly address petitioners' arguments supported by international law, and also excludes redundant cases with 'empty' references from the final analysis of courts behaviour.
3. *Supporting argument:* the reference to international human rights treaty serves as additional support for the justification of the verdict.
4. *Cardinal importance for the result of the case:* the reasoning and justification of the verdict is based on an international human rights treaty (in other words, if there was no international commitment, the result

of the case would be different). This category includes direct application of a treaty, conform interpretation of national law with treaty provisions, and other similar instances.

10.3 General Summary

In this section, we will summarize the basic manner in which the two supreme courts work with the references to international human rights treaties in their case law. According to the current literature, the SAC takes a rather favourable approach to the obligations relating to international human rights.[321] This proposition has been supported by the overall summary of references to international human rights treaties in the case law of the SAC since its establishment. Figure 10.1 shows that the references to international human rights treaties began to be made frequently very soon after the SAC commenced its functioning.

Figure 10.1 Total number of references to international human rights treaties in the case law of the SAC 2003–2014

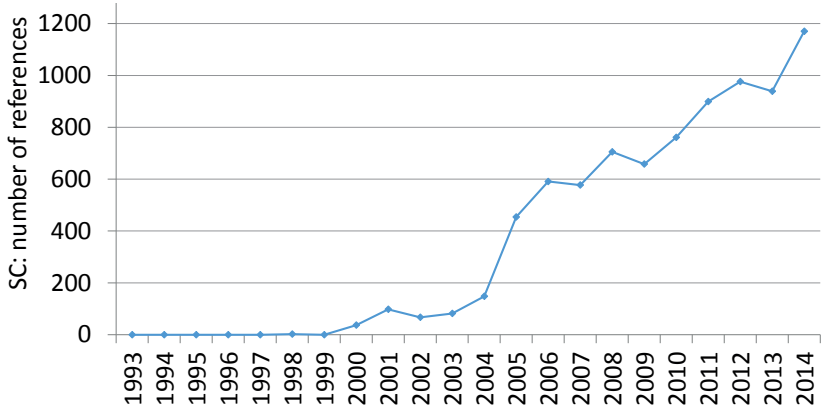


Source: Authors

321 Molek, *Judikatura ve správním právu*, p. 405.

To date, we have known little about the SC's overall approach to international law with respect to its empirical and theoretical levels.[322] As shown in Figure 10.2, there is an increasing trend for references to international human rights treaties to occur at the SC. That reference occurrence curve is steeper than that for the SAC.[323] The point in time at which this significant increase occurred is noteworthy, as the years 2004 and 2005 represent a turning point. A jump shift in the occurrence of references can be observed at that time even as the total number of decisions remains relatively unchanged. This directly begs the question whether the increase is related to the accession to the EU inasmuch as there were at that time more seminars focused on European law, more intense discussion about the character of international law and its relation to the constitutional and European law, and the like. The causality behind the leap in the number of references might be the subject of additional, future research.

Figure 10.2 Total number of references to international human rights treaties in the case law of the SC 2000–2014



Source: Authors

322 One of the exceptions is the publication by Petr Mikeš, which, however, does not specialize in international human rights law (Mikeš, Petr. *Aplikace mezinárodního práva v právním řádu ČR pohledem teorie a soudní praxe.* Prague: Wolters Kluwer, 2012).

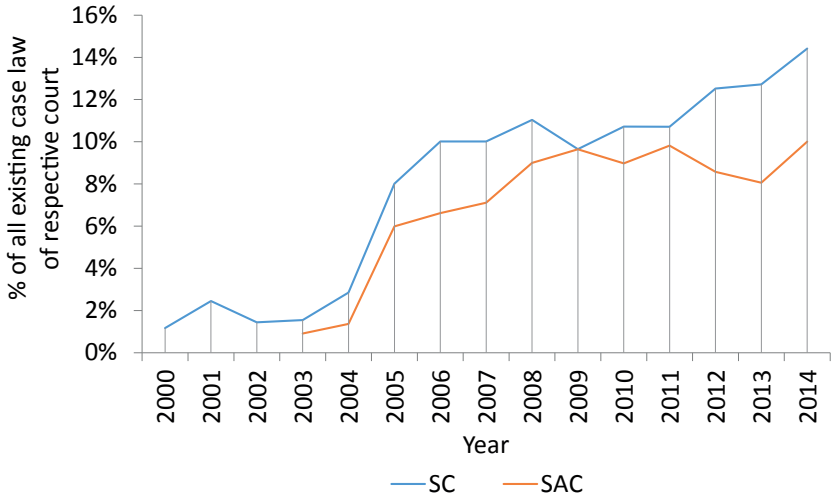
323 Total numbers are depicted in the figure starting from 2000 due to the inaccessibility in electronic form of previous case law excluding collections of decisions with which we work in the next part of the analysis.

Out of the set of 192 existing and 125 ratified treaties, the SC 'applied' in total 42 treaties and the SAC 39. Although this is a surprisingly low number, it reflects the scopes of the two courts' jurisdictions. Regarding the absolute numbers, it may be mentioned merely for the sake of illustration that while the SC issued 1170 decisions in 2014 which included some form of reference to an international human rights treaty, the Supreme Administrative Court issued just 337 such decisions.

The overview is distorted, however, by the total number of decisions. Therefore, Figure 10.3 shows a more representative view. It depicts the references to treaties of both courts in proportion to the total yearly number of decisions.[324] As can be seen, the courts surprisingly do not differ solely in their absolute numbers. Even the proportional depiction indicates that the number of references to international human rights treaties of the SC was at a 1.5 multiple of the SAC's references in 2014. At the same time, we can observe that while the curve for the SC increases more or less continuously, there is a slight decline at the SAC in the years 2012 and 2013. This may have been caused by one or more of several factors, including, for example, the content and focus of treaties (a part of treaties in our database concerns the fields of criminal or labour law) or the manner in which references are used (e.g. a standardized reference to Article 6 of the ECHR and frequent references to Article 4, para. 1 of Protocol No. 7 to the Convention in proceedings related to the doctrine of ne bis in idem in national and cross-border cases).

324 The curve for the SC begins in 2000 because starting from that year we have from our database complete data on court decisions and share of decisions including quotations of human rights treaties.

Figure 10.3 Total number of references to international human rights treaties proportionate to the total number of decisions of the SC and SAC[325]



Source: Authors

This introductory overview has not yet indicated much about the real application of international human rights treaties by both supreme courts. On the one hand, as was mentioned above, it presents only a numerical record of reference numbers and does not distinguish the different 'quality' of references: references to treaties may have been present in a court's argument but also in the recital summarizing the statements of parties to the proceeding. In the latter case, the reference would not constitute a real application or use. At the same time, it would express nothing about the effect of applying the treaty to the case and the manner in which the court had applied the treaties.

In the next section, therefore, we analyse more deeply the content of the most significant case law of the two courts (from the Collection of Judgements

325 Data on the total number of decisions result from the statistics of decisions accessible at www.nssoud.cz (The Supreme Administrative Court) and www.nsoud.cz (The Supreme Court).

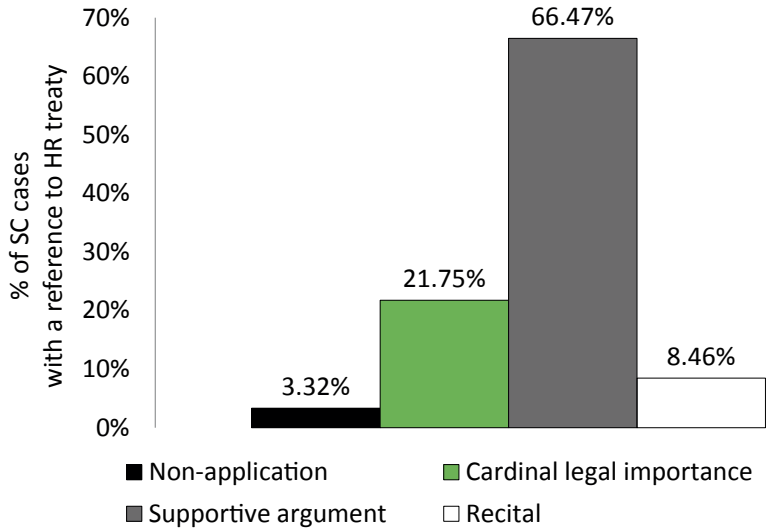
of the SAC and the most significant decisions of the SC of A and B importance). The analysis will provide a more illustrative and accurate view as to the manner in which the supreme courts work with international human rights law and its significance for the results of the disputes they hear.

10.4 Manners of Applying Human Rights Treaties in Case Law

10.4.1 Introductory Notes

This subsection analyses in detail the manner in which the supreme courts apply international human rights treaties to their case law. That manner includes the occurrence of references despite their having no material effect on the results of the disputes heard (including the manner of application defined as 'recital' or 'non-application', the latter of which means cases where the court explains why the treaty is not applicable), if there is a real application which has the quality of fundamental legal importance regarding the case result, or if the treaty is used only to provide a supporting argument. Such method enables us to identify those cases making reference to a treaty but not really applying or using it. Figures 10.4 and 10.5 depict the basic distribution of all manners of references to international human rights treaties at the Supreme Court (Figure 10.4) and the Supreme Administrative Court (Figure 10.5). At first view, the picture depicting the manner in which the two courts apply the international human rights law is not very different. As can be expected, at both courts, the references to human rights treaties significantly prevail only in the form of supporting arguments (66.47% at the SC and 53.71% at the SAC). Only in exceptional cases (3.32%) is it the case that the SC does not apply the treaty at all (due to its content, time scope, characteristic of the clause, etc.). There is a significantly lower proportion, when compared to the SAC (almost by half), wherein the SC refers to the treaties in the recital only and without their further reflection (8.46%). The SAC is more than two times more likely refer to the treaty in the recital only (19.31%) and four times more likely not in fact to apply it at all (13.86%). With respect to the total share of the case law reviewed, that is a relatively poor representation.

Figure 10.4 Manner of applying international human rights treaties in the decisions of the SC[326]



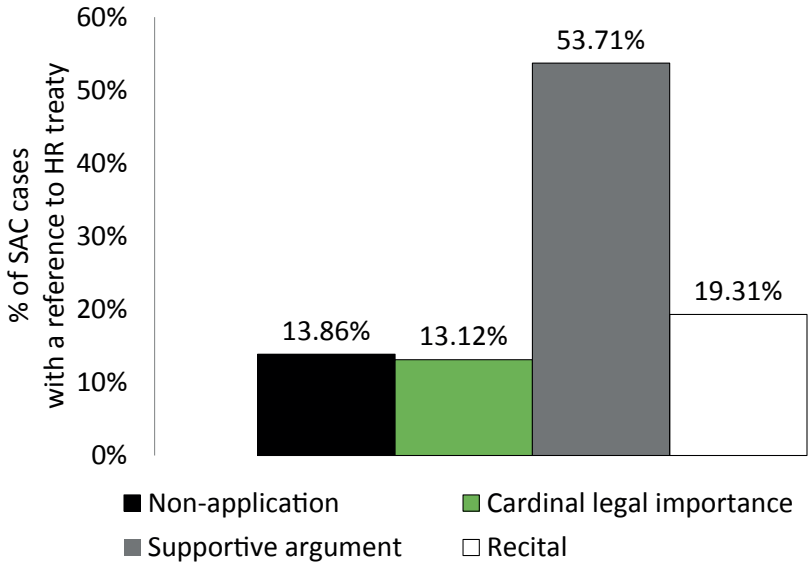
Source: Authors

Cases in which the complainants inferred their rights from the ECHR outside its material or time scope fall under this category at the SC. At the SAC, most cases of non-application concern the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Non-application occurred in 36.38% of cases when using the Aarhus Convention, on the basis of which environmental activist groups have demanded to be a party to court proceedings. The SAC ruled in many cases that the active title of citizens associations to participate in the type of proceeding were not stipulated by Article 9, paras 2 and 3 of the Aarhus Convention inasmuch as they are not self-executing and therefore may not be applied directly.[327]

326 To make the figure transparent, we consolidated the categories of direct treaty application, interpretation of national law in a manner conforming to the treaty, and other cases of fundamental significance into one column including all the mentioned types of fundamental legal significance of the treaty application.

327 To the point of these issues, see the Finding of the Constitutional Court of 30 May 2014, file ref. I. ÚS 59/14, which changed the opinion on some issues.

Figure 10.5 Manner of applying international human rights treaties in the decisions of the SAC



Source: Authors

The classification described enabled us to 'cleanse' the sample of selected decisions of such references to international human rights treaties which do not achieve the application quality. In a later section, we focus the analysis upon two categories of application: cases where the reference represents a supportive argument for the reasoning and cases where the reference is of cardinal importance for the result of the decision.

10.4.2 Treaty as Supportive Argument

As mentioned above, the use of references to human rights treaties as supportive argument significantly prevails at both supreme courts. At the SAC, this proportion is 53.71% of all the decisions referring to the human rights treaties and 80.37% if we take into consideration only those decisions which really applied the treaties (i.e. not counting those cases in which the treaty

was not applied at all or it was referenced merely in the recital). At the SC, these figures are 66.47% of all decisions referring to treaties and 77.42% of decisions in which the treaties were actually applied.

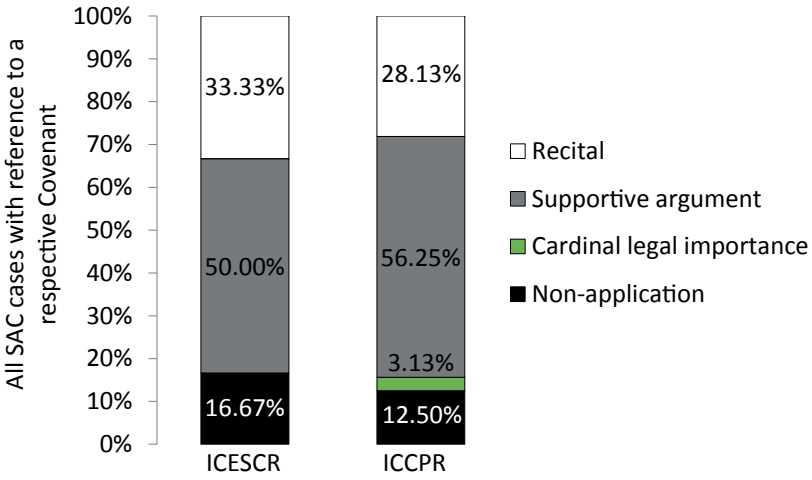
There are two principal manners of applying a treaty in supportive form at the two courts: reference to the treaty so as to create an 'argumentation base' for further reasoning, and reference to the treaty so as sufficiently to support a legal conclusion otherwise reached on the basis of domestic legal provisions.

In the first type, the court, usually in the introduction to the grounds for the judgement,[328] quotes the constitutional and international or EU sources of law which relate to the case. For example, the SAC rather frequently creates the 'argumentation base' in the introduction. This, then, remains in the background for further contemplation, but the court does not additionally apply the treaty in a more specific manner.[329] It is typical for the SAC to use the International Covenant on Economic, Social and Cultural Rights (hereinafter only the 'ICESCR'). The court refers to the articles of the ICESCR only within the list of sources of relevant law. As Figure 10.6 depicts, in the cases of referring to the International Covenant on Civil and Political Rights (hereinafter only the 'ICCPR'), the supportive use and quoting with a mere reference dominates.

328 We mean here the grounds for a decision in the narrower sense of the word, i.e. review by the court.

329 Various examples of such decisions include SAC Judgement of 17 February 2005, ref. no. 2 Afs 5/2005 – 96; of 23 February 2005, ref. no. 6 Ads 62/2003 – 31; Decision of the Grand Chamber of the SAC of 21 July 2009, ref. no. 6 Ads 88/2006-132; the SAC Judgement of 16 March 2010, ref. no. 1 As 97/2009-119; Judgement of the Grand Chamber of the SAC of 7 September 2010, ref. no. 7 As 26/2009-58, point 9; the SAC Judgement of 27 July 2011, ref. no. 1 As 53/2011-109, point 23.

Figure 10.6 Use of Covenants in the SAC case law



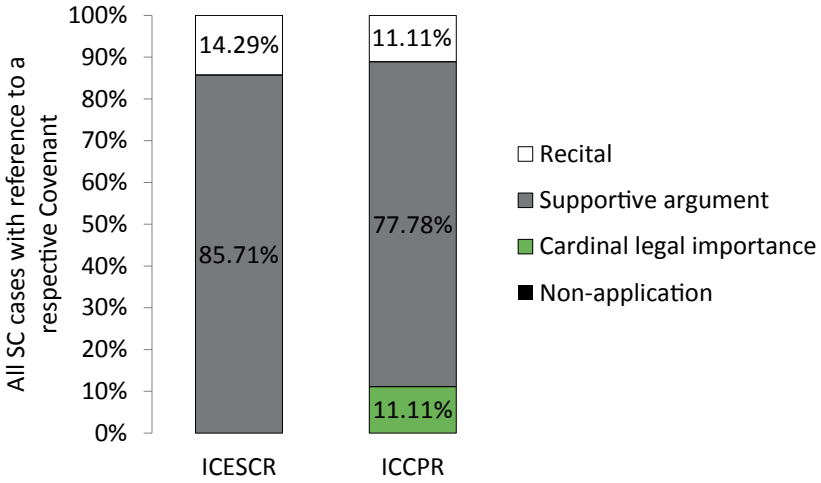
Source: Authors

A similar situation exists in the case law of the SC. The SC, in a similar context, most frequently refers as well to the ICESCR and ICCPR. Other frequently cited treaties are the Convention on the Rights of the Child (CRC)[330] and to selected conventions of the International Labour Organisation.[331]

330 The Decision of 1 March 2001, file ref. 11 Tz 27/2001 may be mentioned and Decision of 30 July 2008, file ref. 29 Odo 828/2006; Opinion of the Criminal Division of 13 December 2006, file ref. Tpjn 302/2005; Judgement of 28 June 2011, file ref. 21 Cdo 3909/2010.

331 For example, the Convention concerning Freedom of Association and Protection of the Right to Organise. Compare, for example, the Opinion, file ref. Cpjn 202/2013 of 23 April 2014.

Figure 10.7 Individual conventions in the SC case law



Source: Authors

In the second model case – the application of a treaty in order sufficiently to justify and support the argument – the reference to a treaty can be found in the conclusion of the argumentation. In these decisions, the courts usually rule on the complaint pursuant to national law and they add that such interpretation also is in accordance with the relevant treaty. Such method can be expected. As Jiří Malenovský mentioned in relation to the decisions of international courts, '*if a national court can find a correspondent legal opinion expressed in the previous decision of an international court so as to support its own decision, it often, in the interest of greater authority and force of its decision, explicitly refers to it.*'[332]

As illustration, we can quote a decision from the case law of the SAC in which the Court had firstly, based on national law, inferred the obligation of administrative authorities to specify precisely in its decision the act leading to an offense, and then justified this reasoning with a reference

332 Malenovský, *Poměr mezinárodního a vnitrostátního práva*, p. 46.

to international law, in particular the autonomous definition of 'criminal charge' used in Article 6 of the ECHR: *'The conclusion on the necessity of full specification of 'administrative offence' (specification from the perspective of subject matter, time and location) fully corresponds with international obligations. It cannot be omitted that other obligations resulting from Article 6, para. 1 of the ECHR affect the decisions on other administrative offences.'*[333] Similarly, at the SC, the most frequent types of cases are those of sufficient legitimacy of the argument through reference to the ECHR, which usually serves to confirm the correctness of the conclusion inferred from the Charter of Fundamental Rights and Freedoms and which is in accordance with the interpretation of the ECtHR and international obligations of the Czech Republic.[334] As an example, we can mention a court judgement of the SC of 30 October 2014, file ref. 8 Tdo 148/2014 in which the SC completed the interpretation of the freedom of speech by Article 17, para. 4 of the Charter in relation to a journalist's speech through which he influenced criminal proceedings by the interpretation of Article 10 of the ECHR and relevant case law of the ECtHR. The rule of international law serves as sufficient confirmation as to the legitimacy of the conclusion in all the mentioned cases.[335]

At the SAC, the specific category of supportive references to the treaty is formed by the cases heard at the beginning of the new administrative justice (i.e. after 2003) in which the SAC, referring to Article 6, para. 1 of the ECHR and to the principle of the complete appeal, explained the scope of a judicial review of public administration conduct or justified the authority of administrative courts to review certain types of decisions.[336] Another specific, albeit standardized, use of references is to quote Article

333 Decision of the Grand Chamber of the SAC of 15 January 2008, ref. no. 2 As 34/2006-73. Other cases, see for example Judgement of the Grand Chamber of SAC of 7 September 2010, ref. no. 4 Azs 60/2007-119, point 20: *'This conclusion is in accordance with Article 1 of the Convention and it is possible to infer that it would be meaningful to persist while discovering and assessing the inclusive clause'.*

334 Compare for example the SC Judgement of 3 February 2011, file ref. 25 Cdo 3333/08; Judgement of 9 November 2011, file ref. 21 Cdo 4795/2010.

335 Similarly McCrudden, Christopher. Why Do National Court Judges Refer to Human Rights Treaties? A Comparative international Law Analysis of CEDAW. *Michigan Law: Public Law and Legal Theory Research Paper Series*, No. 15, 2015, p. 11.

336 For example, the SAC Judgement of 21 June 2006, ref. no. 1 As 42/2005-62; of 28 February 2007, ref. no. 8 As 44/2005-70; of 28 March 2007, ref. no. 1 As 32/2006-99; or of 29 June 2007, ref. no. 4 As 37/2005-83.

6 of the ECHR and its specification of the right to appeal in the case law of the SC, especially in criminal decisions, for example in relation to the two-stage characteristic of the proceedings in accordance with the right to fair trial.[337]

10.4.3 Cardinal Importance of the Treaty

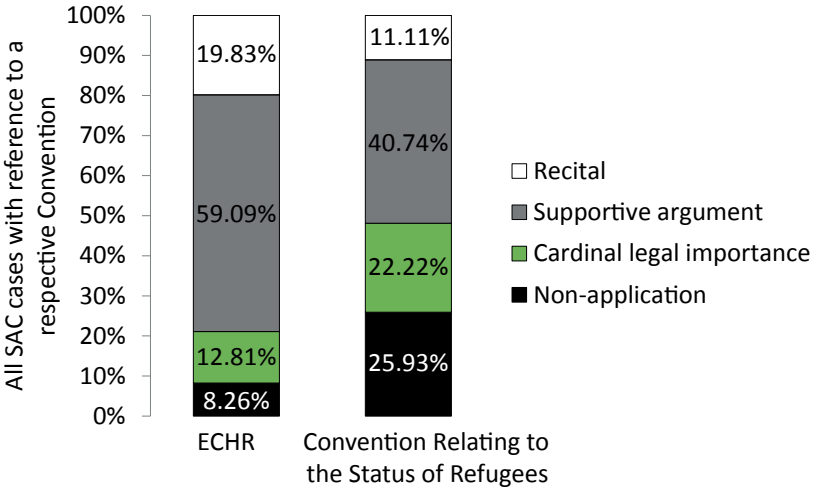
Although the use of international treaties on human rights in the form of supportive argument predominated in the reviewed decisions, in many cases, the international treaty did significantly affect the result. It concerned the (re)interpretation of the national legal norm in a manner conforming to the treaty, direct application of the treaty in accordance with Article 10 of the Constitution, and other cases in which the application of the treaty was the main reason for the given dispute's decision due to other reasons (for example, a decision on the grounds of ECtHR case law that the right had not been violated).[338]

In the SAC's line of reasoning, increasing significance was seen for two treaties: the ECHR and the Convention Relating to the Status of Refugees (see Figure 10.8).

337 See, for example, the SC Judgement of 5 May 2011, file ref. 6 To 26/2011; Decision of 9 October 2013, file ref. 3 Tdo 1042/2042; or of 26 September 2012, file ref. 4 Tdo 1089/2012.

338 See, for example, the SAC Judgement of 7 October 2009, ref. no. 6 Ads 41/2008-67, concerning the allowable extent to which judges may be criticized.

Figure 10.8 Share of ECHR and Convention Relating to the Status of Refugees in cases involving fundamental use of the treaty in the SAC case law



Source: Authors

Direct application of an international human rights treaty is inferred sporadically at the SAC. In 2004, there occurred the first direct application of a human rights treaty in a case wherein the SAC heard the claim of a former military judge relating to his right to retirement pay. The SAC followed the ECtHR's judgement in the case *Bucheň v CR*[339] and ruled that legal provisions pursuant to which the petitioner had no right to retirement pay were discriminatory and inconsistent with Article 14 of the ECHR in relation to Article 1 of Protocol 1 to the ECHR and therefore that instead of applying Article 10 of the Constitution the Convention should have been applied.[340] From the perspective of assessing a situation in which the court finds that national laws are inconsistent with an international human rights treaty which is binding for the Czech Republic, there is a very interesting

339 Judgement of the ECtHR of 26 November 2002, *Bucheň v CR*, application no. 36541/97.
340 SAC Judgement of 4 March 2004 file ref. 5 A 145/2001.

judgement of the SAC of 11 July 2007 ref.no. 6 As 55/2006-96. The SAC inferred that the exclusion of service benefits from court review, pursuant to the Act on Intelligence Service is not inconsistent with the Charter; it is, however, inconsistent with Article 6, para. 1 of the ECHR. The sixth senate of the SAC consciously did not comply with the judgement of the Constitutional Court[341] and inferred that the decision of the Security Information Service was subject to court review on the grounds of direct application of Article 6 of the ECHR.

Direct application of a treaty is typically used in the field of asylum and immigration law. One of the examples[342] related to the ECHR was a refusal to apply the Act on Residence of Aliens which enabled the police to issue a new decision, imminently after the cancellation of the previous decision, on taking the alien into custody in order to deport him. The SAC found that such procedure is inconsistent with Article 5, para. 4 of the ECHR.[343] The SAC applied the Convention Relating to the Status of Refugees directly in its case law and primarily in relation to the principle of *non-refoulement*[344] and Article 33 of the Convention Relating to the Status of Refugees because the SAC preferred its application to some procedural provision of the Act on Asylum.[345] The Court even inferred the obligation of administrative courts to overstep the principle according to which the court is bound by the petition, in the interest of the principle of *non-refoulement*.

At the SC, the field of direct application is larger. Indeed, direct application is used with the same frequency as are the other manners of fundamental significance in the application of international treaties (6.92%). It most often occurs in relation to provisions of the ECHR. Other examples

341 Judgement of the CC of 25 June 2002, file ref. Pl. ÚS 36/01, No. 403/2002 Coll. See Chapter 6 for details on this judgement, including the stormy discussion following its issue.

342 SAC Judgement of 1 November 2012, ref. no. 9 As 111/2012–34.

343 It is necessary to add that the ECHR acted in synergy with Article 15, Para. 2 of return regulation.

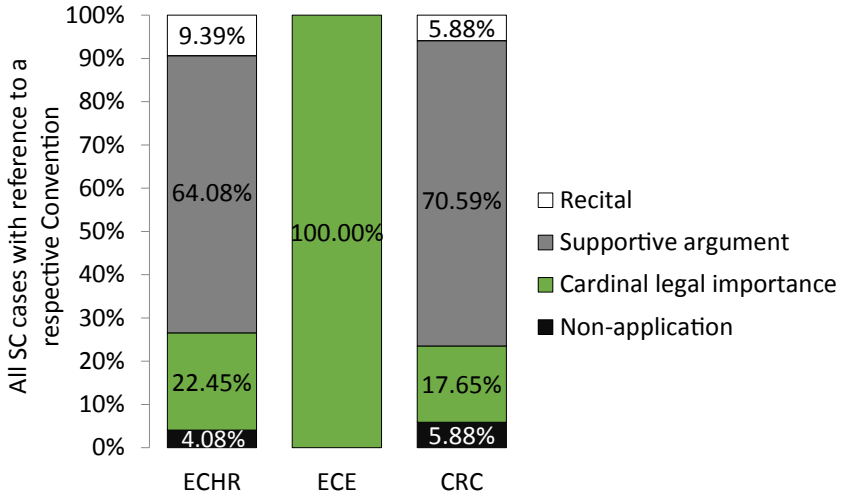
344 In the case law of the SAC, the source of the principle non-refoulement is quoted not only through Article 33 of the Convention relating to the Status of Refugees but also Articles 2 and 3 of the ECHR and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

345 SAC Judgement of 14 June 2007, ref. no. 9 Azs 23/2007-64. See also SAC Judgement of 4 August 2005, file ref. 2 Azs 343/2004, in which the SAC admitted the application preference but did not abide by it in the given case.

include the European Convention on Extradition, the Hague Convention on the Civil Aspects of International Child Abduction, and the Protocol to the European Social Charter. It is interesting that the European Convention on Extradition (ECE) is but rarely seen in the case law of the SC in comparison with references to the ECHR, but, when it is, it appears only in the manner of direct application (comparison Figure 10.7; the SC has repeatedly ruled that the extent of the specialty principle, which is the principle according to which a person in a state into which he was extradited for the purposes of prosecution or enforcement of sentence cannot be prosecuted or punished for offences other than those for which the permit was issued, is provided for in a more narrow manner in the ECE than in § 375, para. 1 of the Penal Code, and therefore the principle shall be directly applied in accordance with Article 10 of the Constitution). We can also mention interesting issues of ne bis in idem and the interpretation of Article 4, para. 1 of Protocol no. 7 to the ECHR in relation to § 11, para. 1, letter f) of the Penal Code and Article 40, para 5 of the Charter, which unanimously stipulate that no person can be prosecuted for an offence for which he was legitimately sentenced. The SC found that the national regulation (including the Charter) affects a narrower sample of situations than does the ECHR, which includes the combination of criminal proceedings with legitimate sentence in offence proceedings for the same offence (or rather, a criminal act). Therefore, the SC inferred the obligation directly to apply Article 4, para. 1 of the Protocol to the ECHR.[346]

346 Judgement of 22 July 2004, file ref. 11 Tdo 738/2003. Further, compare the Judgement of 12 December 2007, file ref. 5 Tdo 1399/2007; Judgement of 22 March 2006, file ref. 4 Tz 182/2005.

Figure 10.9 Share of the ECHR, ECE, CRC in cases of cardinal importance in applying the treaty in the SC case law



Source: Authors

Another important group of cases involving direct application at the SC consists of cases of non-material damages and direct application of Article 5, para 5 of the ECHR before the amendment to Act No. 82/1998 Coll., on liability for damage incurred in the course of exercise of public powers.[347] The SC found that even though the legal regulations presume compensation for non-material damage incurred by the injured party in relation to the Act by foreseen circumstances (unlawful decision or incorrect administrative procedure), it could not be overlooked that the claim provided for in § 31a, para. 1 reflects the right to efficient legal remedy pursuant to Article 13 in relation to Article 6, para. 1 of the ECHR. Therefore, it allowed that non-material damages from the limitation of personal freedom shall be compensated even in the period before the amendment

347 Amendment No. 160/2006 Coll.

to the Act on liability for damage incurred in the course of exercise of public powers came into force because the claim results directly from the applicable Article 5 of the ECHR.[348]

It is necessary to remark, however, that the SC returned to the issue of direct application of Article 5, para. 5 in relation to damages for custody in a series of decisions concerning compensation of political prisoners in relation to the intertemporal effects of the ECHR. The SC several times rejected the direct application of Article 5, para. 5 of the ECHR to disputes on compensating for the limitation of personal freedom which occurred under the communist regime, which time was before the ECHR entered into force in the Czech Republic, despite the fact that the proceedings were commenced after the Czech Republic had adopted the ECHR.[349]

Both courts frequently have not directly applied the treaty, however, because they inferred that it is sufficient for purposes of satisfying the treaty's requirements to interpret the national law in accordance with the treaty's provisions. The most frequent cases of conformity interpretation at both supreme courts relate to the interpretation of ECHR provisions. At the SAC, we can mention for purposes of illustration, a decision in which the SAC, on the grounds of Article 5, para. 4 of the ECHR, inferred that procedures stipulated by the Code of Administrative Procedure shall be executed in such manner that in proceedings related to action protecting against illegal intervention consisting of detaining an alien in the admission centre of an international airport[350] it is necessary to decide preferentially and quickly.[351] The SAC ruled similarly in a case of taking aliens into custody.[352] At the SC, there have been repeated cases concerning compensation

348 Compare the Judgement of the Grand Chamber of the SC of 11 May 2011, file ref. 31 Cdo 3916/2008.

349 Compare, for example, the Judgement of 20 October 2010, file ref. 30 Cdo 1337/2010. These judgements led to a strong disagreement between the SC and Constitutional Court with respect to the time scope of the ECHR, and it resulted in the Opinion of the CC Plenum of 25 November 2014, file ref. Pl. ÚS-st- 39/14, which confirmed that the right to the compensation of non-material damage pursuant to Article 5, Para. 5 of the Charter arises only after the Convention became binding for the Czech Republic (i.e. 18 March 1992).

350 The judgement was issued in the period before the establishment of deciding on permission of entering the territory pursuant to § 73 Para. 4 of the Act on Asylum as amended.

351 SAC Judgement of 15 November 2007, ref. no. 9 Aps 5/2007-63.

352 SAC Judgement of 1 December 2009, ref. no. Aprk 12/2009-28.

for non-material damages and determining the amount of damages pursuant to requirements ensuing from the ECHR and ECtHR case law,[353] but also, for example, concerning demands on the questioning of witnesses. The SC found that although the right of the accused to question a key witness in a contradictory manner pursuant to Article 6, para. 3, letter d) of the ECHR is preferred to the principle of swiftness of criminal proceedings (§ 2, para. 4, second sentence of the Penal Code), such right can be inferred from interpretation of the principle according to which criminal cases are being heard with full observance of rights and freedoms guaranteed by the Charter and international treaties by which the Czech Republic is bound (§ 2 para. 4, third sentence of the Penal Code).[354]

In SAC case law, the Convention Relating to the Status of Refugees played a crucial role, for example while interpreting the provisions of the Act on Asylum according to which it is not possible to grant additional protection if there is reasonable suspicion that the applicant committed offences which contradict the principles and objectives of the UN.[355] Further, on the basis of an interpretation which conforms to the Convention Relating to the Status of Refugees (and qualification regulation), the SAC specified the extent of provision § 17, para. 1, letter a) of the Act on Asylum according to which asylum is revoked if the asylum seeker has provided false data. The first chamber found that, when reflecting the Convention Relating to the Status of Refugees and the qualification regulation, it is necessary to interpret this provision in such manner that not every single case of providing false facts or non-disclosure of facts by the asylum seeker constitutes a reason for revoking the asylum. The asylum can be revoked only if the false data affected the result of the proceedings on granting international protection.[356]

Treaties which were not frequently used in the application practice of administrative courts also play a significant role throughout the formulation

353 For example, the Judgement of 20 October 2010, file ref. 30 Cdo 1637/2009; of 16 November 2010, file ref. 30 Cdo 3759/2009; of 23 August 2011, file ref. 28 Co 4641/2008, or 20 May 2009, file ref. 25 Cdo 1145/2009.
354 SAC Judgement of 17 March 2015, file ref. 8 Tdo 235/2015.
355 SAC Judgement of 29 March 2011, ref. no. 6 Azs 40/2010-70.
356 SAC Judgement of 18 April 2013, ref. no. 1 Azs 3/2013-27.

of the interpretation of national law conforming to the international law. For example, the fifth chamber of the SAC adopted such an interpretation option for the definition of 'internal armed conflict' (used in relation to the reasons for granting additional protection) which corresponded with Article 7 of the 1949 Geneva Conventions.[357]

10.5 Differences across Treaties: General Trends

10.5.1 Introductory Notes

Previous passages have shown the manner in which the SC and SAC apply international human rights treaties. Both courts show the same patterns. Most frequently, they apply the provisions of international human rights treaties as supportive arguments. In some cases, the treaties are fundamentally significant for the results of the disputes. Those are generally exceptions, however. Also emerging from the previous passages is the observation that the manner in which the international human rights treaties are applied to the case law of both supreme courts differs significantly according to treaty. In the case law of the SAC, the Convention Relating to the Status of Refugees and the ECHR led to re-interpretation of national law or have attained direct application while the ICESCR served, in all those cases reviewed, only for making supportive arguments in the form of reference. Similarly, in the case law of the SC, both international treaties emerge rather as material for supportive argumentation and the change of national law was inferred primarily on the grounds of the ECHR, the European Convention on Extradition, and sometimes the Convention on the Rights of the Child.

Were we to take a closer look at the characteristics of treaties applied in individual categories, we would find that, with respect to the generation of human rights included in the treaties, both courts apply the treaties of first or second generations and there are no significant differences in the manner of their application. It can be said, therefore, that the relationship to a certain human rights family does not affect the further fate of the treaty in the national courts' application practice.

357 SAC Judgement of 13 March 2009, ref. no. 5 Azs 28/2008-68.

As can be expected, references to the ECHR prevail at both courts. From the perspective of occurrence and diversity of individual references to treaties, however, the SC quotes the UN treaties twice as much as it does the Council of Europe treaties. The treaties of the ILO also are often used. The SAC applies the treaties more evenly, but upon closer examination we can see that UN treaties appear in the references more often than does the ECHR.

In the following paragraphs, we will present hypotheses related to the main factors affecting the differences in applying the treaties and in their affecting the national law.

10.5.2 Subject Matter and Characteristic of the Legal Form of the International Treaty

The legal form of an international treaty and the characteristics of its individual provisions constitute one of the decisive factors. In other words, it is important *what* the treaty regulates and *how*. From this perspective, it is important first of all whether the treaty duplicates guarantees included in the Czech Republic's Charter of Fundamental Rights and Freedoms and the national law in general, or if it offers 'something more' compared to the national law.

If the treaty does not provide something more, then it is usually used to provide supportive arguments to the national argumentation in relation to the Charter or another national regulation. In referendum cases, for example, the SAC specifies the initiation of a local referendum by a preparatory committee consisting of citizens as part of the right to take part in the conduct of public affairs, referring to to Article 25, letter a) of the ICCPR, which is therefore used as an argumentation base. In the rest of the grounds, however, it works with national law and the human rights considerations are based on Articles 21 and 22 of the Charter. ICCPR is thereby put aside.[358] In some cases, the SAC has expressly admitted that it satisfied the complainants on the basis of national laws and therefore that it shall not deal with the argumentation via the international treaty

358 SAC Judgement of 22 October 2014 ref. no. Ars 4/2014-99. Similarly also the Judgement of 5 March 2015 ref. no. Ars 11/2014-42.

(in this case, the Aarhus Convention).[359] A similar logic can be found also in the case law of the SC in relation to both the ICESCR and ICCPR. The SC often introduces the existing international law but then – inasmuch as it finds that it is in accordance with the national law – the court pursues only the interpretation of the Charter or even the relevant legal regulation. Issues concerning the intercepting of postal and electronic communications provide an example. The SC commenced the argument in the grounds of its judgement by presenting the legal regulation related to the privacy of mail and telecommunication in light of the Czech Republic's international obligations, therefore with references to the ICCPR and ECHR, and then proceeded pursuant to the national law and interpretation of the Charter.[360]

The role of treaties becomes more significant if they offer 'something more' than the national law. For example, the general guarantee of habeas corpus provided under Article 5, para. 4 of the ECHR is valid in the case law of the SAC, and this protection is not included in the Charter or under Czech national law.[361] Accordingly, Article 5 para. 4 of the ECHR has often been referred to with cardinal importance in the case law of the SAC (see also above). A similar example exists for the case law of the SC in relation to compensating non-material damages incurred through the limitation of freedom pursuant to Article 5, para. 5 of the ECHR, or the principle of ne bis in idem (No. 4, para. 1 of Protocol No. 7 to the ECHR). Especially in the light of ECtHR case law and its definition, the SC case law encompasses a rather broader framework of proceedings than did the original national law, which, for example, did not deal with the concurrence of criminal and administrative offence proceedings at all.

A treaty does not by itself, however, have to provide 'something more'. There also are decisions of international human rights bodies. In that respect, there is a higher degree of elaboration regarding issues of freedom of assembly and association in the case law of the ECtHR than in the decisions

359 SAC Judgement of 1 July 2011, ref. no. 1 As 6/2011-347, point 62; or of 27 May 2010, ref. no. 5 As 41/2009-91.

360 SC Judgement of 21 October 1998, file ref. 21 Cdo 1009/98.

361 Langášek, Tomáš. Čl. 8 (Osobní svoboda). In *Listina základních práv a svobod. Komentář,* by Eliška Wagnerová et al. Prague: Wolters Kluwer, 2012, pp. 229–230.

of the Constitutional Court.[362] Accordingly, in many cases heard at the SAC, argumentation based on Article 11 of the ECHR (while applying the following case law of the ECHR) plays a significant role when compared with Article 10 and 20 of the Charter. At the SC, matters related to compensation for non-material damages[363] are applied to the judicial practice of the ECHR (and the Constitutional Court) in a similar manner, the principle nullum crimen sine lege,[364] or issues of independence and impartiality of judges and their guarantee.[365]

The specificity of an international treaty is also significant in relation to the benefit of 'something more'. Treaties of rather narrow and specific character more often play substantial roles. For example, the Convention on Human Rights and Biomedicine was rather significant in decisions concerning mandatory inoculation.[366] A similar conclusion is even more significant in the case law of the SC in which applications of cardinal importance predominate in cases relating to treaties of lower human rights intensity. This reflects the fact that such treaties have narrow focus.

With respect to the character of international treaty provisions, the most important question is whether or not provisions are self-executing. In cases of provisions not self-executing, significant effects can be expected only in exceptional cases, and no such case has been included in those cases reviewed.

10.5.3 Establishment of the Treaty in the National Environment

The degree to which a relevant treaty is established in the national system constitutes another important factor influencing the application and effect of the treaty. By establishment, we mean the adoption of the treaty by Czech lawyers (especially judges, assistants, and attorneys), their becoming accustomed to the treaty, and, as a result, their increasing competence

362 For the right to assemble, see Kosař, David. Politická práva. In *Ústavní právo: Casebook*, edited by David Kosař et al. Prague: Wolters Kluwer, 2014, p. 499.
363 Judgement of 9 December 2010, file ref. 30 Cdo 3326/2009.
364 Opinion of the Criminal Division of the SC of 30 January 2013, file ref. Tpjn 301/2012.
365 SC Judgement of 26 August 2009, file ref. 15 Tdo 520/2009.
366 SAC Judgement of 28 February 2006, ref. no. 5 As 17/2005-66 (later cancelled by the Judgement of the CC of 3 February 2011, file ref. III. ÚS 449/06); Judgement of the Grand Chamber of SAC of 3 April 2012, ref. no. 8 As 6/2011-120.

and willingness to work with the treaty. There is no transparent causality between the degree of a treaty's establishment and its use and effect in the judicial practice of ordinary courts. Rather, this concerns a certain spiral in the sense that the more an international treaty is being mentioned by the parties to the proceedings, the more the case law works with it, and that, in turn, affects the use of the treaty by the parties. However, it is necessary to emphasize that this concerns not only the awareness about the existence of the treaty itself but also the knowledge of its normative substance, principles of its interpretation, and possibly related decisions of the international body. We can illustrate this by differentiating between application of the ICCPR versus the ECHR. Although both treaties are very similar with respect to content (albeit with a certain degree of simplification), their use and effect in the case law of the SC and SAC are very different. The courts mention the ICCPR rather often but they almost always only refer to it without interpreting its provisions in more detail, and they rarely quote the decision-making practice of the UN Human Rights Committee. The ICCPR is used only as a supportive argument in the decision-making practice of the SC and SAC. On the contrary, quoting the ECHR is regularly accompanied by interpretation while drawing upon the case law of the ECHR. The ECHR is much more significant for the decisions of both supreme courts than is the ICCPR; it is directly applied to the provisions of the law or it serves as a reason for re-interpretation of national legal regulations. No matter how well known is the ICCPR, and despite its historical significance in relation to Charter 77, the extent of its establishment in the judicial practice is much poorer in comparison to that of the ECHR and its effect on the national law is correspondingly less.

10.6 Conclusion

In this chapter, we set out to present the reader with one of the first attempts at comprehensive empirical research regarding the case law of the Czech Republic's supreme courts in relation to the application of international human rights.

The theory of international law and human rights usually focuses its attention upon constitutional courts while the ordinary courts are somehow

left aside. However, the decision-making activity of ordinary courts offers the most accurate picture as to the real life of international treaties in national practice.

Our study provided several pieces of interesting knowledge. First, it is surprising that there is, on average, a higher percentage of references to international human rights treaties at the SC than at the SAC. That may be caused by a gradual expansion of the criminal agenda to a certain extent but also by certain specifics of the legal regulation which had stipulated until the end of 2014 that the SC is a body in charge of deciding on custody in the case of transporting through the Czech territory people extradited to another state for the purposes of prosecution or execution of sentence. A part of decisions with the characteristic of 'international overlap' is certainly formed by the case law referring to the European Convention on Extradition which, however, is not a typical human rights treaty. Nevertheless, the total number of various international human rights treaties applied at the SC and SAC has been approximately the same.

From a perspective as to the manner in which reference is made to the treaties and the effect of treaties on the national law through the decisions of courts, both courts behave very similarly. The application of international human rights treaties in the form of supportive references prevails at both courts. These either form the mycelium of the analysed national regulation or retroactively legitimize the line of reasoning inferred from the national law.

Nevertheless, international human rights treaties in the case law of the SC and SAC attain fundamental significance in a relatively low number of cases. Some treaties lead the courts to revise the interpretation of some provisions of the national law or to direct application of the treaty or, possibly, they play a significant role with respect to the decision on a dispute. Only certain treaties are significant, however, and a number of treaties are not applied in this manner at all. This chapter offered hypotheses as to the reasons why the effects differ across individual treaties. It seems the manner of applying international human rights treaties is affected by several factors, the most significant of which are: (1) their subject matter and characteristic of the legal regulation, and (2) the establishment of the treaty in national law. Relating

to the subject matter of the treaty, it is crucial if the treaty includes 'something more', i.e. if the treaty itself or the decisions of the relevant international body go beyond the framework of national provisions and offer broader and more detailed guidelines. With respect to the establishment of the treaty in the national setting, the European Convention on Human Rights unambiguously prevails, but there are also some treaties with a narrower focus used. In general, it cannot be said that treaties of the Council of Europe significantly prevail over the treaty system of the United Nations. On the contrary, if we look at the proportional share of treaties of individual organizations (correcting, therefore, for absolute numbers, which are rather high with respect to the ECHR at both courts), the courts apply a higher number of UN treaties than of Council of Europe treaties.

11 INTERNATIONAL HUMAN RIGHTS LAW IN LEGAL EDUCATION

11.1 Introduction

This chapter discusses the position of international human rights law in Czech and Slovak legal education. It starts with a short overview of the importance of human rights education under international law before providing basic information about the level of human rights awareness among the Czech and Slovak general public and specifically among the students of primary and secondary schools. The main focus, however, is put on Czech and Slovak law schools and their curricula, the idea being that a greater familiarity of students with international human rights treaties will be reflected in greater use of these treaties in the national top courts' case law with the gradual change and arrival of a new generation of judges on lower courts and young alumni of law schools typically working as clerks or analysts at national highest courts.

The level of human rights protection is directly influenced by national courts. A legal provision that might violate a human right can often be interpreted in a way that is compatible with that right. By contrast, a too-formalistic interpretation of a statute may in itself lead to a human rights violation.[367] Although communist Czechoslovakia – similarly to other repressive regimes – did not shy away from signing and ratifying human rights treaties,[368] these were basically never used by national courts. There was no room for direct application of human rights treaties inasmuch as the courts could

367 Wagnerová, Eliška. Základní práva. In *Komunistické právo v Československu. Kapitoly z dějin bezpráví,* edited by Michal Bobek, Pavel Molek, and Vojtěch Šimíček. Brno: Masarykova univerzita, 2009, p. 350.

368 See Chapter 5.4 for more. Šipulová, Katarína, Jozef Janovský, and Hubert Smekal. Mezinárodní lidskoprávní závazky České republiky a Slovenska. In *Mezinárodní lidskoprávní závazky postkomunistických zemí: případy České republiky a Slovenska,* edited by Ivo Pospíšil, and Vladimír Týč et al. Prague: Leges, 2016, p. 25.

only protect the rights that were guaranteed by a domestic law.[369] Moreover, in the time when the judges relied heavily on formalistic reasoning – possibly as a protection against the influence of the communist ideology[370] – invoking human rights treaties as an interpretation aid was also out of the question. Human rights were therefore practically irrelevant in legal practice. Unsurprisingly then, the Czechoslovak legal education also placed little emphasis on human rights issues.

The communist regime in Czechoslovakia lasted more than 40 years, which period was long enough to alter the perception and understanding of the law for a whole generation of lawyers. Such a long-term influence cannot be overcome simply by changes in legislation.[371] Zdeněk Kühn remarks that after 1989 many of the lawyers continued in both judicial offices and academic positions.[372] As a result, Kühn argues, '*while post-Communist law has been substantially modified since 1989, all-too-often the methods of reasoning about that law remained unaffected*'.[373] Though it might be exaggerated to call these lawyers a 'lost generation',[374] it is primarily up to their younger colleagues and future lawyers[375] to bring fresh air and genuine change into the Czech and Slovak legal thinking. Whether this happens at all, and, if so, whether the change will be a favourable one, depends to a large extent on the quality of Czech and Slovak law schools and of legal education generally.

If there is in fact any positive development, this should be seen first in the practice of the highest courts being influenced by the aforementioned fact that especially the Czech ones (the Constitutional Court, the Supreme

369 Molek, Pavel. Mezinárodní právo veřejné. In *Komunistické právo v Československu. Kapitoly z dějin bezpráví,* edited by Michal Bobek, Pavel Molek, and Vojtěch Šimíček, Vojtěch. Brno: Masarykova univerzita, 2009, p. 394.

370 Kühn, Zdeněk. *Aplikace práva soudcem v éře středoevropského komunismu a transformace. Analýza příčin postkomunistické právní krize*. Prague: C. H. Beck, 2005, p. 117.

371 Ibid., p. 119.

372 Zdeněk Kühn is a judge of the Supreme Administrative Court and an ad hoc judge of the European Court of Human Rights.

373 Kühn, Zdeněk. *The Judiciary in Central and Eastern Europe: Mechanical Jurisprudence in Transformation?* Leiden: Martinus Nijhoff Publishers, 2011, xvii.

374 After all, there are still many great lawyers among those who practiced law prior to the Velvet revolution.

375 Along with the justices of the constitutional courts, many of which (in contrast to the judges of ordinary courts) did not spend the entirety of their careers in the judiciary.

Court, and the Supreme Administrative Court) employ many young law school alumni as law clerks or analysts. Although the influence of law clerks varies in accordance with the judges for whom they work, they certainly play an important role in the courts' decision-making process while bringing new ideas and perspectives. These young lawyers are often employed within one year after graduation, which means that the first results of any progress in the quality of legal education should start to be seen almost immediately.

11.2 Human Rights Education in International Law

According to Article 55 (c) of the United Nations Charter, the United Nations shall promote '*universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion*'. Article 56 of the United Nations Charter, then, stipulates that '*all Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55*'. It is true that it is still debated whether these provisions alone can create actual legal obligations for the Member States, especially considering the provisions' lack of specificity.[376] Nevertheless, given the number of subsequent treaties reinforcing this commitment[377] and numerous 'soft-law' instruments specifying states' obligations,[378] a strong argument can be made that current international law

376 Riedel, Eibe H., and Jan-Michael Arend. Article 55(c). In *The Charter of the United Nations: A Commentary. Vol. II*, 3rd ed., edited by Bruno Simma et al. Oxford: Oxford UP, 2012, p. 1573.

377 For example, UN General Assembly. *International Convention on the Elimination of All Forms of Racial Discrimination*. 7 Mar. 1966. U.N. Treaty Series, Vol. 660, p. 195, preamble; UN General Assembly. *International Covenant on Economic, Social and Cultural Rights*. 16 Dec. 1966. U.N. Treaty Series, Vol. 993, p. 3, preamble; UN General Assembly. *International Covenant on Civil and Political Rights*. 16 Dec. 1966. U.N. Treaty Series, Vol. 999, p. 171, preamble.

378 For example, UN General Assembly. *Universal Declaration of Human Rights*. 10 Dec. 1948.

does impose a legal duty on states to promote respect for, and observance of, human rights.[379]

It is indeed a more difficult task, and one that would go beyond the purpose of this chapter, to clarify what is the exact scope of the aforementioned obligation. Suffice it to say that one of the elements of the general obligation to promote human rights is human rights education.[380] As the Preamble to the Universal Declaration of Human Rights stipulates, '*every individual and every organ of society (…) shall strive by teaching and education to promote respect for these rights and freedoms*'. The Vienna Declaration and Programme of Action declares that '*States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms*'.[381] Pursuant to the suggestions made by the World Conference on Human

379 In its advisory opinion on South West Africa (Namibia), the International Court of Justice argued that '*[u]nder the Charter of the United Nations, the former Mandatory had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for al1 without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter*'. International Court of Justice. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970). Advisory Opinion of 21 June 1971*. ICJ Reports, 1971, p. 57, para. 131. According to Malcolm Shaw, '*[i]t may be that this provision can only be understood in the light of the special, international status of that territory, but in the light of extensive practice since the 1940s in the general area of non-discrimination and human rights, the broader interpretation is to be preferred*'. Shaw, Malcolm N. *International Law*, 6th ed. Cambridge and New York, NY: Cambridge UP, 2008, pp. 277–278. Schwelb further notes that '*[w]hen the Court finds that South Africa's policy constitutes a flagrant violation of the purposes and principles of the Charter, it clearly does not intend to convey the idea that only Article 1 (3) has been violated. This follows from the fact that the Court refers to the pledge of Member States which is contained in Chapter IX (article 56) of the Charter. What is meant is a violation of the relevant provisions of the Charter, i.e., its human rights clauses, as a whole.*' Schwelb, Egon. The International Court of Justice and the Human Rights Clauses of the Charter. *The American Journal of International Law,* Vol. 66, No. 2, 1972, pp. 337, 349. See also UN Human Rights Committee. *Communication No. 1507/2006, Panagiotis A. Sechremelis et al. v. Greece: Individual opinion by Committee members Mr. Lazhari Bouzid, Mr. Rajsoomer Lallah and Mr. Fabian Salvioli concerning merits (dissenting)*.2010, para. 15.

380 MacNaughton, Gillian. Human Rights Education for All: A Proposal for the Post-2015 Development Agenda. *Washington International Law Journal,* Vol. 24, No. 3, 2015, pp. 537 and 542.

381 UN World Conference on Human Rights. *Vienna Declaration and Programme of Action.* 12 July 1993, art. 33.

Rights, the United Nations General Assembly proclaimed the ten-year period beginning on 1 January 1995 the United Nations Decade for Human Rights Education. This was followed by proclaiming the World Programme for Human Rights Education to be an initiative created to advance the implementation of human rights education programmes in all sectors of society.[382] The importance of human rights education was further emphasized by the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, according to which '*the State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme*'.[383] Similarly, the United Nations Declaration on Human Rights Education and Training[384] stipulates that human rights education and training is essential for the promotion of universal respect for all human rights and that everyone has the right to know, seek and receive information about all human rights.[385] While it is true that the texts mentioned above are non-binding instruments, given the widespread endorsement that they received from all regions of the world, they are viewed as a contemporary interpretation of the relevant norms under international law.[386]

382 UN General Assembly. *World Programme for Human Rights Education*. 10 Dec. 2004, Art. 2; UN Human Rights Council. *World Programme for Human Rights Education: adoption of the plan of action for the third phase*. 25 Sep. 2014.

383 UN General Assembly. *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. 9 Dec. 1998, Art. 15.

384 UN General Assembly. *United Nations Declaration on Human Rights Education and Training*. 19 Dec. 2011, annex, Art. 1.

385 Note that the Declaration '*not only represents a codification of a number of [human rights education] provisions found within existing international human rights instruments, but also expressly reaffirms in its preamble the importance of those instruments with which states are duty-bound to comply, thus emphasizing the legal obligations which Member States are already under*' (citation omitted). Struthers, Alison E. C. Human rights education: educating about, through and for human rights. *The International Journal of Human Rights,* Vol. 19, Issue 1, 2015, pp. 53–55.

386 See e.g. UN Committee on Economic, Social and Cultural Rights. *Implementation of the International Covenant on Economic, Social and Cultural Rights. General Comment No. 13: The right to education*. 8 Dec. 1999, para. 5.

The obligation to provide human rights education also ensues from the more general right to education.[387] According to Article 26(2) of the UDHR, '*[e]ducation shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms*.' Similarly, Article 13(1) of the ICESCR establishes that '*[t]he States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms*.' The aims and objectives of education, as set out in Article 13(1) of the Covenant, represent an important part of the right to education and the Human Rights Committee inquires in its state reports into schools curricula with a view to assessing the extent to which they are directed towards those ends.[388] Indeed, the Committee interprets Article 13(1) of the Covenant as requiring a human rights education.[389] The emphasis on human rights education is obvious also from other treaties that guarantee the right to education.[390]

387 Baxi, Upendra. Human Rights Education: The promise of the Third Millennium? In *Human rights education for the twenty-first century,* edited by George J. Adreopoulos, and Richard Pierre Claude. Philadelphia, PA: University of Pennsylvania Press, 1997, p. 144; Du Preez, Petro. The Human Right to Education, the Ethical Responsibility of Curriculum, and the Irony in 'Safe Spaces'. In *Safe Spaces: Human Rights Education in Diverse Contexts,* edited by Cornelia Roux. Rotterdam: Sense Publishers, 2012, p. 55.

388 Saul, Ben, David Kinley, and Jacqueline Mowbray. *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*. Oxford: Oxford UP, 2014, p. 1095.

389 Ibid. See also UN Committee on Economic, Social and Cultural Rights. *Guidelines on Treaty-Specific Documents to be submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights ('Guidelines on Treaty-Specific Documents')*. 24 Mar. 2009, para. 58. In 2002, both the Czech Republic and Slovakia were encouraged by the Committee to provide human rights education in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among State officials and the judiciary. UN Committee on Economic, Social and Cultural Rights. *Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights: Czech Republic*. 5 June 2002, para. 45; UN Committee on Economic, Social and Cultural Rights. *Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights: Slovakia*. 19 Dec. 2002, para. 34.

390 See e.g. UN General Assembly. *Convention of the Rights of the Child*. 20 Nov. 1989. U.N. Treaty Series, Vol. 1577, art. 28; Organization of African Unity. *The African Charter on the Rights and Welfare of the Child*. 11 July 1990, art. 11; Organization of American States. *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador')*. 17 Nov. 1988, art. 13, para. 2.

Finally, the obligation to educate regarding human rights can also be understood as a logical consequence of the adoption of each and every international human rights treaty. If the human rights protection is to be truly effective, every member of society must be aware of the rights to which he or she is entitled as well as of the corresponding duties he or she has to others. At the same time, people ought to be well informed about the mechanisms at their disposal to protect their rights.[391] The ultimate goal is to build a culture in which each member of society is active in protecting his or her own rights and where the violations of those rights are, as a rule, recognized and redressed. This is not an easy task, of course, especially for the post-communist countries in which legal awareness has been significantly weakened by decades of blatant and purposeful abuse of the law. Creating a culture of human rights can only be achieved by a long-term and systematic effort of governments, non-governmental organizations, professional associations, and individuals.

11.3 Human Rights Education at Primary and Secondary Schools

Although this chapter deals with international human rights in legal education within the Czech Republic and Slovakia, it is useful in order to put the matter into a broader context to first provide some basic information about human rights education in general. After all, both primary and secondary education might influence students' choices of occupation or their specialization within the occupation. A law student influenced by an early

391 '*Human rights can only be achieved through an informed and continued demand by people for their protection (…) Human rights education constitutes an essential contribution to the long-term prevention of human rights abuses and represents an important investment in the endeavour to achieve a just society in which all human rights of all persons are valued and respected.*' The Office of the High Commissioner for Human Rights. *Human rights education and training.* 2016, http://www.ohchr.org/EN/Issues/Education/Training/Pages/HREducationTrainingIndex.aspx. See also Diakité, M. Arthur. The Importance of an Education in Human Rights. In *Human Rights Law: From Dissemination to Application. Essays in Honour of Göran Melande,* edited by Jonas Grimheden, and Rolf Ring. Boston, MA and Leiden: Martinus Nijhoff Publishers, 2006, p. 25. Mutatis Mutandis see Vöneky, Silja. Implementation and Enforcement of International Humanitarian Law. In *The Handbook of International Humanitarian Law,* 3rd ed., edited by Dieter Fleck. Oxford: Oxford UP, 2013, pp. 698–699.

human rights education may focus his or her attention upon non-mandatory courses dealing with human rights issues or look for an internship at a non-governmental human rights organization.

Being still quite young democracies, the Czech Republic and Slovakia have only recently begun their long journey towards a society educated in human rights. Although the first few steps have been taken, the learning process requires time. Indeed, one of the concerns repeatedly expressed by the Human Rights Committee was an absence of a programme to promote knowledge of human rights (in the case of the Czech Republic)[392] and a perceived lack of knowledge among the lawyers and the citizens about their rights guaranteed by certain human rights treaties (in relation to Slovakia).[393]

In 2005, Slovakia adopted the National Plan for Human Rights Education for the years 2005–2014. A study after the conclusion of the Plan's period showed that in the past ten years the human rights awareness of students of primary and secondary schools had actually decreased.[394] This fact is worrying, especially considering that according to a recent survey Slovakia (and the Czech Republic as well) is among the least tolerant countries in the European Union.[395] A brief look at educational programmes for

392 UN Human Rights Committee. *Consideration of reports submitted by States parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee: Czech Republic*. 9 Aug. 2007, para. 19.

393 UN Human Rights Committee. *Consideration of reports submitted by States parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee: Slovakia*. 29 Mar. 2011, para. 6 and 8.

394 Ministry of Education, Science, Research and Sport. *Analýza súčasného stavu výchovy a vzdelávania k ľudským právam v regionálnom školstve*. 2015, https://www.minedu.sk/data/files/5129_analyza-lp.pdf.

395 European Commission. *Discrimination in the EU in 2015*. 2015, http://www.equineteurope.org/IMG/pdf/ebs_437_en.pdf. This corresponds with the results of the 2016 general election in which the most voted party among the first-time voters was 'Ľudová strana Naše Slovensko' – a political party that describes the Romani people as 'parasites' and promises to protect Slovaks against 'Romani terror'.

primary[396] and secondary[397] education shows there to be no specific number of hours devoted to human rights education. Human rights are usually taught as a part of civics – although it may be incorporated into other subjects as well – and, with less than one hour per week devoted to that whole subject,[398] it scarcely can be expected that the human rights awareness among students would begin to grow.

The Czech Republic is not only criticized for its absence of a programme to promote knowledge of human rights, but it also lacks a comprehensive study on human rights awareness among students. Given the similarity of the Czech and Slovak educational programmes, though, it is reasonable to expect that the level of knowledge among Czech students will not differ significantly from that among their Slovak counterparts.

On the bright side, a few Czech and Slovak primary and secondary schools offer subjects devoted to human rights beyond what the educational programmes require. In recent years, there also has been a significant rise in the number of publications related to human rights teaching.[399] Nevertheless, according to Slovak teachers, the quality of books related to human rights has declined.[400] Mention also should be made of various extracurricular activities organized by Amnesty International, Člověk v tísni (a Czech non-governmental organization), Iuventa (a Slovak state institu-

396 National Institute for Education. Štátny vzdelávací program pre 1. stupeň základnej školy v Slovenskej republike. 2015, http://www.statpedu.sk/sites/default/files/dokumenty/statny-vzdelavaci-program/isced1_spu_uprava.pdf; National Institute for Education. Štátny vzdelávací program pre 2. stupeň základnej školy v Slovenskej republike. 2015, http://www.statpedu.sk/sites/default/files/dokumenty/statny-vzdelavaci-program/isced2_spu_uprava.pdf; Ministry of Education, Science, Research and Sport. *Rámcový učebný plan pre ZŠ s vyučovacím jazykom slovenským*. 2015, https://www.minedu.sk/data/att/7497.pdf.

397 Ministry of Education, Science, Research and Sport. Štátny vzdelávací program pre gymnáziá. 2015, https://www.minedu.sk/data/att/7900.pdf; Ministry of Education, Science, Research and Sport. *Rámcový učebný plán pre gymnáziá s vyučovacím jazykom slovenským,* 2015, https://www.minedu.sk/data/att/7899.pdf.

398 Civics is taught 1 hour per week for four years (out of nine) at primary schools and for three years (out of four) at secondary schools.

399 For the books published since 2005, see Ministry of Education, Science, Research and Sport. *Analýza súčasného stavu výchovy a vzdelávania k ľudským právam v regionálnom školstve*, *annex 9*. 2015, https://www.minedu.sk/data/files/5138_p9_publikacie.pdf.

400 Ministry of Education, Science, Research and Sport. *Analýza súčasného stavu výchovy a vzdelávania k ľudským právam v regionálnom školstve*. 2015, https://www.minedu.sk/data/files/5129_analyza-lp.pdf.

tion), and others. For example, for many years, Iuventa has been helping to organize the Human Right Olympics, a nationwide competition among secondary education students. According to the official website, 4,500 students from more than 300 schools participate in the competition every year. A similar competition with the same name takes place in the Czech Republic, albeit with a weaker tradition and slightly fewer participants.[401]

Finally, in 2016, the finals of the inaugural year of the International Secondary School Moot Court took place in Olomouc. The competition, co-organized by Palacký University and a non-governmental organization, The European Network for Clinical Legal Education, simulates a dispute before the European Court of Human Rights and is targeted at Czech and Slovak secondary education students who are mentored by law school students.[402] The subject matter of the 2016 dispute involved refugee law.

Lately, Czech and Slovak law faculties have become more active in educating primary and secondary school students. Some of them organize street law clinics and similar projects during which law students visit schools and give lectures about human rights and related topics. Moreover, Palacký University hosts a series of so-called MOOCs (massive open online courses), including a MOOC on human rights.[403]

The aforementioned study carried out in Slovakia at the end of the National Plan for Human Rights Education showed that the number of students using the internet as a primary source of information about human rights is growing rapidly. The role of schools should therefore be to cultivate the students' interest in human rights issues and especially to teach them how to work with the information they receive. Otherwise, the almost unlimited access to information can be a double-edged sword because it might not always be easy to separate interesting and thought-provoking information from the information that is dubious or plainly false.

401 According to the organizers, 2,658 students participated in the first round of the competition in 2015.

402 In 2016, law schools students from Olomouc, Praha and Košice took part in the competition. The competition can be viewed as a successor to the Street Law Moot Court in which the Faculty of Law in Olomouc was the only law school to participate.

403 According to the organizers, 872 people had enrolled in the human rights MOOC and 211 of them had successfully completed the course (as of 11 Sep. 2016).

A final note regarding the human rights education of the general public: Given the key importance of courts' role in human rights protection, a special significance should be attached to the case law of high courts and particularly to the decisions of constitutional courts. Courts, on their part, should therefore use modern communication technologies to make their decisions easily accessible. While the majority of Czech and Slovak high courts are still quite passive in this regard, the Czech Constitutional Court uses its official Facebook and Twitter accounts to inform about its latest decisions, usually also offering an accompanying explanatory text.[404] It is nevertheless up to the judge rapporteur whether or not a particular decision will be make public also through social networks. Consequently, the publicized decisions offer only a fragmented view of the Court's case law. That is even more so given the fact that an overwhelming percentage of the constitutional complaints are rejected as manifestly ill-founded. These decisions are rarely publicized. In 2016, the Czech Supreme Court created a Twitter account as well, although it has been used rather sporadically. The Supreme Court also releases a quarterly newsletter informing about its own case law as well as regarding the case law of foreign supreme courts, the Court of Justice of the European Union, and the European Court of Human Rights.

11.4 Legal Education in the Czech Republic and Slovakia

If protection of human rights is to be truly effective, the education of present and future lawyers is of utmost importance. As former President of the American Bar Association Ross L. Malone once wrote: *'Lawyers are the handmaidens of justice (…) [they] are essential to the implementation of the rule of law, if not to its very existence (…) Tyrants throughout history have recognized in lawyers a constant threat to their tyranny.'*[405]

The importance of human rights education for law school students also stems from the fact that many individuals with law degrees become active in politics and may be among nations' future leaders. Although the number

404 The Constitutional Court also releases a yearbook (both in Czech and in English) which provides a summary of the most important events related to the Court.

405 Malone, Ross L. The American Lawyer's Role in Promoting the Rule of Law. *Marquette Law Review*, Vol. 43, Issue 1; 1959, p. 43.

of lawyers in the Czech and Slovak parliaments is not as high as, for example, in the United States, their presence in the legislative bodies is still noteworthy. As of 2016, approximately every tenth member of the Czech Parliament and every seventh member of the Slovak Parliament is a law school graduate. Moreover, there are two law school graduates out of 13 Czech regional governors and one out of eight in Slovakia. Both the Czech and Slovak prime ministers are law school graduates. Bearing that in mind, '*legal education allows us to glimpse the future of the society*'.[406]

The communist regime deeply affected both Czech and Slovak education systems. In 2000, Aviezer Tucker commented (in relation to Czech education, though his opinions apply equally for Slovakia):

'*The purges following the communist revolution in 1948 and the Soviet invasion in 1968 left the Czech education system in worse condition than Czech industry; in addition to being outdated and inefficient, it was morally corrupt, staffed by incompetents, and authoritarian. The Czech Republic, unlike Hungary, for example, was closed to the outside world, excluding foreign publications and preventing academic contacts with colleagues. Consequently, even those academics, usually in the lower rungs of the academic hierarchy, who truly attempted to do their job, found it very difficult to be informed about recent developments in their fields. Honest, non-ideological education in the law, humanities, and the social sciences was forced to become historical, precluding analytical, problem-solving approaches*.'[407]

Tucker then went on to criticize the process of modernizing Czech higher education, which he considered stalled by the absence of updated research libraries, the limited linguistic skills of academics, and the reluctance and inability of people who obtained academic positions under the old regime on the basis of their political loyalties to adapt.

The discussion about the post-1989 legal education was resumed in 2005 when Michal Bobek[408] published a series of articles criticizing the quality

406 Merryman, John Henry. *Stanford Legal Essays*. Stanford, CA: Stanford UP, 1975, p. 335.

407 Tucker, Aviezer. Reproducing Incompetence: The Constitution of Czech Higher Education. *East European Constitutional Review,* No. 94, 2000, pp. 94–95.

408 Michal Bobek became an Advocate General on the Court of Justice of the European Union in October 2015.

of Czech law faculties.[409] He described Czech legal education – apart from being corrupt[410] – as dogmatic, positivistic, and formalistic. He stressed that even as the law school graduates lack practical skills training, they also do not develop a sufficient theoretical foundation. Bobek considered teaching at law faculties to be overly formal and fact-oriented and argued that skills and values should instead be at the heart of a legal education. Bobek also proposed major structural changes which he basically considered condiciones sine quibus non of any significant development in Czech legal education, including an increase in the number of law schools (leading to a smaller average student body size) and especially the introduction of school fees for public universities.

Roughly ten years later, the number of Czech law schools remains the same and public education in both the Czech Republic and Slovakia continues to be free of charge. Certain progress has nevertheless been made.[411]

Legal education in the Czech Republic and Slovakia is provided predominantly by public schools. To practice law, both countries require a master's degree (in 'Law and Jurisprudence' in the Czech Republic[412] and

409 Bobek, Michal. O (ne)reformovatelnosti studia práv v Čechách. *Právní rozhledy*, No. 10, 2005, p. 365; Bobek, Michal. O (ne)reformovatelnosti studia práv v Čechách. *Právní rozhledy*, No. 12, 2005, p. 446; Bobek, Michal. O (ne)reformovatelnosti studia práv v Čechách. *Právní rozhledy*, No. 14, 2005, p. 523; Bobek, Michal. O (ne)reformovatelnosti studia práv v Čechách. *Právní rozhledy*, No. 16, 2005, p. 601.

410 There have been two well-known corruption scandals concerning Czech law schools. The first emerged in 1999 after it was revealed that members of the Faculty of Law of the Charles University were selling the entrance exams (with correct answers if one paid a little extra). The second scandal arose in 2009 at the Faculty of Law of the University of West Bohemia after it was discovered that the faculty was handing out fast-track law degrees after only a few months of study and that many of the theses written and accepted at the Faculty had been plagiarized.

411 Although the number of Czech law faculties remains the same, the recent trend both in the Czech Republic and Slovakia has been to reduce the numbers of enrolled students (which corresponds to the demographic evolution and the budget cuts). Another positive evolution, apart from what is discussed further below in the text, can be seen in the system of entrance exams. Bobek had pointed out that the exams used by law schools served to identify those students with the best memories rather than students capable of thinking critically. Since then, the law schools have in large part begun to use exams that along with testing their general knowledge also evaluate the students' verbal, numerical and critical reasoning skills.

412 There are other law master's programmes offered in the Czech Republic, but these do not suffice to practice law.

in 'Law' in Slovakia[413]). In Slovakia, there are four public and two private law schools with corresponding accreditation. In the Czech Republic, meanwhile, with almost twice the population of Slovakia and the same number of public law schools, no private law school has the accreditation for a Law and Jurisprudence master's study programme.[414]

The absence in the Czech Republic of private law schools with accredited Law and Jurisprudence master's study programmes might be surprising, especially having in mind the high number of applicants and low unemployment rate among law school graduates.[415] On the other hand, running a law school in the Czech Republic may not be without difficulties, and both the Faculty of Law of Palacký University in Olomouc and the Faculty of Law of the University of West Bohemia in Pilsen have had their share of trouble in the past with maintaining the accreditation (one of the main deficiencies criticized by the Accreditation Commission being insufficient academic staff). The Slovak experience has most probably not helped to promote the idea of private law schools, either. One of the Slovak private law schools, the Faculty of Law of Pan-European University in Bratislava, almost lost its accreditation in 2015, and the other, the Janko Jesensky Faculty of Law of Danubius University in Sládkovičovo,[416] regularly takes last place in law school rankings[417] and its reputation was damaged by news reports pointing out its benevolence in handing out law degrees, especially to Czech politicians.[418] As a result, it is often argued that the number of fac-

413 A student in Slovakia first needs to complete a three-year bachelor's degree programme and only then can he or she continue with a two-year master's programme. In the Czech Republic, there is one five-year Master's programme which a student attends without previously having obtained a bachelor's degree.

414 Foreign private law schools may operate in the Czech Republic through their branches. The value of a degree from such schools is dubious, however, and the Czech Bar Association does not recognize it for the purposes of the admission to the Bar.

415 In 2014, the unemployment rate for law schools graduates (with less than two years since their graduation) was 3.9%. Masaryk University. *Uplatnění absolventů Masarykovy univerzity 2013–2014 v praxi*. 2016, http://is.muni.cz/do/rect/metodika/rozvoj/kvalita/ver/Absolventi_2013-2014_v_praxi_2015_zprava_final_web.pdf.

416 Sládkovičovo is a town with a population of less than 6,000.

417 Academic Ranking and Rating Agency. *Hodnotenie fakúlt vysokých škôl 2015*. 2015, http://www.arra.sk/sites/arra.sk/files/file/ARRA_Sprava_2015.pdf.

418 See e.g. IDNES. *Hejtman Hašek získal titul z kontroverzní slovenské fakulty*. 2011, http://zpravy.idnes.cz/hasek-ziskal-titul-ze-slovenske-fakulty-fd7-/domaci.aspx?c=A110309_083602_domaci_jw.

ulties in Slovakia is actually unnecessarily high and that the accreditation to some schools should not have been given in the first place.[419]

Bobek's criticism of teaching and evaluation methods remains relevant for Czech and Slovak law schools. Even though there is a tendency to change the way law is taught,[420] the transformation is still in its early stages and if a student does not aspire to obtain the best grades possible, then it is usually sufficient for him or her to memorize the required material as opposed to actually learning and understanding it.

Nevertheless, it should be noted that in the period since Bobek published his aforementioned criticism in 2005 certain progress has been made. An active student may today discover that there are various opportunities to use the instructional time effectively. There are courses or extracurricular activities led by dedicated teachers who will force students to think about law, teach them legal skills, and show that, indeed, law is not merely a system of enforceable rules but a living organism and that rote memorization of it is not sufficient. And while future employers are not that interested in the students' grades, they greatly value those who endeavoured to do something in addition to their regular studying duties. These students often have the upper hand on the labour market, and that should be a major motivating element even for those students who are not exactly enthusiasts of the law.

Hence, as it stands, two students of the same programme at the same law school may obtain very different legal educations. Unsurprisingly, the same applies for education in the field of human rights.

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419 That was the opinion already in 2008 of the General Secretary of the Slovak Bar Association as well as of the deans of the Faculty of Law of Comenius University in Bratislava and the Faculty of Law of Pavel Jozef Šafárik University in Košice. Noviny. sk. *Absolventov práva začína byť podľa odborníkov privela*. 2008, http://www.noviny.sk/slovensko/40259-absolventov-prava-zacina-byt-podla-odbornikov-privela-. In 2015, a similar concern was raised by the Prime Minister Robert Fico. The Faculty of Law at Comenius University in Bratislava. *Premiér diskutoval s dekanmi právnických fakúlt*. 2015, http://www.flaw.uniba.sk/detail-aktuality/back_to_page/pravnicka-fakulta-uk/article/premier-diskutoval-s-dekanmi-pravnickych-fakult/.

420 This tendency is apparent especially from the growing number of courses that focus on legal skills as well as from the gradual change of the evaluation methods, because it is not uncommon today that an exam has both theoretical and practical parts.

11.5 International Human Rights at Czech and Slovak Law Schools[421]

After the Velvet Revolution, the teaching of human rights at Czechoslovakia's law schools had to start practically from scratch. The problem was not only with the amount of time devoted to teaching of human rights during the communist regime[422] but especially with the perception of human rights by socialist states. While the 'Western' world considers the individual to be at the centre of human rights, socialist states emphasized the role of the state[423] and used human rights to promote its importance. Human dignity and freedom, which are cornerstones of the present Czech and Slovak constitutional orders[424], were of little significance in socialist constitutions.[425]

421 The information about the curricula has been obtained from the schools' official websites and information systems, or delivered by the schools upon our request. The quotes are used to cite the syllabuses of the described courses. The syllabuses are available at official websites: for the Faculty of Law of Masaryk University in Brno, see is.muni.cz; for the Faculty of Law of Palacký University in Olomouc, see portal.upol.cz; for the Faculty of Law of the University of West Bohemia in Plzeň, see portal.zcu.cz; for the Faculty of Law of the Charles University in Prague, see is.cuni.cz; for the Faculty of Law of Pan-European University in Bratislava, see is.paneurouni.com; for the Faculty of Law of Pavel Jozef Šafárik University in Košice, see https://ais2.upjs.sk/ais/servlets/WebUIServlet?appClassName=ais.gui.vs.st.VSST178App & kodAplikacie=VSST178; for the Faculty of Law of the University of Matej Bel in Banská Bystrica, see http://www.prf.umb.sk/studium/sprievodca-studiom.html; for the Faculty of Law of Trnava University, see https://student.truni.sk/maisportal/studijneProgramy.mais; for the Faculty of Law at Comenius University in Bratislava, see https://www.flaw.uniba.sk/studium/student-bc-mgr/studijne-plany-informacne-listy/ and https://www.flaw.uniba.sk/fileadmin/praf/Studium/student_bc_mgr/stud._plany__inf._listy/2015_2016/IL_MPRVX.pdf; for the Janko Jesenský Faculty of Law in Sládkovičovo, see http://fpjj.vsdanubius.sk/Studenti/Harmonogram-ucebneho-planu.

422 Human rights were not ignored by Czechoslovak law schools and the constitutional law textbooks usually did have a chapter about human rights. Compared to the present day, the main difference, apart from a completely different perception of human rights, as discussed further in the text, was the absence of courses devoted specifically to human rights.

423 Shaw, *International Law*, p. 268.

424 Baroš, Jiří. Čl 1 (Svoboda a rovnost v důstojnosti a v právech. Základní práva a svobody obecně). In *Listina základních práv a svobod. Komentář,* by Eliška Wagnerová et al. Prague: Wolters Kluwer, 2012, p. 60.

425 Wagnerová, *Základní práva*, p. 346.

Hand in hand with the described concept of human rights went the interpretation of the position of human rights within international law. As Shaw notes:

'Human rights were not directly regulated by international law and individuals were not subjects of international law. Indeed, human rights were implemented by the state and matters basically and crucially within the domestic affairs of the state. As Tunkin emphasised, "conventions on human rights do not grant rights directly to individuals". Having stressed the central function of the state, the point was also made that the context of the international human rights obligations themselves was defined solely by the state in the light of the socio-economic advancement of that state. Accordingly, the nature and context of those rights would vary from state to state, depending upon the social system of the state in question. It was the particular socio-economic system of a state that would determine the concrete expression of an international human rights provision.' [426]

The international human rights law doctrine in Czechoslovakia was not constant, though. Its evolution corresponded to political changes in the Eastern bloc and the growing power of the Soviet Union in the post-war world.[427] By the end of the 1960s and early 1970s, certain signs of the western approach towards international human rights law could have been identified in Czechoslovak's international law textbooks. These signs quickly disappeared in the years that followed, however.[428]

It follows that the academic staff at law schools in the post-revolutionary Czechoslovakia had only limited experience with the human rights law as viewed and interpreted by liberal democratic countries. At the same time, there were basically no up-to-date human rights law publications in the Czech or Slovak languages. Foreign books were of little use because of the low level of students' knowledge of foreign languages (with the exception of Russian). These factors limited the possibilities for real progress in human rights education during the 1990s.

In light of the failed modernization of post-communist higher education as described above,[429] however, human rights law continued to play a rather

426 Shaw, *International Law*, pp. 268–269.
427 For more detail, see Molek, *Mezinárodní právo veřejné*, pp. 364–400.
428 Ibid., p. 394.
429 See Tucker, *Reproducing Incompetence*, pp. 94–99.

marginal role in Czech and Slovak legal education even at the beginning of the decade that followed. Although the basics of human rights were taught in both constitutional law and international law courses, human rights issues were mainly left to philosophers, politicians, non-profit organizations, and legal practitioners (especially constitutional courts) to deal with. Legal academics usually did not pay enough attention to human rights law.[430]

Real progress can therefore be seen only towards the end of the first decade of the 21st century as more human rights-related publications appeared,[431] the faculties recruited young lecturers and lecturers with experience from abroad, and the doctrine of human rights began to take shape thanks to, among other factors, the case law of constitutional courts and the European Court of Human Rights. Consequently, some schools have created compulsory courses devoted specifically to human rights, while others have expanded their offer of non-mandatory human rights courses and other activities such as legal clinics or moot courts.

While human rights law is today a firm part of the curriculum at every Czech and Slovak law school, the schools differ significantly in the number and variety of human rights courses offered. Nevertheless, the most common approach (a notable exception being the Faculty of Law in Olomouc) still is to introduce human rights to students through the constitutional law and public international law courses which are usually compulsory and are taught mainly during the first two years. These courses serve to explain the concept of human rights and their position in the national legal order and international law, respectively. More in-depth study of human rights is then provided by specialized courses. These often are non-mandatory, though, and it is not unusual for there to be no other compulsory course dedicated to human rights. That means a student can successfully complete

430 Molek, Pavel. *Právo na spravedlivý proces.* Prague: Wolters Kluwer, 2012, p. 13.

431 It should be mentioned, though, that already in 1990 Jiří Malenovský wrote the first edition of his book 'Mezinárodní právo veřejné' ('Public international law'). The book, in its latter editions, is still the leading international law textbook in the Czech Republic. *See* Malenovský, Jiří. *Mezinárodní právo veřejné – Obecná část a poměr k jiným právním systémům,* 6th ed. Brno: Doplněk, 2014.

the school with only a very limited understanding of human rights. There are only three law schools whose curricula include compulsory courses oriented to human rights.

At the Faculty of Law of Masaryk University in Brno, a compulsory course 'Human Rights and Judiciary' is taught. The course is offered typically to the fourth year students and requires the student to be able to '*solve – at the basic level – actual human rights cases, understand the procedural and material aspects of human rights protection at both international and domestic levels and write reasoned analysis of a human rights issue as well as a petition to the court*'. The course is concluded by an open book exam which consists of writing a constitutional complaint. It offers a direct contact with practice given the fact that among the lecturers there are two Justices of the Constitutional Court, two Supreme Administrative Court judges, and various law clerks and attorneys.

The Faculty of Law of Palacký University in Olomouc offers the first-year and the second-year students a compulsory course, entitled 'Fundamental Rights', which aims to provide '*knowledge and skills concerning the basic relations between the state and the individual, the international and national enshrinement and the fundamental human rights institutes*'. The course is taught by lecturers with experience from the Czech Constitutional Court as well as the European Court of Human Rights. Its final exam consists, inter alia, of a practical case that the students try to resolve.

At the Faculty of Law of Pan-European University in Bratislava, a compulsory course entitled 'International and European Protection of Human Rights' is offered in the first year of the graduate master's programme. After completing the course, students should '*have knowledge on universal and regional systems of the protection of human rights, with particular focus on the institutional system of the United Nations, the European Union and the Council of Europe, and be able to analyse basic international documents and file a complaint to the European Court of Human Rights*'. The lecturers have experience working in the human rights field, including various Council of Europe committees and commissions.

Turning to non-mandatory courses, the most active Czech law faculty in the field of human rights seems to be the Faculty of Law in Brno, which, in addition to its compulsory courses, offers non-mandatory courses providing a more in-depth theoretical background either of human rights in general

('The Interpretation of Human Rights', 'Human Rights and Documentary Film', and an English-taught course 'Human Rights in Europe') or of specific rights guaranteed by the Charter of Fundamental Rights and Freedoms and international treaties ('Human Rights in Criminal Proceedings', 'Religion and Faith in a Democratic State', and 'Asylum and Migration Law'). Various courses on human rights are taught or organized by Justices of the Constitutional Court and the Supreme Administrative Court. These courses are mostly practice-oriented and the lecturers include lawyers from human rights non-governmental organizations. As part of the courses, students visit the Constitutional Court, the Office of the Public Defender of Rights, and various non-governmental organizations. While some of these courses can be viewed as introductory, others are more challenging and it is expected that the students acquire the basic skills of practical legal work and learn how to write a legal analysis or a petition to a court. The faculty also co-organizes an annual summer school on human rights. Recently, the Brno faculty has begun to organize legal clinics providing the students with an opportunity to apply their skills and knowledge on real cases (these include legal clinics regarding medical law, international legal protection of children, refugee law, anti-discrimination law, and others). The students in Brno can also take advantage of the fact that especially the Constitutional Court and the Supreme Administrative Court are recently very open to offer internships and are situated in Brno.

The Law Faculty in Olomouc offers a series of non-mandatory courses which build on the compulsory course 'Fundamental Rights'. These courses include a course 'Current Issues in Human Rights' or an English-taught course 'International Human Rights Law' (which apart from the substantive law focuses on the position of human rights within international law as well as on procedural issues of human rights protection). Another course, called 'Student Laboratory of Human Rights', provides students, aided by lawyers from various non-governmental organizations, with an opportunity for checking and practicing acquired knowledge and skills by endeavouring to resolve current human rights issues arising in the Czech Republic. The Olomouc

faculty can be viewed as a pioneer in Czech clinical legal education.[432] The faculty also organizes legal clinics directed to social rights, discrimination law, refugee law, and medical law, as well as a specialized human rights clinic.

In Prague, deepening of theoretical knowledge is provided by a non-mandatory course, 'Protection of Civil and Human Rights', which focuses on the philosophy and history of human rights as well as on major international human rights documents. A course called 'European Protection of Human Rights' is devoted to the ECHR and the case law of the European Court of Human Rights. The aim of an English-taught course, 'Human Rights Protection in Post-Communist Countries and ECHR Case Law', is to teach the student how to effectively research, evaluate, and interpret case law of the Strasbourg Court. At the end of the course, the students visit a hearing of the European Court of Human Rights and take part in a workshop given by a lawyer of the Court. Further courses are devoted to a specific area (refugee law, anti-discrimination law). Building on a 15-year tradition, the Prague faculty also offers practice-oriented courses in which students apply their skills and knowledge to real cases under the supervision of lawyers from non-governmental organizations or the office of the Public Defender of Rights.

In Pilsen, 'Introduction to Human Rights' is taught both in English and in Czech and, as the course's name suggests, it offers an introductory framework regarding issues of human rights. The position of human rights in the Czech legal system is discussed in the course 'Human Rights and Constitutional Order of the Czech Republic'. Two courses are devoted to the case law of the Constitutional Court and the European Court of Human Rights, respectively. Students may test their knowledge in the practice-oriented course 'Case Study', where they prepare an analysis of a real human rights case. The course is taught in English and includes a series of lectures by visiting lecturers from Manchester Metropolitan University. Similarly to the rest of Czech law schools, the Faculty in Pilsen also organizes a legal clinic, although it is not specifically focused on human rights.

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432 Thus compensating for the fact that Olomouc does not have as many law firms as Prague and as many courts as Brno where the students have the opportunity to acquire practical experience.

In Slovakia, a rather small number of courses are dedicated to human rights at the Faculty of Law of Pavel Jozef Šafárik University in Košice, although the faculty's long-term plan calls for creating a series of non-mandatory human rights courses (starting with the course 'Introduction to the Study of Human Rights', which is offered to first-year students for the bachelor's degree since the 2016/2017 academic year). These courses will complement the compulsory courses 'Constitutional Law' and 'Public International Law' which already deal with human rights issues (including case studies on the ECHR, ICCPR, and ICESCR). At present, the faculty offers a non-mandatory course devoted to children's rights (focusing especially on the Convention on the Rights of the Child) and, similarly to its Czech counterparts, it also organizes various legal clinics. Apart from an asylum clinic, mention should be made of the 'Street Law Clinic', in which the students visit prisons and secondary schools to give lectures about human rights.

The Faculty of Law of the University of Matej Bel in Banská Bystrica offers the non-mandatory course 'International Protection of Human Rights', which focuses primarily on relevant mechanisms within the European Union and the Council of Europe. Human rights are also dealt with in an English-taught course 'Constitutional Law within Judicial Practice', which focuses on the impact of constitutional law in everyday judicial practice. The aim of another English-taught course, 'International Refugee Law', is to provide students with a general overview on asylum and refugee law from the perspective of international law, European Union law, and law of the Slovak Republic. Although the faculty organizes various legal clinics, none of these are focused on the application of human rights instruments.

The Faculty of Law of Trnava University offers a number of courses focused on human rights. The theory of human rights is discussed in the course 'International Protection of Human Rights'. Apart from theoretical knowledge, the course aims to provide the students with practical skills on the preparation of texts of human rights treaties and submissions to international judicial and quasi-judicial authorities in the areas of protecting human rights, monitoring respect for the rights of asylum seekers and refugees, and preparing decisions of international judicial and quasi-judicial

authorities in the area of human rights protection. An English-taught course, 'Jurisdiction of the European Court of Human Rights', deals with case law of the Strasbourg court, especially with regards to its doctrines and methods of interpretation. The case law of the Court is also discussed in a number of courses directed to specific rights areas ('Religious Freedom Cases at the European Court of Human Rights', 'International and European Family Law', 'Legal Aspects of Religious Freedom'). The course 'International Protection of Rights of the Members of Minority Groups' goes beyond the European level of protection and aims to provide a complete picture of the international protection of minorities, including relevant case law of the Permanent Court of International Justice, the United Nations Human Rights Committee, and the Committee on the Elimination of Racial Discrimination. As a part of the course 'Human rights – Field Research and Documentation', the students watch and discuss film documentaries that address various violations of human rights in the world. With respect to legal clinics, the Law Faculty in Trnava offers an opportunity to participate in 'Clinic of Human Rights Protection' and 'International Law Clinic', which are in fact pure internships, as well as in 'Asylum Law Clinic' and 'Law Clinic for Communities'. During the latter, the students visit prisoners and secondary schools students and provide them with the basics of legal awareness (including human rights).

At the Faculty of Law at Comenius University in Bratislava, human rights theory and philosophy is taught in the course 'Constitutional Guarantees of Human Rights'. The course 'Humanitarian and Human Rights Law' and the English-taught course 'International Human Rights Protection' then focus on international aspects of human rights protection. The faculty also offers a course called 'Asylum Law', which provides students with a possibility to attend an asylum law clinic.

While the Faculty of Law of Pan-European University offers a compulsory human rights course ('International and European Protection of Human Rights'), its offer of non-mandatory human rights courses is rather limited. Nevertheless, human rights issues are discussed in the course 'International and European Asylum Law' and the students can also test their knowledge and skills in a human rights clinic.

Finally, the Janko Jesenský Faculty of Law in Sládkovičovo offers three courses that are dedicated to human rights and their protection under international law ('Humanitarian and Human Rights Law in International Law'), the ECHR ('Slovakia and Human Rights in the Case law of the European Court of Human Rights'), and European Union law ('Fundamental Rights of the European Union and Their Protection').

Apart from the standard courses and legal clinics, the students of Czech and Slovak law schools may compete in various international moot courts, such as the European Human Rights Moot Court Competition[433] or the Philip C. Jessup International Law Moot Court Competition.[434] In the Czech Republic, the League of Human Rights[435] organizes a national human rights moot court competition with the finals taking place at the Constitutional Court. The judges of the Supreme Court, the Supreme Administrative Court and the Constitutional Court are usually invited to judge the final rounds. Although participation in a moot court competition – and particularly if it is an international one – certainly enhances one's curriculum vitae, the interest in these competitions among the students is in fact rather low. Schools rarely motivate their students,[436] or the faculty members, to take part in moot courts despite the fact that success in the competition may raise the prestige of the school inasmuch as the media are interested in such events.

Additionally, human rights law is not an isolated area of law and it may be touched upon in other courses as well. In the Czech and Slovak legal systems, all legal provisions must be interpreted in a manner compatible with

433 Particularly successful in this young competition has been the team from Prague, finishing 7th in 2013 (the inaugural year of the competition) and making it to the final 8 again in 2016.

434 While the Jessup primarily focuses on general international law, it usually raises at least one human rights issue. During past years, the Czech Republic and Slovakia were each usually represented by one team in the international rounds of the competition. Their success has been rather moderate, although in 2010, the team from Brno finished 13th in the written round of the competition.

435 This non-profit organization organizes also other competitions and events focused on human rights. One of them is the 'Human rights dissertation', a competition for the best dissertation focused on human rights (the competition is not limited to law students).

436 Recently, at least, participation in a moot court has begun to be awarded ECTS credits, something that just a few years earlier was not the rule.

human rights.[437] Basically, every legal area has been influenced by the decisions of constitutional courts and if one wishes to master a body of law, it is essential to be able to detect and understand all relevant human rights issues that may arise there. Unfortunately, the majority of the courses usually pay only very limited attention to human rights issues, which is probably a result of the artificial fragmentation of law which is a common feature in Czech and Slovak legal education.[438]

As the curricula described above reveal, it is difficult to find a common theme in the way human rights are dealt with at Czech and Slovak law schools. Some schools offer compulsory human rights courses while others deem it sufficient to introduce human rights through the constitutional law or international law courses and leave it to students' discretion whether or not they further attend non-mandatory courses, legal clinics, and so forth.

Even those schools offering a compulsory human rights course do not seem to have the same strategy with regards to human rights education. While the compulsory course 'Fundamental Rights' at Palacký University is targeted to first-years and second-years students, similar courses at Masaryk University and Pan-European University are offered to more advanced students. The point of the 'Fundamental Rights' course is to provide a first introduction to human rights law, raise a certain level of human rights awareness among students and perhaps encourage them to choose more in-depth non-mandatory courses further down the road. To attend a human rights course so early in the curriculum should also lead the students to consider human rights questions in the rest of the courses as well.

By contrast, both Masaryk University and Pan-European University consider it sufficient to introduce human rights only via general constitutional law courses. The students who take an interest in human rights may then attend non-mandatory courses while the rest will study human rights again in their fourth year. One of the advantages of this approach is that the older students should already have a considerable knowledge of law which helps them to work with real human rights cases.

437 See e.g. I. ÚS 823/11, N 44/64 SbNU, 521 (The Constitutional Court of the Czech Republic, 2012), Pl. ÚS 1/2014 (The Constitutional Court of the Slovak Republic, 2014).

438 Bobek, *O (ne)reformovatelnosti studia práv v Čechách*, No. 16, pp. 601–602.

In contrast with Bobek's critique in 2005, the human rights courses offered in the Czech Republic and Slovakia today are mostly practice-oriented and give great emphasis to the case law of both the constitutional courts and the European Court of Human Rights.[439] Lately, many of the schools have also made a considerable effort to provide the students with sufficient possibilities to apply their skills and knowledge through legal clinics, internships, and other projects.

One of the few common characteristics across Czech and Slovak law schools is the emphasis laid upon the ECHR and the corresponding neglect of other human rights treaties and mechanisms. The case law and the proceedings before the European Court of Human Rights is a fixed part of many courses dedicated to human rights law. This might seem logical, because it is the Strasbourg Court that has the most direct influence on the decisions of national courts – among the many human rights treaties ratified by the Czech Republic and Slovakia, it is the ECHR with its corresponding case law that is the most referred to by Czech and Slovak highest courts.[440] On the other hand, the Convention focuses primarily on civil and political rights and does not account for the full catalogue of human rights, including economic, social, and cultural rights. Moreover, even though the case law of the Strasbourg Court serves as key guidance for interpreting the human rights guaranteed by the Convention, other human rights instruments may require different standards of protection. This Eurocentric approach thus leads inevitably to an incomplete picture of international human rights law.

While it is safe to say that certain law schools (especially the faculties of law in Brno, Olomouc or Trnava) are a step ahead in terms of the quantity and variety of their human rights courses, the curricula alone do not tell the whole story. Of equal or even greater importance is the teaching staff. Indeed, without experienced and dedicated lecturers, there is not much difference between attending a course and reading a book at home. It is impossible to compare the respective teaching staffs and make a statement about

439 This has been possible thanks to the improvement in the students' knowledge of English.

440 Šipulová, Katarína, and Jan Petrov. Mezinárodní lidskoprávní smlouvy v judikatuře obecných soudů: Nejvyšší soud a Nejvyšší správní soud. In *Mezinárodní lidskoprávní závazky postkomunistických zemí: případy České republiky a Slovenska,* edited by Ivo Pospíšil, and Vladimír Týč et al. Prague: Leges, 2016, pp. 161–165.

the standing of individual faculties. That would require seeing each and every single one of the lecturers in action multiple times, and still it would be very difficult to evaluate staffs objectively. In general, though, the Czech and Slovak law schools have benefited greatly from the possibilities the students and young lawyers have today to study or work abroad. The majority of young lecturers have had such experiences during the past twenty years, and thus they have provided the schools with what had been so much missing during the communist era. It is not uncommon that faculty members have working experience from the highest national courts or the European Court of Human Rights and other international institutions. Many of the law schools have also managed to attract various justices of the constitutional courts (although not all of them necessarily teach human rights law), thereby providing the students direct contact with the 'real' human rights law as practiced among the highest human rights authorities in the two countries.[441]

As a final point, it is worth noting that legal education does not end at graduation. Lawyers need always to stay in touch with any developments in human rights law, and that is especially the case for those lawyers who work at the highest national courts. The courts are well aware of this fact, and they utilize their analytic departments to closely follow, and inform the judges and clerks concerning, the case law of other courts, including the European Court of Human Rights. An important role in educating lawyers is played by judicial academies. These are judicial educational institutions that organize seminars, workshops or mock trials which are focused primarily on domestic law (including constitutional law and human rights), EU law, and legal skills.[442]

11.6 Conclusion

As indicated in the introduction to this chapter, it can be expected that students' greater familiarity with international human rights treaties along with a general growth in knowledge and awareness about international

441 For example, the Department of Constitutional Law and Political Science of the Faculty of Law of Masaryk University includes three Justices of the Constitutional Court (along with law clerks from the same court) and a judge of the Supreme Administrative Court.

442 For further information, see the official websites of the Judicial Academy of the Slovak Republic (http://www.ja-sr.sk) and the Czech Judicial Academy (http://www.jacz.cz).

HR law would gradually lead to more frequent application of these treaties in the decisions of national courts. An improvement in the quality of legal education should therefore indirectly help the state to comply with its international human rights commitments.

There should be no doubt that in the past 25 years significant progress has been made with respect to human rights education. Although recovery from the impacts of the communist regime has been slow, it can be said that, as of today, students interested in human rights will find that the Czech and Slovak law schools offer all the ingredients necessary to build solid foundations for their future professional careers.

The majority of law schools already offer various human rights courses. These cover both national and international mechanisms of human rights protection, as well as both the theory and practice of human rights. While some schools seem to be only at the beginning of the whole process, all Czech and Slovak law schools offer at least a few courses that are devoted specifically to human rights.

There exist also growing numbers of possibilities for the students to apply and test their skills and knowledge. The emphasis on practical aspects can be seen in the evaluation methods used in many human rights courses: as a part of the final examination, students are typically required to demonstrate their ability to apply the human rights law in concrete, reallife cases by writing a simulated constitutional complaint or judgement. Furthermore, the Czech law faculties have introduced and help co-organize a wide range of activities focused on human rights (such as legal clinics or moot courts), thereby providing hands-on legal experience to their students. Finally, important roles are played by high courts and non-governmental organizations, which increasingly are open to offering various internships for law students. All these opportunities make human rights law appealing for students and enhance the chances that a higher number of them will focus on human rights during their studies.

Although the number and variety of human rights courses is slowly increasing, it is nevertheless important to emphasize that they usually are only of a non-mandatory character. As a result, many of the alumni might have rather limited knowledge of human rights law, particularly inasmuch as the human

rights subject area usually is marginalized in the rest of the courses (with the exception of those on international law and constitutional law). It can be argued that with the growing importance of human rights in national legal orders, a compulsory human rights course ought to be a part of every law school's curriculum. That is especially the case for countries like the Czech Republic and Slovakia which are trying to reverse the effects from years of human rights issues being ignored by national courts. On the other hand, the overall number of compulsory courses should be rather low, thus allowing students to focus on their fields of interests. A compromise could be that human rights will be mainstreamed throughout the courses that primarily focus on other areas of law.

An important part of the positive development in human rights education has also been the partial change in academic staff, with the arrival of young lecturers and academics interested in human rights issues. These lawyers and scholars have benefited greatly from the open borders and the possibilities to study, work, and gain experience abroad, thus bringing the Czech and Slovak legal education a bit closer to the best European universities.[443] The increasing knowledge of foreign languages of both the lecturers and the students further fosters this trend. The introduction of English language courses has enabled frequent invited lectures by foreign academics while the students may also more easily use foreign literature as study material, thereby partially filling in the gaps in the Czech and Slovak human rights publications.

Even those gaps are slowly disappearing as there are growing numbers of publications dedicated to specific human rights,[444] to specific human rights control mechanisms,[445] or to human rights in general.[446] The academic works build on and complement the doctrine of human rights created by the case

443 Neither Czech nor Slovak law schools rank among the best European law schools. See e.g. TopUniversities. *QS World University Rankings 2016*. 2016, http://www.topuniversities.com/university-rankings/university-subject-rankings/2016/law-legal-studies.

444 For example, Molek, *Právo na spravedlivý proces*.

445 For example, Kmec, Jiří et al. *Evropská úmluva o lidských právech*. Prague: C. H. Beck, 2012.

446 For example, Bartoň, Michal et al. *Základní práva*. Prague: Leges, 2016; Svák, Ján. *Ochrana ľudských práv v troch zväzkoch*. Žilina: Eurokódex, 2011.

law of constitutional courts and of the European Court of Human Rights. Indeed, the decisions of those courts are today easily accessible, hence providing further important study material.

All in all, the growing attention to human rights law in the curricula of Czech and Slovak law schools will hopefully have an impact on legal practice, as the number of lawyers who have acquired a more human rights-oriented education will grow. Many of these graduates will look for jobs in the judiciary as clerks and analysts or may become judges themselves.

12 CONCLUSION

Our project sought to add further nuance to the burgeoning research on international human rights commitments. The number of human rights treaties is increasing and so are the number of signatures and ratifications by state parties. Such a trend should not be seen as one-sidedly positive without more clarification, however, because while the number of non-democratic illiberal countries remains approximately the same the number of their commitments is rising quite quickly. That implies that some states do not mean their signatures and ratifications sincerely. Adopting human rights commitments has become a standard practice in the international arena, and states have learned how to 'talk the talk' (i.e. sign and ratify human rights treaties) but not to 'walk the walk' (i.e. comply with them). Because such treaties usually do not wield strong control mechanisms, ratification represents for states a low-cost exercise wherein they know they are not really threatened with any harsh punishment.

For more than a decade already, legal and political science scholars have endeavoured to explain why states commit to human rights treaties. They have not yet succeeded in finding a consensus. Human rights treaties differ from other international treaties in an important aspect, because the benefits of their ratifications for the states are not readily tangible. Provisions of human rights treaties create benefits different for subjects (typically citizens) than for those who adopt them (states). Thus, it remains unclear why states sign and ratify such types of treaties. Two main streams of explanations have emerged. The first is based predominantly on norms (states subscribe to certain values which they have a tendency to spread internationally), and the second is based on interests (there must be some benefits which might not be clearly visible at first sight, but states expect, for example, easier access to investment, trade, or in acceding to international organizations). Scholars usually do not apply either of the perspectives exclusively; rather, one of the two prevails or receives more emphasis in their elaborations. The research field also includes one specific puzzle which various analyses approach differently: This involves the question as to the relationship

between the human rights commitment and the subsequent compliance with the content of the treaty. Human rights treaties are not based on reciprocity, and therefore a non-complying state cannot be sanctioned by others through their being non-compliant as well. (If one state were to begin torturing its citizens, other states would not retaliate by also torturing their citizens.) When states take a human rights issue seriously and want to secure wide conformity with the treaty, then they must consider introducing a strong international control mechanism despite the fact that it brings with it higher risk of interference with domestic affairs. Such a move presents a very sensitive issue and induces considerable vigilance among states who do not want to give up their freedom to manoeuvre without international oversight. A more ambitious treaty as regards the control mechanism thus risks attracting few states as parties because only a limited number of states are willing to undergo such intrusion of an international body.

Chapter 2 described the most influential works in this field and their findings. Several books and numerous articles examine which factors influence the decision of a state to sign and ratify a human rights treaty. The most straightforward intuition would probably lead to the hunch that the political regime matters, that liberal democracies probably sign and ratify such treaties more than do illiberal non-democracies. More detailed characteristics of the regime were then added to the analyses. For example, whether or not a country has a functioning judicial system has been considered as an important characteristic. Important variables are not connected only to a state itself but also to the human rights treaty which it signs or ratifies, in particular to the nature of rights covered or to the strength of the control mechanism.

The overview of the existing body of research helped us to identify factors which are deemed crucial when states are considering to adopt a human rights commitment. Unlike the rest of the studies, which include many states and only few treaties, we built our research design around just two states (and their predecessors) and many treaties which we define as human rights treaties. We adopted quite a broad definition of what constitutes a human rights treaty, and therefore our sample[447] includes 192 pacts.

447 We may speak in this case about a population of human rights treaties which are open for signing and ratification by European states.

Limiting coverage to only two states facilitated a more detailed elaboration of particular issues. We have, for example, suggested adding another important element (ideological position of the Government) which influences a decision of states to adopt human rights commitments. Analysing commitment practice in two states which were created after sharing a long history of constituting one state, and therefore also the same legal system, permits including a comparative element. We expect that states as similar as the Czech Republic and Slovakia and with the same fundamental values and foreign policy goals should also have very similar commitment practice. If they do not, then we can trace what accounts for these differences in signatures and ratifications of human rights treaties.

Our original research starts with a global overview of the relationships between the type of political regime, substance of a treaty, and commitment patterns. On a slightly different sample of 150 treaties,[448] we monitor the development in ratifications over time and show that the rise of commitments has not only been due to new treaties being adopted but that states also are committing to human rights treaties at a higher rate than before. Furthermore, we construct a global ranking of the ratification activity of states which is based on how frequently and how fast states ratify human rights treaties. Both in the case of the United Nations (UN) and Council of Europe (CoE) treaties, Norway scores as a top performing state. Our research indicates that the content of a treaty clearly is associated with general ratification patterns, but this situation differs when we take a look at UN versus CoE treaties. While states tend to ratify UN treaties on social and group rights, in the case of the CoE, we observe much more ratifications of treaties embodying first-generation rights. Finally, the regime matters. In the cases of both UN and CoE treaties, democracies and transitional democracies tend to ratify treaties more often than do autocracies. This trend is further amplified in the case of human rights treaties having strong control mechanisms. Furthermore, transitional democracies clearly behave in a peculiar way, demonstrating the strongest tendency to adopt treaties with robust control mechanisms compared to those having weak

448 International Labour Organisation treaties were excluded from the sample which, for the purpose of this specific chapter, comprised all human rights treaties of the UN and CoE.

control mechanisms. This finding suggests that the states in transition might be using ratifications of human rights treaties to signal their strong commitment to human rights and resolve to comply because a strong control mechanism in the form of treaties' judicial bodies may act as an external check to lock in new policies strongly oriented to human rights. In later chapters dealing specifically with cases of the Czech Republic and Slovak, we untangle this puzzle even further. We suggest that reservations constitute an important variable which modifies the effect of control mechanism on the propensity of states to commit to treaties. This holds true in particular for some types of regimes, whose use of reservations distorts the overall effect of human rights commitments.

After the global overview, the book introduces the practice of human rights commitments in communist Czechoslovakia (1948–1989), the transitioning Czech and Slovak Federative Republic (1989–1992), and the Czech Republic and Slovakia (1993–present). Interestingly, despite its resistance to the idea of liberal democracy, the Czechoslovak communist regime formally accepted most of the international treaties on universal human rights between the 1960s and end of the 1980s. A closer look at the practice of the state, however, reveals that Czechoslovakia in fact opposed the relevance of human right treaties and resisted their direct domestic application and the country's subordination to the decisions of international bodies. The regime widely advocated the doctrine of non-interference in domestic affairs and argumentation based on the existence of its own (Marxist) theory of human rights. Formally, Czechoslovakia adopted reservations to the treaties in order to prevent any unwanted influence of the control bodies.

After the collapse of the communist regime, the newly created democratic institutions made intensive efforts to adopt promptly the existing human rights obligations. In those years, the Czech and Slovak federation signed and ratified the optional protocols enabling individuals to petition the international bodies with cases of human rights violations, and it became a participant in the European Convention on Human Rights system of human rights protection, which is widely perceived as the most effective regional human rights system in the world.

After the split of the Czech and Slovak federation, with the initial pro-democratic and proliberal enthusiasm melting away, both independent states began to run 'utilitarian politics' and thoroughly considered what obligations were and were not worth accepting. After the previous communist period, which clearly preferred social and economic rights while virtually ignoring civil and political rights, the new regime in the Czech Republic pursued a very cautious approach towards international obligations connected with social rights and avoided committing to decision-making of international bodies in individual cases concerning social rights guarantees. A bit paradoxically, the Slovak Republic followed a different trajectory in the years of so-called 'Mečiarism', at which time it had not scored high in terms of liberal democratic credentials, but it still signed and ratified quite a few human rights treaties. In both countries after the period of initial human rights enthusiasm, however, a rather pragmatic approach to adopting human rights obligations prevailed. This can be verified also by the fact that during the crucial period in the process of accession to the European Union the commitment activity both of the Czech Republic and Slovakia sharply increased, probably to safeguard smooth continuation of the accession talks.

In the following chapter, we focused on the influence of the strength of the treaty control mechanism on the decision of a state to sign and ratify human rights treaties. The communist regime in Czechoslovakia had adopted human rights commitments, but it strongly preferred those with weak control mechanisms. Alternatively, communist Czechoslovakia made potentially strong human rights regimes much weaker in practice through the use of reservations. As regards the overall speed of the process, pre-1989 Czechoslovakia did not differ much from the practice of the Czech Republic and Slovakia. The only regime standing out was the transitional Czech and Slovak Federative Republic, which significantly increased both the quantity and the speed of its human rights commitment, including commitment to treaties with strong control mechanisms. The succeeding democratic states have not been capable of keeping the pace of the ratification process.

Furthermore, we seek to uncover reasons for making human rights commitments. For this reason, we studied historical governmental and

parliamentarian records and identified certain patterns in the three periods of the different regimes (communist Czechoslovakia, transitioning Czech and Slovak federation, and democratic Czech Republic). During communist times, the parliamentary sessions on the human rights treaties witnessed no debates and the motions were agreed unanimously. The Minister of Foreign Affairs usually explained to parliamentarians that Czechoslovakia had already surpassed the level of protection required by the treaty. Moreover, it was often emphasized that human rights are only realizable in communist countries. At the same time, the exponents of the regime posited that they did not subject Czechoslovakia to any stronger control mechanism because the principle of non-interference with internal affairs of sovereign states should be followed. That position shares some similarities with today's liberal democratic regime inasmuch as the Czech government tends to submit human rights treaties to Parliament for ratification when the Czech legislation conforms to the contents of the treaty. In contrast to the time of the communist regime, human rights treaties became 'business as usual' in the parliamentary debates, with some voices criticizing the content of treaties or the very decision of the Government to start with the ratification process. Nevertheless, the Czech Republic regularly adopts commitments with strong control mechanisms and without procedural reservations. Finally, as follows from the governmental justification of the studied human rights treaties, today's democratic Czech Republic uses ratification particularly for external signalling of its values. As already indicated, the transitioning regime behaved differently. Most of all, during the transitioning period, the treaties served as a vehicle for legislative changes. The federation therefore knew that its legislation did not conform to the contents of the treaty, but the treaty was ratified nevertheless and served as a yardstick for legislative changes. Moreover, the ratification process worked smoothly and quickly. Shortly after the Velvet Revolution, the idea of human rights enjoyed almost 'untouchable' appeal. That translated into a governmental justification which included both rational and ideational elements and addressed both the domestic and foreign audiences.

Transitioning Czechoslovakia wanted to proclaim both to its citizens and to governments abroad that it intended seriously to embrace Western values of human rights and freedoms.

Our further contribution to the field of research in human rights commitments consists of exploring to what extent the signatures and ratifications of human rights treaties are related to the ideological position of a Government. We were especially interested if, for example, left-wing governments make more commitments and if they are more prone to adopt a specific kind of rights. Here, intuition would imply that leftist governments will with greater probability sign social rights treaties than will rightist governments. We focused on the developments after the Velvet Revolution in November 1989, because prior to this event there was no variation in political ideology of the Government. Both Czech and Slovak governments were examined from the period after dissolution of the Czechoslovak federation. Moreover, we explored government manifestos to establish if one can infer commitment activity of a Government from the references to human rights in the manifestos. Our data generally confirm basic intuitive hunches, that leftist governments used human rights language in their manifestos more frequently than did rightist governments. While rightist governments rhetorically emphasize the first generation of rights, leftist governments underscore the second. The differences have not remained solely rhetorical, however. The most striking conclusion shows that governments do behave differently based on their ideological positions. Leftist governments are generally much more active in taking on human rights commitments, and that surprisingly holds true both for first- and second-generation rights. Moreover, the commitment practice could be predicted on the basis of government manifestos. It seems that these do not present only a legally non-binding programme of the Government which is then ignored. If they include frequent references to human rights, this implies an interest of the Government in human rights which translates also into higher rates of signing and ratifying human rights treaties.

The study on the practice of reservations reveals in particular their strategic use by communist Czechoslovakia in order to blunt the potential practical effects of human rights treaties. Czechoslovakia employed procedural

reservations so that control mechanisms under the treaties could not have been activated against it. Such a practice is fully in line also with unwillingness to sign and ratify optional procedural protocols to the United Nations human rights treaties which introduced the possibility of individual complaints. The reservation practice after the fall of the Iron Curtain changed considerably. Nowadays, the Czech Republic and Slovakia do not employ procedural reservations targeting the control mechanisms, but they do sometimes use minor substantive reservations when they do not fully agree with some particular provision including details on a particular right. Nonetheless, reservations of this type, unlike the procedural reservations, do not significantly modify the extent of the commitment as they concern the breadth but not the depth of the commitment.

After analysing how states can curtail the reach of human rights obligations in practice but still present themselves as states promoting human rights and which adopt commitments, we turned the attention back to the national political system and sought to identify the key veto players in domestic political arenas and assess their impacts on human rights commitments. We examined the roles of key actors in legislative processes and confirmed that the number and consistency of veto players matter. For example ratification processes in the single-chambered Slovak Parliament are almost twice as fast as in the Czech Parliament with its two chambers involved in the ratification. As a result of Slovakia's having the Mečiar's government during 1993–1998, the added example of a regime with dubious liberal democratic credentials enhanced the variation in available scenarios. While not many human rights treaties were signed in that period, the ratification process for those that were signed was concluded at a very fast pace. Perhaps an even more important finding concerns practical use of the veto. Although the key political players (the Government, Parliament, and President) wield veto power under the constitution, they do not use it in practice. This implies that governments try to avoid the risky business of presenting a human rights treaty to the ratification process for which they do not have strong support. The only (and rare) exceptions were found in the case of the Czech Parliament (or the Government upon indirect pressure from the Parliament's position), which stopped treaties identified

as a possible threat to state sovereignty. Thus, we conclude that an international human rights commitment is essentially a political, governmental decision; once the Government decides to proceed with ratification, it succeeds in a clear majority of cases, albeit potentially with some delays in the most controversial instances. This conclusion is noteworthy, because legal science usually stresses the importance of ratification over signature due to its binding effect. From a political point of view, however, the essential act of commitment seems to be the signature.

The last part of our book project focuses on domestic impacts of human rights treaties. First, the practice of constitutional courts is analysed, followed by that of apex courts, and finally, the place of international human rights in curricula of Czech and Slovak law schools is examined.

Constitutional courts played an important role in the transitioning democracies and in some cases significantly helped in rooting the principles of human rights, democracy, and rule of law. This holds true both for the Czech and Slovak constitutional courts, although each employed a slightly different approach. In the Czech Republic, the Constitutional Court sharply criticized the decision of Parliament to downgrade the exclusive position of human rights treaties in the Constitution, and instead preserved the exclusive role of the treaties even against the explicit wording of the constitutional text and the will of the constitution-giver. In Slovakia, the human rights treaties have never been regarded as components of the constitutional legal order. They had a constitutional relevance due to the Constitutional Court's case law, wherein they are used as inspiration and guidelines for interpreting the Constitution itself. The role of human rights treaties has been strengthened inasmuch as they constituted criteria for the Constitutional Court to review domestic laws. In practice, the Court oscillated between preferential application and the treaties' use as a reference for annulling laws inconsistent with human rights treaties provisions. The approach of the Czech Constitutional Court is more consistent inasmuch as it always requires the ordinary courts to submit a motion to the Constitutional Court when they detect such a conflict. The issue is then resolved solely within the proceedings on judicial review of domestic law and the human rights treaty may be used for immediate cancellation of an offending law. On the other hand,

both Czech and Slovak constitutional courts took advantage of the opportunity to make changes shortly before the accession to the European Union. The reforms towards incorporating human rights treaties within the countries' domestic legal orders occurred hand in hand with the constitutional adjustments concerning the relationships between EU law and the national constitutions.

Our analysis of the case law of the Czech Supreme Court and the Supreme Administrative Court shows that both institutions frequently reference human rights treaties. However, these references typically have only a supportive importance to further justify conclusions reached in decisions and their use is in addition to the more important domestic sources. References having more substantial importance typically concern only a very limited number of human rights treaties, with the dominant position being that of the European Convention on Human Rights.

Practical use of human rights treaties largely depends on the familiarity of lawyers with such treaties. It follows that legal education significantly influences the penetration of human rights ideas into both law-making and the application of law. Educating law students in human rights was introduced only after the fall of communism, which had not paid them much attention. The situation has changed only slowly since the 1989 Velvet Revolution, but today we can find a number of specialized human rights courses at virtually all law schools. Moreover, these courses are taught by highly qualified lecturers, including justices of constitutional courts and experts with experience from the European Court of Human Rights. Various extra activities are being made available to interested students, such as specialized legal clinics and moot courts. The improvement in the situation is closely connected with the arrival to the law schools of young faculty with foreign experience. Still, considerable differences among law schools abound. While some have one human rights course among the list of compulsory courses, many others offer human rights courses only as non-mandatory and the topic is covered through compulsory courses on either constitutional or international law.

Hopefully, our findings can serve to provide hypotheses and cues for research in other countries which would help in building a more solid empirical basis. Given the historical proximity to other post-communist countries

in Central and Eastern Europe and related similarities in terms of values and fundamentals of societal, political, and legal systems, our conclusions may apply also beyond the Czech and Slovak frontiers. Once a sufficient number of studies on individual countries is available, they could then serve as source materials for further comparative, synthesizing works. Finally, through integrating comparative and within-case analysis, a typological theory[449] can be developed in the longer run. The advantages of typological theories include their abilities to address complex phenomena, clarify similarities and differences among cases, and incorporate interaction effects.[450]

The future research might also consider the question to what extent commitment decisions of governments are influenced by the functioning of various international human rights regimes. Some treaty bodies behave in an activist way, while others rather passively. Do governments adjust their commitment practice if treaty bodies have used the evolutive interpretation to expand regimes' reach? Or, vice versa, do states include in their calculations when a human rights regime has not intervened in states' sovereignty and has left states with a large margin of appreciation?[451] All these questions are certainly worth further analysis.

449 George and Bennett describe typological theorizing as '*the development of contingent generalizations about combinations or configurations of variables that constitute theoretical types*' (see George, Alexander L., and Andrew Bennett. *Case Studies and Theory Development in the Social Sciences*. Cambridge MA, MIT Press, 2005, p. 233).

450 Ibid.

451 We would like to express our thanks to Martin Kopa for raising the issue.

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ANNEX 1: LIST OF TREATIES

Abolition of Forced Labour Convention

Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings

Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding Supervisory Authorities and Transborder Data Flows

Additional Protocol to the Convention on Cybercrime, concerning the Criminalisation of Acts of a Racist and Xenophobic Nature committed through Computer Systems

Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes

Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin

Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research

Additional Protocol to the Convention on the Transfer of Sentenced Persons

Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid

Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority

Additional Protocol to the European Convention on Extradition

Additional Protocol to the European Social Charter

Agreement Establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean

Agreement for the Suppression of the Circulation of Obscene Publications

Agreement for the Suppression of the Circulation of Obscene Publications, signed at Paris on 4 May 1910, amended by the Protocol signed at Lake Success, New York, 4 May 1949

Agreement on the Exchange of War Cripples between Member Countries of the Council of Europe with a view to Medical Treatment

Agreement on the Privileges and Immunities of the International Criminal Court

Amendment to the Article 8 of the Rome Statute of the International Criminal Court

Collective Bargaining Convention, 1981

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine

Convention for the Protection of Human Rights and Fundamental Freedoms

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data

Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, concluded at Geneva on 12 September 1923 and amended by the Protocol signed at Lake Success, New York, on 12 November 1947

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

Convention on Access to Information, Public Participation in Decision–Making and Access to Justice in Environmental Matters

Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

Convention on Contact concerning Children

Convention on Cybercrime

Convention on International Protection of Adults

Convention on Protection of Children and Co-operation in respect of Intercountry Adoption

Convention on Safeguarding of the Intangible Cultural Heritage

Convention on the Civil Aspects of International Child Abduction

Convention on the Elimination of All Forms of Discrimination against Women

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

Convention on the Nationality of Married Women

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity

Convention on the Participation of Foreigners in Public Life at Local Level

Convention on the Political Rights of Women

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

Convention on the Prevention and Punishment of the Crime of Genocide

Convention on the Promotion of a Transnational Long-term Voluntary Service for Young People

Convention on the Recovery Abroad of Maintenance

Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality

Convention on the Reduction of Statelessness

Convention on the Rights of Persons with Disabilities

Convention on the Rights of the Child

Convention on the Transfer of Sentenced Persons

Convention relating to the Status of Refugees

Convention relating to the Status of Stateless Persons

Council of Europe Convention on Access to Official Documents

Council of Europe Convention on Action against Trafficking in Human Beings

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession

Council of Europe Convention on the Prevention of Terrorism

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

Council of Europe Framework Convention on the Value of Cultural Heritage for Society

Definition of the Crime of Aggression

Discrimination (Employment and Occupation) Convention

Equality of Treatment (Social Security) Convention, 1962

European Agreement on 'au pair' Placement

European Agreement on Continued Payment of Scholarships to Students Studying Abroad

European Agreement on the Abolition of Visas for Refugees

European Agreement on the Transmission of Applications for Legal Aid

European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights

European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights

European Charter for Regional or Minority Languages

European Code of Social Security

European Code of Social Security (Revised)

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

European Convention on Cinematographic Co-Production

European Convention on Establishment

European Convention on Establishment of Companies

European Convention on Extradition

European Convention on Mutual Assistance in Criminal Matters

European Convention on Nationality

European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children

European Convention on Social and Medical Assistance

European Convention on Social Security

European Convention on the Adoption of Children

European Convention on the Adoption of Children (Revised)

European Convention on the Exercise of Children's Rights

European Convention on the International Validity of Criminal Judgments

European Convention on the Legal Status of Children Born out of Wedlock

European Convention on the Legal Status of Migrant Workers

European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes

European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations

European Convention on the Repatriation of Minors

European Convention on the Social Protection of Farmers

European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders

European Convention on the Transfer of Proceedings in Criminal Matters

European Convention on Transfrontier Television

European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors

European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors

European Social Charter

European Social Charter (revised)

Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

Fourth Additional Protocol to the European Convention on Extradition

Framework Convention for the Protection of National Minorities

Freedom of Association and Protection of the Right to Organise Convention

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea

Geneva Convention relative to the Protection of Civilian Persons in Time of War

Geneva Convention relative to the Treatment of Prisoners of War

Home Work Convention

Human Resources Development Convention

Indigenous and Tribal Peoples Convention

International Agreement for the Suppression of the „White Slave Traffic"

International Convention against Apartheid in Sports

International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

International Convention against the Taking of Hostages

International Convention for the Protection of All Persons from Enforced Disappereance

International Convention for the Suppression of Terrorist Bombings

International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications

International Convention for the Suppression of the Traffic in Women and Children

International Convention for the Suppression of the Traffic in Women of Full Age

International Convention for the Suppression of the White Slave Traffic

International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910, amended by the Protocol signed at Lake Success, New York, 4 May 1949

International Convention on the Elimination of All Forms of Racial Discrimination

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

International Convention on the Suppression and Punishment of the Crime of Apartheid

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

Labour Relations (Public Service) Convention, 1978

Maintenance of Social Security Rights Convention

Maternity Protection Convention, 2000

Medical Care and Sickness Benefits Convention

Migrant Workers (Supplementary Provisions) Convention

Migration for Employment Convention (Revised), 1949

Minimum Age Convention

Night Work Convention

Night Work of Young Persons (Industry) Convention (Revised)

Occupational Cancer Convention

Occupational Health Services Convention

Optional Protocol on the International Covenant on Economic, Social and Cultural Rights

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Optional Protocol to the International Covenant on Civil and Political Rights

Optional Protocol to the UN Convention on the Rights of Persons with Disabilities

Part-Time Work Convention

Prevention of Major Industrial Accidents Convention

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime

Protocol amending the Agreement for the Suppression of the Circulation of Obscene Publications, signed at Paris on 4 May 1910

Protocol amending the European Convention on the Suppression of Terrorism

Protocol amending the European Convention on Transfrontier Television

Protocol amending the International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, and the International Convention for the Suppression of White Slave Traffic, signed at Paris on 4 May 1910

Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education

Protocol International Convention for the Suppression of the Traffic in Women and Children signed at Lake Success, New York, on 12 November 1947

Protocol no. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby

Protocol no. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

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

Protocol no. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Protocol no. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention

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

Protocol no. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty

Protocol no. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Protocol no. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Protocol relating to the Status of Refugees

Protocol to amend the Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, concluded at Geneva on 12 September 1923

Protocol to amend the Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30 September 1921, and the Convention for the Suppression of the Traffic in Women of Full Age, concluded at Geneva on 11 October 1933

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

Protocol to the European Code of Social Security

Protocol to the European Convention on Consular Functions concerning the Protection of Refugees

Protocol to the European Convention on Social and Medical Assistance

Protocol to the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors

Protocol to the European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors

Protocol V on Explosive Remnants of War of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects

Rome Statute of the International Criminal Court

Rural Workers' Organisations Convention, 1975

Safety and Health in Mines Convention

Second Additional Protocol to the European Convention on Extradition

Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict

Slavery Convention

Statute of the Council of Europe

Statutes of the International Centre for Genetic Engineering and biotechnology

Supplementary Agreement for the Application of the European Convention on Social Security

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects as amended on 21 December 2001

Third Additional Protocol to the European Convention on Extradition

United Nations Convention against Transnational Organized Crime

Vocational Rehabilitation and Employment (Disabled Persons) Convention

Workers with Family Responsibilities Convention, 1981

Working Environment (Air Pollution, Noise and Vibration) Convention

Worst Forms of Child Labour Convention

ANNEX 2: RANKING OF THE UNITED NATIONS MEMBER STATES AND THEIR COMMITMENT PRACTICE

	Ratifications and successions by 31 December 2014			Ratification commitment over time		Propensity to fast ratification	
Country	**Total**	**Rate**	**Rank**	**Rate**	**Rank**	**Rate**	**Rank**
Slovak Republic	50	82%	1	40%	47	6%	4
Mexico	47	77%	2	62%	10	5%	7
Belgium	47	77%	2	62%	11	5%	8
Czech Republic	46	75%	4	27%	102	4%	16
Austria	45	74%	5	62%	7	5%	11
Norway	44	72%	6	75%	2	7%	3
Luxembourg	44	72%	6	56%	20	4%	18
Romania	44	72%	6	62%	8	5%	13
Montenegro	43	70%	9	16%	147	4%	23
Poland	43	70%	9	58%	17	4%	17
Brazil	42	69%	11	52%	22	4%	30
Argentina	42	69%	11	47%	28	3%	34
Hungary	42	69%	11	57%	19	4%	22
Croatia	42	69%	11	31%	80	4%	27
Bosnia	42	69%	11	31%	81	4%	24
Finland	42	69%	11	65%	5	5%	9
Denmark	42	69%	11	69%	4	6%	5
Italy	42	69%	11	62%	9	5%	15
Uruguay	41	67%	19	34%	70	3%	60
Netherlands	41	67%	19	63%	6	5%	14
Albania	40	66%	21	46%	35	3%	41
Spain	39	64%	22	41%	41	3%	52
Australia	39	64%	22	61%	12	4%	19

Cyprus	38	62%	24	37%	58	3%	58
Ecuador	38	62%	24	47%	31	3%	46
France	38	62%	24	50%	25	3%	37
Slovenia	38	62%	24	28%	99	3%	36
Guatemala	38	62%	24	41%	44	3%	57
Sweden	38	62%	24	58%	14	4%	28
United Kingdom	38	62%	24	58%	14	4%	28
Ukraine	38	62%	24	43%	38	3%	53
Macedonia	37	61%	32	24%	116	3%	61
Tunisia	37	61%	32	43%	37	3%	50
South Africa	37	61%	32	42%	39	3%	56
Niger	37	61%	32	39%	50	3%	55
Bulgaria	37	61%	32	45%	36	3%	51
Cuba	37	61%	32	48%	26	3%	47
Ireland	36	59%	38	51%	24	3%	42
Turkey	36	59%	38	51%	23	3%	40
Canada	36	59%	38	59%	13	4%	32
Costa Rica	36	59%	38	36%	61	2%	66
Latvia	36	59%	38	47%	29	5%	6
Peru	36	59%	38	33%	75	2%	71
New Zealand	36	59%	38	48%	27	3%	48
Bolivia	35	57%	45	32%	77	2%	76
Nicaragua	35	57%	45	37%	56	2%	68
Azerbaijan	35	57%	45	46%	34	5%	10
Portugal	35	57%	45	31%	83	2%	79
Mali	35	57%	45	38%	51	3%	63
Greece	35	57%	45	41%	43	3%	64
Paraguay	35	57%	45	24%	118	2%	92
Senegal	35	57%	45	36%	63	2%	65
Philippines	35	57%	45	47%	30	3%	54
Nigeria	34	56%	54	28%	100	2%	83

Belarus	34	56%	54	42%	40	2%	67
Egypt	34	56%	54	57%	18	3%	35
Burkina Faso	34	56%	54	32%	76	2%	70
Panama	33	54%	58	32%	78	2%	89
Moldova	33	54%	58	34%	71	4%	25
Georgia	33	54%	58	34%	74	4%	26
Lesotho	33	54%	58	29%	88	2%	82
Chile	33	54%	58	35%	65	2%	77
India	33	54%	58	55%	21	3%	43
Estonia	32	52%	64	40%	46	4%	21
Rwanda	32	52%	64	29%	93	2%	86
Guinea	32	52%	64	37%	55	2%	73
Liberia	32	52%	64	27%	105	2%	95
Honduras	32	52%	64	22%	127	2%	105
Libya	32	52%	64	36%	62	2%	80
Switzerland	32	52%	64	37%	57	2%	81
Venezuela	32	52%	64	34%	72	2%	88
Jamaica	32	52%	64	37%	54	2%	75
Kyrgyzstan	32	52%	64	40%	45	4%	20
Lithuania	31	51%	74	34%	69	4%	31
Ghana	31	51%	74	34%	73	2%	90
Ivory Coast	30	49%	76	24%	113	2%	100
Colombia	30	49%	76	29%	92	2%	98
Algeria	30	49%	76	39%	48	2%	72
Sri Lanka	29	48%	79	46%	33	2%	69
Sierra Leone	29	48%	79	27%	103	2%	104
Afghanistan	29	48%	79	36%	64	2%	93
Trinidad and Tobago	29	48%	79	30%	87	2%	101
Armenia	29	48%	79	38%	52	4%	33
Tanzania	28	46%	84	38%	53	2%	87
Mauritius	28	46%	84	26%	107	2%	108

El Salvador	28	46%	84	26%	109	2%	112
Kazakhstan	28	46%	84	29%	95	3%	44
China	28	46%	84	41%	42	2%	91
Pakistan	28	46%	84	46%	32	2%	74
Malawi	28	46%	84	36%	59	2%	85
Mongolia	28	46%	84	29%	90	2%	109
Togo	28	46%	84	29%	96	2%	102
Iraq	28	46%	84	35%	67	2%	96
Turkmenistan	28	46%	84	30%	84	3%	38
Dominican Republic	27	44%	95	28%	101	2%	113
Gabon	27	44%	95	24%	117	2%	111
Benin	27	44%	95	21%	128	2%	119
Morocco	27	44%	95	29%	89	2%	110
Madagascar	26	43%	99	35%	66	2%	97
Uganda	26	43%	99	30%	86	2%	106
Cambodia	26	43%	99	23%	121	1%	123
Mauritania	26	43%	99	20%	132	1%	122
Bangladesh	26	43%	99	22%	126	2%	103
Zambia	26	43%	99	23%	120	1%	126
Jordan	25	41%	105	31%	82	2%	118
Syria	25	41%	105	32%	78	2%	116
Kuwait	25	41%	105	26%	108	2%	114
Cape Verde	25	41%	105	23%	119	2%	99
Mozambique	25	41%	105	20%	130	2%	107
Cameroon	25	41%	105	26%	106	2%	120
Congo Kinshasa	24	39%	111	28%	98	1%	124
Haiti	24	39%	111	35%	68	2%	115
Tajikistan	24	39%	111	29%	91	3%	59
Korea South	24	39%	111	29%	94	1%	125
Israel	23	38%	115	36%	60	2%	117
Ethiopia	23	38%	115	25%	111	1%	130

Djibouti	23	38%	115	17%	146	2%	121
Burundi	23	38%	115	20%	135	1%	128
Zimbabwe	22	36%	119	18%	139	1%	133
Swaziland	22	36%	119	18%	141	1%	129
Namibia	22	36%	119	27%	104	2%	78
Guinea-Bissau	22	36%	119	13%	153	1%	127
Laos	22	36%	119	20%	136	1%	138
Nepal	22	36%	119	23%	123	1%	135
Central African Republic	22	36%	119	24%	115	1%	132
Fiji	21	34%	126	6%	171	1%	168
Japan	20	33%	127	23%	124	1%	145
Germany	20	33%	127	17%	143	2%	94
United States	20	33%	127	25%	110	1%	141
Uzbekistan	20	33%	127	25%	112	2%	84
Botswana	20	33%	127	17%	142	1%	142
Guyana	20	33%	127	18%	140	1%	137
Saudi Arabia	19	31%	133	13%	154	1%	156
Iran	19	31%	133	30%	85	1%	140
Congo Brazzaville	19	31%	133	19%	138	1%	154
Kenya	19	31%	133	21%	129	1%	143
Gambia	18	30%	137	20%	131	1%	148
Bahrain	18	30%	137	14%	151	1%	147
Chad	18	30%	137	17%	144	1%	153
Suriname	18	30%	137	20%	134	1%	149
Equatorial Guinea	17	28%	141	17%	145	1%	152
Qatar	17	28%	141	13%	152	1%	151
Angola	17	28%	141	16%	148	1%	144
Lebanon	17	28%	141	23%	122	1%	155
East Timor	17	28%	141	24%	114	3%	49
Indonesia	16	26%	146	10%	160	1%	162

Vietnam	16	26%	146	19%	137	1%	146
Myanmar (Burma)	16	26%	146	22%	125	1%	157
Thailand	16	26%	146	10%	158	1%	160
Malaysia	16	26%	146	12%	157	1%	163
Singapore	15	25%	151	14%	149	1%	164
UAE	14	23%	152	10%	159	1%	159
Solomon Islands	14	23%	152	9%	164	1%	167
Papua New Guinea	13	21%	154	14%	150	1%	158
Russia	13	21%	154	13%	155	1%	134
Oman	12	20%	156	8%	165	1%	166
Eritrea	11	18%	157	10%	161	1%	150
Comoros	10	16%	158	7%	166	1%	165
Korea North	9	15%	159	9%	162	0%	170
Yemen	9	15%	159	9%	163	1%	161
Somalia	8	13%	161	12%	156	0%	171
Bhutan	7	11%	162	7%	169	0%	173
Serbia	6	10%	163	6%	170	1%	139
Sudan-North	1	2%	164	0%	173	0%	172
South Sudan	0	0%	165	0%	174	0%	174
Yugoslavia				77%	1	9%	1
Yemen North				3%	172	0%	169
Germany West				39%	49	3%	39
Serbia and Montenegro				7%	167	3%	62
Yemen South				7%	168	1%	131
Sudan				20%	133	1%	136
Czechoslovakia				69%	3	8%	2
Germany East				28%	97	3%	45
USSR				58%	16	5%	12

Source: Authors

ANNEX 3: RANKING OF THE COUNCIL OF EUROPE MEMBER STATES AND THEIR COMMITMENT PRACTICE

	Ratifications and successions by 31 December 2014			Ratification commitment over time		Propensity to fast ratification	
Country	**Total**	**Rate**	**Rank**	**Rate**	**Rank**	**Rate**	**Rank**
Netherlands	65	73%	1	66%	3	6%	3
Norway	64	72%	2	71%	1	7%	2
Spain	59	66%	3	43%	16	4%	19
Sweden	59	66%	3	68%	2	6%	4
Denmark	57	64%	5	64%	4	5%	5
Luxembourg	55	62%	6	61%	5	5%	7
Portugal	54	61%	7	44%	14	3%	23
Cyprus	53	60%	8	45%	13	3%	20
Italy	52	58%	9	60%	6	4%	9
France	50	56%	10	53%	10	4%	18
Belgium	50	56%	10	54%	8	4%	17
Czech Republic	49	55%	12	38%	18	4%	10
Austria	49	55%	12	47%	12	3%	26
Finland	49	55%	12	29%	27	2%	32
Latvia	49	55%	12	35%	22	4%	12
Slovenia	48	54%	16	38%	20	4%	11
Romania	48	54%	16	24%	31	2%	33
Germany	47	53%	18	26%	29	3%	31
Macedonia	47	53%	18	31%	25	4%	16
Albania	46	52%	20	19%	37	2%	37
Ukraine	46	52%	20	18%	38	2%	38
Estonia	46	52%	20	38%	19	4%	13
Lithuania	45	51%	23	37%	21	4%	14
Turkey	45	51%	23	44%	15	3%	30

United Kingdom	45	51%	23	53%	9	3%	22
Serbia	43	48%	26	18%	39	4%	15
Hungary	43	48%	26	23%	32	2%	39
Croatia	42	47%	28	32%	24	3%	21
Slovak Republic	42	47%	28	31%	26	3%	25
Bosnia	42	47%	28	22%	33	3%	27
Moldova	42	47%	28	28%	28	3%	24
Ireland	41	46%	32	50%	11	3%	29
Switzerland	41	46%	32	35%	23	2%	35
Bulgaria	39	44%	34	20%	35	2%	41
Georgia	38	43%	35	25%	30	3%	28
Greece	37	42%	36	41%	17	2%	34
Poland	37	42%	36	21%	34	2%	43
Montenegro	35	39%	38	20%	36	4%	8
Armenia	29	33%	39	18%	41	2%	36
Azerbaijan	25	28%	40	16%	42	2%	40
Russia	23	26%	41	18%	40	2%	42
Czechoslovakia	N/A	N/A	N/A	1%	44	1%	44
Germany West	N/A	N/A	N/A	56%	7	5%	6
Serbia and Montenegro	N/A	N/A	N/A	16%	43	9%	1

Source: Authors.

MAKING SENSE OF HUMAN RIGHTS COMMITMENTS:
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