Economic and Social Rights in Central and Eastern Europe – Insights from the Perspective of the UN Human Rights System

Adam Ploszka*
University of Warsaw, Warsaw, Poland
a.ploszka@wpia.uw. edu.pl

Jan Denka**
Adam Mickiewicz University, Poznań, Poland
janden@amu.edu.pl

Abstract 863
Keywords 864
I. Introduction 864
II. Economic and Social Rights in Central and Eastern European Constitutionalism 868
III. Acceptance of the International Treaties in the Field of Economic and Social Rights by Central and Eastern European Countries 870
IV. Implementation of the ICESCR by Central and Eastern European Countries – in Light of the Concluding Observations of the Committee on Economic and Social Rights 879
V. Selected Deficits in the Implementation of Selected Social Rights by Central and Eastern European Countries 883
VI. Conclusions 888

Abstract

This article delves into the protection of economic and social rights in Central and Eastern Europe from the United Nations (UN) human rights protection system perspective. We analyse the extent to which the broad inclusion of economic and social rights in domestic constitutions translates into Central and Eastern European states' ways of approaching the international protection of economic and social rights. In particular, we examine

* Assistant Professor at Centre for Human Rights, Faculty of Law and Administration, University of Warsaw, Poland.

** Ph. D. Candidate at Department of Constitutional Law, Faculty of Law and Administration, Adam Mickiewicz University, Poland. This research was funded in whole by the National Science Centre, Poland, grant number: 2022/47/D/HS5/01784.

DOI 10.17104/0044-2348-2025-3-863 ZaöRV 85 (2025), 863-890

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

whether the recognition of the justiciability of economic and social rights in these countries' domestic constitutions are borne out by their acceptance of human rights treaties that protect economic and social rights, especially those that enable individuals to bring communications at the international level. Based on the concluding observations of the UN Committee on Economic, Social and Cultural Rights, we also study Central and Eastern European countries' approach to the domestic implementation of the International Covenant on Economic, Social and Cultural Rights. We argue that there is a discrepancy between the extensive constitutional protection of economic and social rights by Central and Eastern European countries on the one hand, and their reluctant acceptance of the international law counterparts of these constitutional rights on the other.

Keywords

Central and Eastern Europe – Economic and Social Rights – Committee on Economic Social and Cultural Rights – Justiciability

I. Introduction

After the fall of communism, Central and Eastern Europe (CEE)[1] served as a kind of laboratory for the protection of economic and social rights.[2] Legal scholarship enthusiastically discussed constitutionalisation and implementation of these rights in the region.[3] Once their constitutions were adopted, interest in economic and social rights in the region visibly decreased and tended to be fragmented. In recent years researchers have focused on specific jurisdic-

1 Due to the differences in defining the scope of countries described by the term 'Central and Eastern European', for the sake of clarity it is useful to list the countries that we covered in our research. These are: Albania, Bosnia and Herzegovina, Belarus, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Montenegro, North Macedonia, Poland, Romania, Serbia, Slovakia, Slovenia, Ukraine. The information in this article is up to date as of 21 July 2025.

2 This term was rightly used by: Wojciech Sadurski, *Constitutional Socio-Economic Rights: Lessons from Central Europe*, The Foundation for Law, Justice and Society in affiliation with The Centre for Socio-Legal Studies, University of Oxford, 2009.

3 See Adam Ploszka, 'Constitutional Debates and Courts in Central and Eastern Europe' in: Malcolm Langford and Katharine G. Young, (eds) The Oxford Handbook of Economic and Social Rights (Oxford University Press, forthcoming).

 DOI 10.17104/0044-2348-2025-3-863

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

tions (especially Hungary[4]) or selected rights. At the same time, discussions are gaining momentum[5] in the area of economic and social rights, and their enforcement, also in relation to the crises that have happened in recent years.[6]

This article aims to contribute to this debate by providing insights into Central and Eastern Europe from international law, specifically, from the UN human rights protection system perspective. Our research question here is as follows: to what extent is the constitutionalisation of economic and social rights (defined as subjective rights) after the fall of communism reflected in Central and Eastern European states' approach to the UN economic and social rights protection system? We will reconstruct this approach by examining two of its dimensions. First, the acceptance of UN treaties and optional complaints procedures which serve to protect economic and social rights through the UN. Secondly, the implementation of the ICESCR at the domestic level based on the concluding observations issued by the UN Committee on Economic, Social, and Cultural Rights.

The focus on the UN system is particularly relevant in our research, as this system has introduced mechanisms for the individual quasi-judicial enforcement of economic and social rights, similar to the mechanisms of judicial enforcement that were introduced in the constitutional orders of Central and Eastern European countries. For this reason, we do not analyse in detail the European economic and social rights protection system centred around the (Revised) European Social Charter. For despite the comprehensive and detailed case-law developed by the European Committee of Social Rights[7], the Charter only provides a mechanism for collective complaints. Instead, we focus on the UN system which is particularly relevant since in the early days

4 Renata Uitz and András Sajó, 'A Case for Enforceable Constitutional Rights? Welfare Rights in Hungarian Constitutional Jurisprudence' in: Fons Coomans (ed.), *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (Intersentia 2006), 97-128; Malcolm Langford, 'Hungary: Social Rights or Market Redivivus', in: Malcolm Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press 2008), 250-266; Csilla Kollonay Lehoczky and Balazs Majtenyi, 'Social Rights, Social Policy, and Labor Law in the Hungarian Populist-Nationalist System,' Comparative Labor Law & Policy Journal 42 (2021), 13-42

5 See for example: Aoife Nolan (ed.), *Economic and Social Rights After the Global Financial Crisis* (Cambridge University Press 2014); Stefano Civitarese Matteucci and Simon Halliday (eds), *Social Rights in Europe in an Age of Austerity* (Routledge 2017); Jackie Dugard et al. (eds), *Research Handbook on Economic, Social and Cultural Rights as Human Rights* (Edward Elgar 2020); Christina Binder, Jane A. Hofbauer, Flávia Piovesan and Amaya Úbeda de Torres (eds), *Research Handbook on International Law and Social Rights* (Edward Elgar 2020).

6 In particular, the global financial crisis started in 2008, which resulted in adopting a series of austerity measures. Later, there were the health crises associated with the COVID-19 pandemic and then (to some extent, its aftermath) the cost-of-living crisis.

7 See more David Harris and John Darcy, *The European Social Charter: The Protection of Economic and Social Rights in Europe* (Brill 2021).

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

of CEE's transition from communism to democracy, participation in the UN international human rights protection system and its implementation machinery (especially through the International Covenant on Economic, Social and Cultural Rights [ICESCR] reporting system) was regarded as a positive change in the states' approach to international human rights protection.[8] The question arises, however, whether this change in attitude amongst the CEE states was profound or rather superficial.

In the scholarly debate on social and economic rights protection, much attention is rightly attributed to the domestic application[9] and enforcement of international human rights law in addition to supervision from international human rights treaty bodies.[10] Various concepts and methods of reasoning developed in international law,[11] such as the concept of minimum core obligation,[12] were also applied domestically. However, the relationship between domestic and international economic and social rights protection is not a one-way street. Some concepts developed in domestic jurisdictions have also influenced the shape of international law. Perhaps the best example of this is the category of reasonableness,[13] which was applied by the South African Constitutional Court[14] and which ultimately found application in the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.[15]

---

8 Zdzisław Kędzia, 'The Implementation of Social and Economic Rights in Central and Eastern Countries' in: Franz Matscher (ed.), *The Implementation of Economic and Social Rights: National, International, and Comparative Aspects* (Engel 1991), 237-266 (240).

9 See Matthew C. R. Craven, 'The Domestic Application of the International Covenant on Economic, Social and Cultural Rights', NILR 40 (1993), 367-404; Sandra Liebenberg, 'The Protection of Economic and Social Rights in Domestic Legal Systems' in: Asbjørn Eide, Catarina Krause and Allan Rosas (eds), *Economic, Social and Cultural Rights, a Textbook* (2nd edn, Brill/Nijhoff 2001), 55-84.; David Landau, 'The Reality of Social Rights Enforcement', Harv. Int'l L. J. 53 (2012), 189-248; Malcolm Langford (ed.), *Social Rights Jurisprudence Emerging Trends in International and Comparative Law* (Cambridge University Press 2008).

10 See especially: Philip Alston, 'The Committee on Economic, Social and Cultural Rights' in: Frédéric Mégret and Philip Alston (eds), *The United Nations and Human Rights: A Critical Appraisal* (Oxford University Press 2020), 439-476.

11 See for example: Eibe Riedel, Gilles Giacca and Christophe Golay (eds), *Economic, Social, and Cultural Rights in International Law: Contemporary Issues and Challenges* (Oxford University Press 2014).

12 Katharine G. Young 'The Minimum Core of Economic and Social Rights: A Concept in Search of Content', Yale J. Int'l L. 33 (2008), 113-175.

13 See more: Albie Sachs, 'Enforcement of Social and Economic Rights,' Am. U. Int'l L. Rev. 22 (2007), 673-708.

14 See more: Sandra Liebenberg, 'The South African Model of Socio-Economic Constitutionalism: Features and Fault Lines' in: Steffen Hindelang, Stefan Korte and Nils Schaks, YSEC Yearbook of Socio-Economic Constitutions 2024 (Springer 2025), 37-65.

15 Bruce Porter, 'Reasonableness and Article 8(4)' in: Malcolm Langford, Bruce Porter, Rebecca Brown and Julieta Rossi (eds), *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary* (Pretoria University Law Press 2016), 173-202.

 DOI 10.17104/0044-2348-2025-3-863

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

With this piece, we hope to contribute to this debate by identifying the impact (or lack thereof) of the constitutionalisation of economic and social rights on the domestic application of international law. We focus particularly on the International Covenant of Economic Social and Cultural Rights, as well as on the ratification policy[16] of states in the field of international protection of economic and social rights. Drawing on the rich literature on the interplay between domestic and international human rights protection systems,[17] our cautious hypothesis is that the constitutional determination of economic and social rights in CEE states, as subjective and justiciable rights, should translate into greater openness towards the international protection of economic and social rights amongst those states. Yet in this paper, we find that the constitutionalisation of economic and social rights in CEE, which is widely accompanied by the acceptance of judicial enforcement of economic and social rights, is not generally reflected in Central and Eastern European states' approach to the UN's international protection of economic and social rights. We argue that this is evident in particular from the low number of ratifications in CEE of the optional complaints procedures that enable individuals to challenge economic and social rights violations at the international level as well as in the very limited application of the ICESCR in domestic legal orders.

The article is structured as follows. Following this introduction, in part II, we draw on existing literature to briefly sketch the constitutional regulation of economic and social rights in Central and Eastern Europe. Our aim there is to establish a point of reference for further analysis of the Central and Eastern European countries' approach toward the international protection of economic and social rights and also to explain why we have chosen to focus on Central and Eastern Europe. Then, in part III, we will review the acceptance status of international human rights instruments and place these acceptance decisions on a timeline. We aim to determine whether there is a correlation between Central and Eastern European countries' adoption of constitutions and their decisions to accept certain human rights instruments. Finally, in parts IV and V, we present the results of our analysis of the concluding observations of the Committee on Economic, Social and Cultural Rights (CESCR) in the context of reports submitted by countries in the region related to the implementation

16 On the relationship between constitutional law and ratification policy see Thomas Buergenthal, 'Modern Constitutions and Human Rights Treaties', Colum. J. Transnat'l L. 36 (1998), 211-223.

17 In this regard see Thomas Buergenthal, 'The Evolving International Human Rights System' AJIL 100 (2006), 783-807; Beth A. Simmons, *Mobilizing for Human Rights International Law in Domestic Politics* (Cambridge University Press 2012) 148-154; Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights Through International Law* (Oxford University Press 2013).

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Our focus on the ICESCR and the CESCR concluding observations is additionally justified by the fact that within the UN system, the Covenant is a key international human rights treaty on economic and social rights[18] ratified by all countries in the region. Therefore, all the countries that we are considering here have been evaluated by the CESCR, which makes it possible to draw some conclusions about the state of the protection of economic and social rights in the region. In our analysis, on the one hand we will focus on countries' domestic applications of ICESCR. On the other hand, with a view to identifying common trends and patterns, we also focus on three social rights that are both covered by the ICESCR and which are also common to all constitutional orders of the countries in question. These are the right to social security, the right to healthcare, and the right to education.

II. Economic and Social Rights in Central and Eastern European Constitutionalism

One key characteristic of Central and Eastern European constitutionalism, which also to some extent distinguishes it from Western European constitutionalism, is that all constitutions adopted in this region contain a wide range of economic and social rights.[19] The adoption of these rights was essentially the legacy of communism. The societies of countries that bore the hardships of economic transition and were simultaneously accustomed to certain benefits in the communist period expected their needs to be addressed by the new democratic constitutions.[20]

However, the catalogues of economic and social rights which are protected in the CEE constitutions differ between countries, and some are more elaborate

18 See more: Zdzisław (Dzidek) Kędzia, 'Social Rights Protection Under the ICESCR and Its Optional Protocol – the Role of the Committee on Economic, Social and Cultural Rights' in: Christina Binder, Jane A. Hofbauer, Flávia Piovesan and Amaya Úbeda de Torres, *Research Handbook on International Law and Social Rights* (Edward Elgar 2020), 90-110.

19 For more on global trends in the constitutionalisation of social rights, see Ran Hirschl, Evan Rosevear and Courtney Jung, 'Justiciable and Aspirational Economic and Social Rights in National Constitutions' in: Katharine G. Young (ed.), *The Future of Economic and Social Rights* (Cambridge University Press 2019), 37-65.

20 Wojciech Sadurski, *Rights Before Courts A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe* (Springer 2014), 253. See also: András Sajó, 'Social Rights as Middle-Class Entitlements in Hungary: The Role of the Constitutional Court', in: Roberto Gargarella, Pilar Domingo and Theunis Roux (eds), *Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor?* (Routledge 2006), 83-105; Wiktor Osiatyński, 'Rights in New Constitutions of East Central Europe' Colum. Hum. Rts. L. Rev. 26 (1994), 111-166. Gábor Halmai, 'Separation of Power – Social Rights – Judicial Review. The Polish and Hungarian Cases' in: Mirosław Wyrzykowski (ed.), *Constitution-Making Process* (Institute of Public Affairs 1998), 83-96.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

than others. Until now, no one has been able to provide a convincing explanation for this diversity amongst the catalogues of rights.[21] Sadurski has suggested that there are a number of factors that did *not* influence the shape of these catalogues, including: the stage of economic development; the strength of post-communist political forces; the speed with which a constitution was created; and, finally, the prospect of further EU integration.[22] What all bills of rights adopted in the region do have in common is the presence of three social rights: the right to social security, the right to healthcare, and the right to education.[23]

During the constitution-making process, however, the real problem was not the catalogue of economic and social rights but rather how these economic and social rights should or should not differ from civil and political rights in terms of enforcement mechanism.[24] Sadurski identified three models for the enforcement of economic and social rights in these constitutions.[25]

Constitutions in the first group do not draw any meaningful distinctions between economic and social rights and all other rights, making them directly enforceable (as subjective rights). This model occurred on the largest scale, and numerous countries in the region adopted it.[26] In the second model, economic and social rights (as aspirational rights) were clearly separated from civil and political rights, and this separation was applied through an introduction to the constitution of a general clause limiting the possible enforcement of economic and social rights.[27] The Czech Republic's Charter of Fundamental Rights and Freedoms adopted in 1991[28] is an example here. Article 41 (cited from the official English translation) provides that: 'The rights listed in

21 A detailed analysis of the catalogues of rights adopted by the constitutions of Central and Eastern Europe has been carried out by Sadurski, *Rights Before Courts* (n. 20), 253-287. See also: Kędzia, 'Implementation of Social and Economic Rights' (n. 8), 237-266.

22 Wojciech Sadurski, 'Postcommunist Charters of Rights in Europe and the U.S. Bill of Rights', Law & Contemp. Probs. 65 (2002), 223-250 (234).

23 Sadurski, *Rights Before Courts* (n. 20), 261.

24 Osiatyński (n. 20), 141.

25 Sadurski, 'Postcommunist Charters' (n. 22), 234-235.

26 Belarus, Bulgaria, Croatia, Estonia, Latvia, Lithuania, Macedonia, Romania, Ukraine, Montenegro, and Serbia.

27 This model can be found in the Czech Republic and Slovakia, and in Hungary (in the latter case, a qualitative change (the transition from model one to model two was brought about by the adoption of a new constitution, called Fundamental Law in 2011.)

28 The Charter of Fundamental Rights and Freedoms was adopted in Czechoslovakia on 9 January 1991 by the required super-majority of the Federal Assembly members, before the formal (so called velvet) dissolution of the federation. Both countries have decided to incorporate the Charter into their legal order. The Slovak Republic incorporated a slightly changed Charter directly into its constitution of September 1992 while the Czech Republic stated in its constitution of December 1992 that the Charter constitutes a part of the constitutional order of the republic (see Article 112.1. of the Constitution). The Charter is available in English at: <https://www.psp.cz/en/docs/laws/listina.html>, last access 18 February 2025.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

Article 26, Article 27, par.4, Articles 28 to 31, Article 32, pars.1 and 3, and Articles 33 and 35 of the Charter may be claimed only within the scope of the laws implementing these provisions.' The provision that rights can 'only' be claimed within the statutory regulation governing those specific rights points to a significant limitation of the justiciability of the economic and social rights indicated in this provision.[29] Finally, the third model combines the first and second ones. The Polish 1997 Constitution[30] serves as an example of this model.[31] This constitution contains both social and economic rights that can be directly enforced but also a clause limiting the citizen's ability to enforce some of them. Article 81 of the Polish Constitution, for example, provides that: 'the rights specified in Article 65, paras 4 and 5, Article 66, Article 69, Article 71 and Articles 74-76, may be asserted subject to limitations specified by statute.'[32]

III. Acceptance of the International Treaties in the Field of Economic and Social Rights by Central and Eastern European Countries

Through our close examination of the ratification status of human rights treaties, we hope to uncover some interesting insights into the protection of economic and social rights within CEE states, and into their approach to the justiciability of economic and social rights. Of course, simply knowing whether a state has signed, ratified, or acceded to certain international instruments does not provide a comprehensive picture of the enjoyment of these rights in the region. But it may serve as an indicator of the attitudes of the domestic authorities towards the enforcement of economic and social rights since the ratification of human rights treaties is usually associated with better human rights practices.[33] Therefore, for the purposes of this study, we have reviewed the nine following UN human rights treaties:

29 On the reasons for adopting this solution, see Lloyd Cutler and Herman Schwartz. 'Constitutional Reform in Czechoslovakia: E Duobus Unum?' U. Chi. L. Rev. 58 (1991), 511-553. See more on the Czech Republic constitution-making in: Jon Elster, 'Transition, Constitution-Making and Separation in Czechoslovakia', European Journal of Sociology/Archives Européennes de Sociologie 36 (1995), 105-134.

30 The Constitution of the Republic of Poland of 2nd April 1997, published in Journal of Laws No. 78, item 483.

31 Also in: Albania, Moldova, and Slovenia.

32 See more on Poland constitution-making: Wiktor Osiatyński, 'A Brief History of the Constitution,' East European Constitutional Review 6 (1997), 66-76.

33 As Oona A. Hathaway argues in: 'Do Human Rights Treaties Make a Difference', Yale L. J. 111 (2002), 1935-2042. See more: Christof H. Heyns and Frans Viljoen, 'The Impact of the United Nations Human Rights Treaties on the Domestic Level' HRQ 23 (2001), 483-535.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

- the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the Optional Protocol to the ICESCR
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)
- the Convention on the Rights of the Child (CRC)
- the (Third) Optional Protocol to the Convention on the Rights of the Child on a communications procedure
- the Convention on the Rights of Persons with Disabilities (CRPD)
- the Optional Protocol to the CRPD

Each of these treaties aims to enhance the protection of economic and social rights, albeit to a greater (like the ICESCR) or lesser (like the CRC) extent. Nonetheless, the above selection comes with a caveat: our selection of treaties focuses on those we perceived to have a greater significance for the protection of economic and social rights in two ways. First, due to their provisions that directly protect economic and social rights (substantially and procedurally); secondly, based on the extensive practice of supervisory bodies doing work based on these treaties in the area of economic and social rights.

Therefore, one can assume that if a state accepts one of the abovementioned treaties, the individuals in that state may enjoy their rights to a greater extent (at least *de iure*).[34] In order to assess CEE states' involvement in the internationalisation[35] of these rights we therefore compiled all the available data on the acceptance (this could refer to ratification, accession, or succession) of the abovementioned international treaties. The covenants which declare certain rights and impose new obligations on the state parties are presented in Table 1.[36] States which also accepted optional complaints procedures that might strengthen the procedural guarantees of economic and social rights protection were presented in a separate table (Table 2). The differentiation between these two types of human rights treaties was justi-

34 The problem of the actual (*de facto*) enjoyment of these rights will be discussed in the next sections.

35 Under the concept of 'internationalisation', we understand different forms of recognising and enforcing human rights through international institutions. On this issue see Lloyd N. Cutler, 'The Internationalization of Human Rights', U. Ill. L. Rev. 3 (1990), 575-591.

36 Regarding indications used here and in the following tables: X indicates that a treaty was accepted, and lack of X indicates that it was not.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

fied by the fact that these procedural mechanisms are supposed to permit individuals to initiate international proceedings if states fail to observe their obligations.[37]

Table 1. Acceptance of UN International Treaties (Protecting Economic and Social Rights) in CEE states

CEE states	ICESCR	CEDAW	CMW	CRC	CRPD
Albania	x	x	x	x	x
Bosnia and Herzegovina	x	x	x	x	x
Belarus	x	x		x	x
Bulgaria	x	x		x	x
Croatia	x	x		x	x
Czechia	x	x		x	x
Estonia	x	x		x	x
Hungary	x	x		x	x
Latvia	x	x		x	x
Lithuania	x	x		x	x
Montenegro	x	x		x	x
North Macedonia (FYROM)	x	x		x	x
Poland	x	x		x	x
Romania	x	x		x	x
Serbia	x	x		x	x
Slovakia	x	x		x	x
Slovenia	x	x		x	x
Ukraine	x	x		x	x

37 On this issue see Malcolm Langford, Bruce Porter, Rebecca Brown and Julieta Rossi, 'Introduction' in: Malcolm Langford, Bruce Porter, Rebecca Brown and Julieta Rossi (eds), *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary* (Pretoria University Law Press 2016), 1-15. See also: Zdzisław Kędzia, 'The Committee on Economic, Social and Cultural Rights – The Power of Subjective Rights?', Journal of Human Rights Practice 14 (2022), 50-74.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

It is not necessarily true that the CEE states are reluctant to sign and ratify international instruments, but they are certainly selective in this regard. The ICESCR, CEDAW, CRC and CRPD are the only international instruments that were universally ratified in Central and Eastern Europe. On the other hand, not a single CEE state accepted the individual communication procedure under the CMW, and the CMW itself was only ratified by two states (Albania, and Bosnia and Herzegovina).[38] Indeed, even the Optional Protocol to the ICESCR has been accepted by no more than five states so far (Albania, Bosnia and Herzegovina, Montenegro, Serbia, and Slovakia)[39] while some CEE states have also refrained from accepting the Optional Protocol to the CEDAW, CRC, and CRPD.[40]

Table 2. Acceptance of UN Individual Complaints Procedures in CEE States (Economic and Social Rights)

CEE states	ICESCR (OP)	CEDAW (OP)	CMW (ICP)	CRC (OP)	CRPD (OP)
Albania	x	x		x	
Bosnia and Herzegovina	x	x		x	x
Belarus		x			
Bulgaria		x			
Croatia		x		x	x
Czechia		x		x	x
Estonia		x		x	x
Hungary		x			x
Latvia					x
Lithuania		x		x	x
Montenegro	x	x		x	x
North Macedonia (FYROM)		x			x

38 Serbia and Montenegro signed the CMW, but abstained from ratifying it.

39 North Macedonia, Slovenia and Ukraine signed the Optional Protocol to the ICESCR, but abstained from ratifying it.

40 North Macedonia, Poland, Romania and Serbia signed the Optional Protocol to the CRC, but abstained from ratifying it. Bulgaira and Romania signed the Optional Protocol to the CRPD, but abstained from ratifying it.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

Poland		x			
Romania		x			
Serbia	x	x			x
Slovakia	x	x		x	x
Slovenia		x		x	x
Ukraine		x		x	x

In the context of ratification policies it is worth adding that CEE states made hardly any relevant reservations or declarations to the treaties. However, we must mention some important examples of reservations that affect the protection of economic and social rights. For instance, upon ratification of the CRPD, Poland made a reservation that the provisions of the treaty could not be 'interpreted in a way conferring an individual right to abortion or mandating state party to provide access thereto, unless that right is guaranteed by the national law'.[41] Lithuania also declared that the legal concept of 'sexual and reproductive health' under the CRPD 'does not include support, encouragement or promotion of pregnancy termination, sterilisation and medical procedures of persons with disabilities, able to cause discrimination on the grounds of genetic features'.[42] Such reservations and declarations can have very real implications for the right to healthcare in terms of access to abortion as we will discuss below. Moreover, the right of persons with disabilities to work on an equal basis with others could also be affected by reservations, such as that made by Slovakia stating that 'the implementation of the prohibition of discrimination on the basis of disability in setting conditions of recruitment, hiring and employment shall not apply in the case of recruitment for service as a member of the armed forces, armed security forces, armed corps, the National Security Office, the Slovak Information Service and the Fire and Rescue Corps'.[43] Nonetheless, CEE states have generally abstained from making reservations or declarations that could significantly undermine the protection of economic and social rights.

Based on our quantitative analysis, we have also identified three crucial periods in the process of internationalisation of economic and social rights in the region. This timeline was established on the basis of the number of

41 See <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-15&chapter=4&clang=_en>, last access 18 February 2025.

42 See <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-15&chapter=4&clang=_en>, last access 18 February 2025.

43 See <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-15&chapter=4&clang=_en>, last access 18 February 2025.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

ratifications and/or accessions to the abovementioned instruments within each span of time (Chart 1). Ratifications by states that no longer exist, and by the predecessors of some Central and Eastern European countries (Czechoslovakia, the Soviet Union, and Yugoslavia) were also included in this study. The first period occurred in the 1970s when the Eastern Bloc countries ratified the ICESCR as well as other human rights treaties. To a great extent, ratifications during this period were driven by the process of improving relations between East and West, which ultimately resulted in the adoption of the so-called Helsinki Agreement of 1975.[44] The second stage occurred in the 1990s. In this period there was a noticeable spike in the number of ratifications/accessions to the conventions. This trend may be explained on the one hand by the emergence of new CEE states who accepted the UN international human rights treaties in that sphere, as well as by numerous states' efforts to move towards a market-oriented economy and to abandon their Communist heritage on the other.[45] As mentioned above – with the decisions to be bound by the various international treaties – legal scholars at the time hoped that the level of respect for human rights within countries in the region would improve.[46] The third stage roughly encompasses the time from 2000 to 2025. In this period, the CRPD and a series of optional protocols (to the ICESCR, CRPD, CRC) were accepted and opened for signature. All of the CEE states ratified the CRPD, and some of the states also accepted the optional protocols for the ICESCR, CRPD, CRC, and CEDAW.

Nonetheless, all the states in this study seem in general to be reluctant to extend their obligations under international treaties on economic and social rights. It is especially alarming that states fail to provide individuals with the respective individual complaints procedures at the international level. One cannot overlook here a striking contradiction related to the fact that CEE states whose constitutions recognise the justiciability of economic and social rights at the same time in principle reject the primary mechanism for addressing violations of these rights in the international forum of the Optional Protocol to the ICESCR. It is worth underlining that, without such guarantees, individuals might face considerable difficulties when enforcing the rights guaranteed to them in international treaties. If the rights enshrined in the

44 See more: Arthur Henry Robertson, 'Helsinki Agreement and Human Rights', Notre Dame L. Rev. 53 (1977), 34-48.

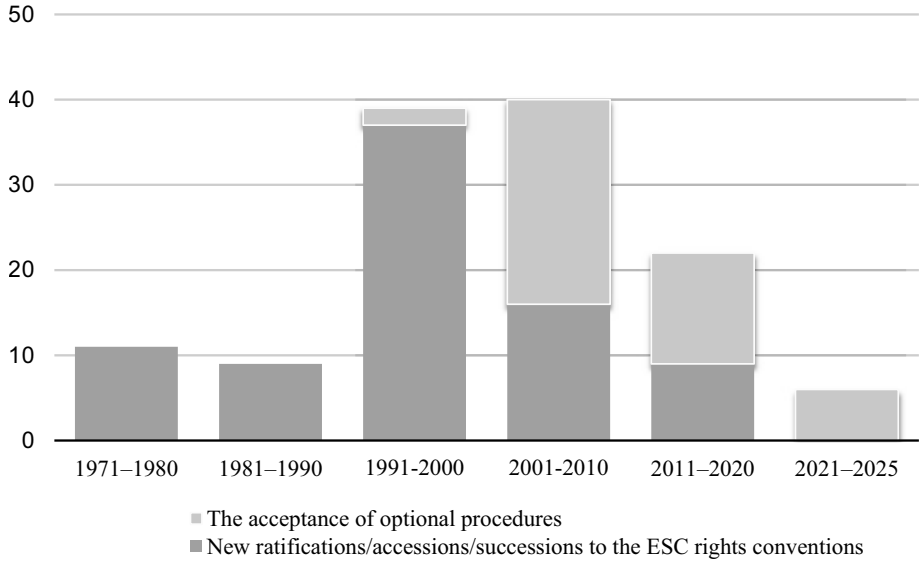
45 On this issue see for example: Krzysztof Drzewicki, 'Implementation of Social and Economic Rights in Central and Eastern Europe Transforming from Planned Economy to Market Economy', Nord. J. Int'l L. 64 (1995), 373-384; Jakub J. Szczerbowski and Paulina Piotrowska, 'Measures to Dismantle the Heritage of Communism in Central and Eastern Europe. Human Rights' Context', Cuadernos constitucionales de la Cátedra Fadrique Furió Ceriol 62/63 (2008), 233-248.

46 See Kędzia, 'Implementation of Social and Economic Rights' (n. 8).

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

covenants are not effectively realised by the domestic authorities and/or enforced before the national courts, opportunities for individuals to protect their rights remain significantly limited.

Chart 1. The timeline of new international instruments in ESC rights



Interestingly, the CEE countries' approach to preventing individuals from challenging violations of economic and social rights internationally can also be seen in the regional European human rights protection system. The regional mechanism – the collective complaint procedure based on 1995 Protocol to the European Social Charter/Revised European Social Charter – generally remains inaccessible to citizens. This is partly because the only entities entitled to file complaints are specific types of organisations (including trades union or employers' unions),[47] but, more importantly, because only four CEE states have accepted the procedure (Bulgaria, Croatia, Czechia, and Slovenia).[48] Therefore, in many cases the only legal procedure that CEE individuals can use to challenge violations of economic and social rights is an individual application to the European Court on Human Rights

47 On this mechanism see more: Robin R. Churchill and Urfan Khaliq, 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?', EJIL 15 (2004), 417-456.

48 Signatures and ratifications of the 1961 Charter, its Protocols and the European Social Charter (revised) as of 1 January 2025, available at <https://www.coe.int/en/web/european-social-charter/signatures-ratifications>, last access 18 February 2025.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

(ECtHR).[49] However, this legal tool remains questionable and insufficient for economic and social rights litigation.[50] In spite of several significant judgments of the ECtHR, the Court does not generally engage in the protection of these rights to a wider extent.[51]

It could be argued that the reluctance of CEE countries regarding international enforcement mechanisms corresponds to a similar trend among the states commonly referred to as 'Western European liberal democracies'. However, this argument is not entirely accurate, as we can see from the example of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. This protocol has been accepted by countries such as Belgium, France, Finland, Germany, Italy, Luxembourg, Portugal, and Spain. However, despite certain deficiencies in terms of access to international procedures in 'Western Europe', the approach adopted by CEE states still emerges as distinctive for two reasons. First, the low level of engagement with these instruments clearly contrasts with the fact that the Central and Eastern European constitutions could be generally associated with 'social constitutionalism' rather than 'liberal' and 'neoliberal' varieties.[52] This discrepancy is quite striking. Second, in many Western European states, at least one of these international procedures will still be available. It is worth noting that, for example, Belgium, France, and Italy ratified both the 1995 protocol to the European Social Charter and the Optional Protocol to the ICESCR. Concurrently, no CEE state agreed on both the CESCR and the ESC procedures.

The existence of domestic mechanisms to protect economic and social rights could be leveraged as a justification for the CEE states' low level of engagement in the international procedures. However, this argument is not fully convincing for at least three reasons. First, there are numerous shortcomings in the realisation of these rights, as will be described in the later sections, and this clearly shows that the international obligations are, in many cases, implemented ineffectively or even not at all. Secondly, it is

49 Ellie Palmer, 'Protecting Socio-Economic Rights Through the European Convention on Human Rights: Trends and Developments in the European Court of Human Rights', Erasmus Law Review 4 (2009), 397-425.

50 Colin Warbrick, 'Economic and Social Interests and the European Convention on Human Rights', in: Mashood Baderin and Robert McCorquodale (eds), *Economic, Social, and Cultural Rights in Action* (Oxford University Press 2007), 241-256.

51 Liam Thornton, 'The European Convention on Human Rights: A Socio-Economic Rights Charter?', in: Suzanne Egan, Liam Thornton and Judy Walsh (eds), *Ireland and the European Convention on Human Rights: 60 Years and Beyond* (Bloomsbury 2014), 227-256.

52 On differentiating types of constitutionalism see Whitney K. Taylor, *The Social Constitution. Embedding Social Rights Through Legal Mobilization* (Cambridge University Press 2023), 4-7.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

desirable for the content of economic and social rights to be interpreted in a consistent manner among parties to the ICESCR. Meanwhile, the lack of participation in international enforcement mechanisms may perpetuate differences in the level of protection guaranteed by respective countries. Notably, some domestic authorities may interpret certain rights, such as the right to health, in a more restrictive way than their foreign counterparts. Such a phenomenon would be incompatible with the universal nature of human rights. Therefore, the involvement in the international human rights protection system can be viewed as a 'further stage in the historical development of the idea of constitutionalism' (global constitutionalism), whereby international actors also impose limits on the exercise of the state's power.[53] Thirdly, and finally, although parallel systems of economic and social rights protection may entail a risk of generating inconsistent and contradictory outcomes, and causing tension between domestic and international legal commitments, previous experience in civil and political rights protection suggests that parallel systems are ultimately beneficial for the individual whose rights are violated. The best example of this is the aforementioned system of the European Convention on Human Rights, to which all European countries are party (with the exception of Russia and Belarus), and which functions alongside the national systems of protection of rights and freedoms which reinforce it, which of course sometimes causes controversy and tension.[54]

To sum up, what CEE states have in common is the general acceptance of most of the UN treaties that protect economic and social rights at the international level and the states' simultaneous failure to accept the procedural treaties that allow individuals to question violation of rights at the international level. While it must be acknowledged that poor engagement with the international enforcement of economic and social rights is an ongoing issue in numerous countries globally, this is a prevailing trend among the CEE states in particular.

53 See Stephen Gardbaum, 'Human Rights as International Constitutional Rights', EJIL 19 (2008), 749-768 (766-767).

54 See Adam Ploszka 'It Never Rains but It Pours. The Polish Constitutional Tribunal Declares the European Convention on Human Rights Unconstitutional', Hague Journal on the Rule of Law 15 (2023), 51-74.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

IV. Implementation of the ICESCR by Central and Eastern European Countries – in Light of the Concluding Observations of the Committee on Economic and Social Rights

As mentioned earlier, merely looking at the number of ratifications does not give a complete picture of how Central and Eastern European countries approach the international protection of economic and social rights. To better understand this, it is worth to draw on the conclusions of the Committee on Economic and Social Rights. Based on a thorough comparison of 49 concluding observations of the Committee on Economic, Social and Cultural Rights, several observations can be made with regard to the Central and Eastern European countries. It is important to note that our analysis covered concluding observations adopted in respect to CEE countries[55] after the fall of communism. Thus, the period covered by concluding observations extends, in theory, over 30 years, although one should bear in mind that the first concluding observations (after the fall of communism in these countries) were not adopted until the mid-1990s. It is also worth noting that practice in reporting on the domestic implementation of the ICESCR varied widely between different countries during this period. On average, therefore, our analysis included three concluding observations for each country. However, some countries saw more (as in the case of Ukraine, where it was five) or less (as in the case of Hungary, where only one concluding observation was accepted during that period).

The concluding observations provided by the Committee encompass synthetic summaries of the problems encountered in specific jurisdictions. Each document includes descriptive elements (what was noted by the Committee) as well as recommendations (what should be done to improve the enjoyment of conventional rights). These observations are issued – as a matter of principle – on a regular basis. However, this does not apply to all CEE states given the fact that – as mentioned above – some states failed to submit periodic reports within the dates specified by the Committee. This situation in itself is concerning since the implementation of the obligations laid down in the Covenant might not be subject to evaluations for as long as twenty years.[56] It must be also acknowledged that concluding observations are drafted in a very specific way, which stems from the fact that they are

55 At the moment, concluding observations have not yet been adopted for Kosovo.

56 See long periods of time with no period reports provided by Belarus (1996-2013), Bulgaria (1999-2012), Croatia (2001-2025), Hungary (since 2008) and Romania (1994-2014).

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

primarily based on state reports as well as submissions from Non-Governmental Organisations (NGOs) and UN specialised agencies.[57] While they are obviously not formulated in a strictly academic way, they provide – as reputable expert resources – valuable insights into the implementation of the Covenant at domestic level.

According to the CESCR's concluding observations, the provisions of the ICECSR are generally either not invoked at all before courts in CEE states or are invoked in a limited number of cases (Table 3).[58] This practice remains incompatible with the nature of the obligations reflected in the Covenant because its provisions should be justiciable by the domestic judicial bodies.[59] Regretfully, only some of the state parties were able to provide information on the relevant national case-law. The information provided raise additional doubts concerning the scope of the domestic application of the ICESCR. To give an example, Romania asserted that the Covenant had been invoked in over 1,700 cases from 2011 to 2024. Along with basic quantitative data, no detailed qualitative information was presented.[60] A further problem might arise from the fact that the Covenant is applied by the higher instance courts, but not lower courts and administrative instances, as was highlighted in the concluding observations regarding Czechia.[61] A limited number of cases in which the Covenant was invoked, such as in the Slovenian judiciary, can also be considered as threats to the protection of economic and social rights.[62]

One could argue that referring to the Covenant would ultimately be redundant in view of the fact that the domestic constitutions contain detailed catalogues of economic and social rights. However, the CESCR has not observed the presence of such well-established practices in terms of invoking constitutional economic and social rights. Even if this were the case, it does

57 Malcolm Langford and Jeff A. King, 'Committee on Economic, Social and Cultural Rights. Past, Present and Future' in: Malcolm Langford (ed.), *Social Rights Jurisprudence. Emerging Trends in International and Comparative Law* (Cambridge University Press 2009), 477-516 (479).

58 The CESCR's concluding observations are publicly available at: <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=5>, last access 18 February 2025.

59 The Committee on Economic, Social and Cultural Rights General Comment No. 9 on the domestic application of the Covenant, 3 December 1998, E/C.121998/24, para. 10.

60 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Romania, 20 March 2024, E/C.12/ROU/CO/6, para. 4.

61 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of the Czech Republic, 23 June 2014, E/C.12/CZE/CO/2, para. 5; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of the Czech Republic, 28 March 2022, E/C.12/CZE/CO/3, para. 4.

62 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Slovenia, 15 December 2014, E/C.12/SVN/CO/2, para. 5.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

not exclude the additional references to the provisions of the ICESCR. Those references may serve as a legal basis for inclusion of the case-law of the Committee on Economic, Social and Cultural Rights in the jurisprudence of domestic courts, including constitutional courts. Nevertheless, even if the domestic courts referred extensively to the constitutional provisions, the question would remain as to whether or not these rights are universally interpreted in line with the international standards.

Table 3. Cases of Direct Applicability of the Covenant Before the Courts

Provisions invoked in numerous cases	**Provisions invoked only by higher instance courts**	**Provisions interpreted as not giving rise to subjective claim rights**	**Provisions occasionally or rarely invoked by the courts**	**No data provided by the state**
Romania (as of 2024)	Czechia	Estonia	Belarus (as of 2022)	Albania
	Latvia	Hungary	Bulgaria	Bosnia and Herzegovina
		Poland (until 2016)	Croatia (as of 2001)	Belarus (until 2013)
			Lithuania (as of 2023)	Lithuania (until 2014)
			North Macedonia	Montenegro
			Slovakia (as of 2019)	Poland (as of 2024)
			Slovenia	Romania (until 2014)
				Serbia
				Slovakia (until 2012)
				Ukraine
				Croatia (as of 2025)

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA

The question arises as to the driving factors behind the nearly universal absence of the Covenant within CEE domestic case-law. In its concluding observations, the Committee suggests that the main difficulty in enforcing the provisions of the Covenant comes from a lack of sufficient training for members of the judiciary, lawyers, and public officials along with insufficient awareness of economic and social rights among rights holders (as well as other state and non-state actors responsible for the implementation of the Covenant).[63]

Yet it appears that this state of affairs results from more systemic concerns in the domestic human rights protection systems. We argue that these failures can be attributed to three wrong assumptions. First, the state party may view the Covenant as programmatic and aspirational, but not justiciable.[64] Secondly, there is a common misconception that the violations of economic and social rights should not be treated by the authorities as seriously as any infringements in the sphere of civil and political rights.[65] Thirdly, the legal obligations undertaken by the state parties are frequently implemented as if they were merely obligations of conduct, not obligations of result. The CESCR's concluding observations show that in many cases the states adopt appropriate legislative frameworks, which are then not effectively implemented in practice.[66]

In this context it is worth reminding ourselves that article 2(1) imposes an obligation to 'take steps with a view to achieving progressively the full realisation of the rights by all appropriate means'.[67] Hence states are supposed to 'move as expeditiously and effectively as possible towards that goal'

63 E. g.: The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Lithuania, 30 March 2023, E/C.12/LTU/CO/3, paras 4-5; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Poland, 26 October 2016, E/C.12/POL/CO/6, paras 5-6; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Serbia, 6 April 2022, E/C.12/SRB/CO/3, paras 4-5; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Slovakia 2019, 14 November 2019, E/C.12/SVK/CO/3, paras 4-5.

64 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Fifth Periodic Report of Poland, 2 December 2009, E/C.12/POL/CO/5, para. 8.

65 Scott Leckie, 'Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights', HRQ 20 (1998), 81-124 (82).

66 See The Committee on Economic, Social and Cultural Rights Concluding Observations on the Initial Report of Montenegro, 15 December 2014, E/C.12/MNE/CO/1, para. 16; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Combined Second to Fourth Periodic Reports of the former Yugoslav Republic of Macedonia, 15 July 2016, E/C.12/MKD/CO/2-4, para. 39; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Latvia, 30 March 2021, E/C.12/LVA/CO/2, para. 16.

67 The International Covenant on Economic, Social and Cultural Rights, 16 December 1966.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

and use 'the maximum available resources'.[68] One can nevertheless observe that the states in the region have serious problems with meeting this requirement, although attempts are made to respect, protect, and fulfil economic and social rights. The in-depth analysis of the concluding observations enabled us to discern two patterns related to CEE states' approach to the dialogue with the CESCR regarding the domestic implementation of economic and social rights guaranteed by the ICESCR. There is a small group of countries where domestic authorities persistently refrain from implementing the recommendations formulated by the Committee. This is especially evident from our analysis of the concluding observations from Bosnia and Herzegovina (adopted in 2006, 2013 and 2021), Belarus (1996, 2013 and 2022), and Bulgaria (1999, 2012 and 2019). This approach compromises the protection of the rights guaranteed by the ICESCR.

However, this is not a typical approach. The majority of CEE states are characteristically taking numerous actions in several areas, for example by amending existing laws and launching multi-annual programmes, but these were nonetheless regarded by the ICESCR as insufficient. Despite these critical observations, the states are not substantially changing their approach. This can be seen in the following concluding observations on Albania (2013, 2024), Estonia (2002, 2011, 2019), Hungary (2008), Latvia (2008 and 2021), Lithuania (2004, 2014 and 2023), Montenegro (2014), North Macedonia (2008 and 2016), Poland (1998, 2002, 2009, 2016, 2024), Romania (2014, 2024), and Serbia (2014, 2022).

Interestingly, a significant number of countries initially took the first approach. However, over the years, the approach of some CEE countries has changed. These countries have begun to engage in dialogue with the CESCR and address challenges in implementing economic and social rights. One can observe this change in the concluding observation adopted in reference to Croatia (2001 and 2025), Czechia (2014 and 2022), Romania (2014 and 2024), Serbia (2014 and 2022), Slovenia (2014), and Ukraine (2014 and 2020), especially when compared with earlier ones.

V. Selected Deficits in the Implementation of Selected Social Rights by Central and Eastern European Countries

As mentioned in the first part of this article, there are three social rights that are common to CEE constitutionalism – the right to social security,

68 The Committee on Economic, Social and Cultural Rights General Comment No. 3 on the Nature of States Parties' Obligations, 14 December 1990, para. 9.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

the right to healthcare, and the right to education.[69] Regardless of their constitutional anchoring, the CESCR notes a number of systemic problems that arise in their realisation. In the present section, we concentrate on the deficits noted in more than one country, particularly in several CEE jurisdictions.

According to the CESCR's general comment no. 19, entitlement to social security is vital for safeguarding the principle of human dignity, and therefore access and maintenance of benefits must not be based on any discriminatory criteria.[70] On the basis of constitutional provisions alone, one might possibly conclude that the CEE states will be particularly 'generous' in that regard. However, the reality appears to be quite different in many cases. The problems may arise at different stages, starting with the failure to take effective measures to ensure that employers pay social security contributions on time, although fortunately, this is not a widespread issue in the region.[71] In reality, beneficiaries are generally covered by different forms of financial support, but the amounts of benefits, pensions, and allowances are often still insufficient for an adequate standard of living.[72] There are also two tendencies that clearly aggravate this problem – the cuts in public fundings that have an adverse impact on the socio-economic status of recipients,[73] and application

69 Wojciech Sadurski, *Rights Before Courts. A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe* (2nd edn, Springer 2014), 261-264.

70 The Committee on Economic, Social and Cultural Rights General Comment No. 19, The Right to Social Security, 4 February 2008, E/C.12/GC/19, paras 1-2.

71 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Initial Periodic Report of Bosnia and Herzegovina, 24 January 2006, E/C.12/BIH/CO/1, para. 15; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Bosnia and Herzegovina, 16 December 2013, E/C.12/BIH/CO/2, para. 18; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Bosnia and Herzegovina, 11 November 2021, E/C.12/BIH/CO/3, para. 34; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Lithuania, 30 March 2023, E/C.12/LTU/CO/3, para. 45.

72 See for example: The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Estonia, 16 December 2011, E/C.12/EST/CO/2, para. 18; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Lithuania, 24 June 2014, E/C.12/L TU/CO/2, para. 10; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Estonia, 27 March 2019, E/C.12/EST/CO/3, paras 28-31; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Latvia, 30 March 2021, E/C.12/LVA/CO/2, paras 28-29.

73 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of the Czech Republic, 23 June 2014, E/C.12/CZE/CO/2, para. 14; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Combined Third to Fifth Periodic Reports of Romania, 9 December 2014, E/C.12/ROU/CO/3-5, para. 15.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

of stricter eligibility criteria affecting the marginalised groups and disadvantaged groups, which put them in an even more vulnerable position.[74]

The deficiencies in access to healthcare are also particularly troublesome. Clearly, this does not mean that CEE countries generally abstain from allocating public funds for such objectives. Serious doubts do arise however if one scrutinises the way in which healthcare services are distributed. There are reoccurring disparities in the availability of such services between regions.[75] The deep-lying general causes of these disparities are frequently systemic, boiling down to factors such as the lack of sufficient well-qualified medical professionals combined with the excessively low budget allocations.[76]

Significantly, the Committee is 'responsive' not only to the risks to the protection of physical health, but also mental health, which is especially evident as far as the most recent concluding observations are concerned.[77] Shortcomings in the latter are widespread in the region, and consequently strengthening domestic mental health-care systems has become one of the

74 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Slovenia, 15 December 2014, E/C.12/SVN/CO/2, para. 18; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Combined Second to Fourth Periodic Reports of the former Yugoslav Republic of Macedonia, 15 July 2016, E/C.12/MKD/CO/2-4, paras 37-38; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Poland, 26 October 2016, E/C.12/POL/CO/6, paras 27-28; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Serbia, 6 April 2022, E/C.12/SRB/CO/3, para. 50.

75 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Poland, 26 October 2016, E/C.12/POL/CO/6, paras 43-44; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Bulgaria, 29 March 2019, E/C.12/BGR/CO/6, paras 40-41; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Fourth Periodic Report of Albania, 17 October 2024, E/C.12/ALB/CO/4, paras 44-45.

76 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Poland, 26 October 2016, E/C.12/POL/CO/6, paras 43-44; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Lithuania, 30 March 2023, E/C.12/LTU/CO/3, paras 52-53.

77 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Bulgaria 29 March 2019, E/C.12/BGR/CO/6, paras 42-43; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Estonia, 27 March 2019, E/C.12/EST/CO/3, paras 42-43; The Committee on Economic, Social and Cultural Rights Concluding Observations on Latvia, 30 March 2021, E/C.12/LVA/CO/2, paras 44-45; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Lithuania, 30 March 2023, E/C.12/LTU/CO/3, paras 56-57; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Romania, 20 March 2024, E/C.12/ROU/CO/6, paras 44-45.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

most important challenges for the CEE states, especially considering the high suicide rates among different age groups, including adolescents.[78]

In some cases, there are also still considerable concerns in terms of reproductive health.[79] The emerging trends fall into two categories. In a few countries, abortion has become a prevalent method of birth control, a trend which is often attributed to a lack of sexual health education.[80] On the other hand, women seeking to terminate pregnancy in other jurisdictions have faced difficulties in gaining access both to safe abortions and also to contraceptives.[81] Apart from the apparent infringement of the International Covenant on Economic, Social and Cultural Rights, the latter trend, which has grown over the last years,[82] appears to be clearly incom-

78 According to the data provided by Eurostat, in 2021 the suicide rate among adolescents aged from 15 to 19 years in 8 CEE countries was higher than the average suicide rate in the European Union. See <https://ec.europa.eu/eurostat/databrowser/view/tps00202__custom_11207793/default/bar?lang=en>, last access 18 February 2025.

79 The right to sexual and reproductive health is considered by the CESCR an integral part of the right to health. On this issue see The Committee on Economic, Social and Cultural Rights General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, E/C.12/GC/22, para. 1.

80 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Estonia, 16 December 2011, E/C.12/EST/CO/2, para. 24; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Lithuania, E/C.12/L TU/CO/2, 24 June 2014, para. 22; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Initial Report of Montenegro, 15 December 2014, E/C.12/MNE/CO/1, para. 24.

81 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Combined Second to Fourth Periodic Reports of the former Yugoslav Republic of Macedonia, 15 July 2016, E/C.12/MKD/CO/2-4, paras 49-50; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report, 26 October 2016, Poland 2016, E/C.12/POL/CO/6, paras 46-47; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Slovakia 2019, 14 November 2019, E/C.12/SVK/CO/3, paras 41-42; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Latvia, 30 March 2021, E/C.12/LVA/CO/2, paras 42-43; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Romania, 20 March 2024, E/C.12/ROU/CO/6, paras 42-43; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Seventh Periodic Report of Poland, 24 October 2024, E/C.12/POL/CO/7, paras 44-45. The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Croatia, 10 March 2025, E/C.12/HRV/CO/2, paras 46-47.

82 On this issue see for example: Aleksandra Gliszczyńska-Grabias and Wojciech Sadurski, 'The Judgment That Wasn't (But Which Nearly Brought Poland to a Standstill). "Judgment" of the Polish Constitutional Tribunal of 22 October 2020, K1/20', Eu Const. L. Rev. 17 (2021), 130-153; Andrea Cioffi, Camilia Cecannecchia, Fernanda Cioffi, Giorgio Bolino and Raffaella Rinaldi, 'Abortion in Europe: Recent Legislative Changes and Risk of Inequality', International Journal of Risk & Safety in Medicine 33 (2022), 281-286.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

patible with the Human Rights Committee's (HRC) stance on the right to life. Using the words of the HRC, one could say that the obstacles that some CEE women or girls face when seeking to terminate a pregnancy might 'jeopardize their lives, subject them to physical or mental pain or suffering', and moreover 'discriminate against them or arbitrarily interfere with their privacy'.[83]

CEE states have also faced significant difficulties in the full realisation of the third 'core' right of Central and Eastern-European Constitutionalism – the right to education. There are several problematic areas that are apparent in more than one country. In the most extreme cases, the states fail to adopt effective measures aimed to eliminate high dropout rates in primary and secondary education. The statistical gravity of this issue varies depending on specific social groups, but, undoubtedly, the risk of not completing education is exacerbated in marginalised and vulnerable communities, in particular among Roma children.[84] Predominantly in the most recent concluding observations, the Committee emphasises the importance of inclusive and accessible education for children with disabilities, migrant children, and children from national/ethnic minorities. This is an issue due to the existing legal and administrative barriers to school enrolment as well as harmful practices such as the continuation of segregated structures in educational institutions.[85]

Nevertheless, the shortcomings in the realisation of the right to education does not amount solely to the aspect of 'accessibility'. The ongoing challenge remains the quality of education, which is related, *inter alia*, to the pressing need to extend the school curricula to cover the age-appropriate sex and

83 The Human Rights Committee General Comment No. 36 on the Right to Life, 3 September 2019, CCPR/C/GC/36, para. 8.

84 See for example: The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Hungary, 16 January 2008, E/C.12/HUN/CO/3, para. 27; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Slovakia, 8 June 2012, E/C.12/SVK/CO/2, para. 26; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Bulgaria, 29 March 2019, E/C.12/BGR/CO/6, paras 48-49

85 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Bulgaria, 29 March 2019, E/C.12/BGR/CO/6, paras 48-49; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Bosnia and Herzegovina, 11 November 2021, E/C.12/BIH/CO/3, paras 50-51; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Czechia, 28 March 2022, E/C.12/CZE/CO/3, paras 46-49; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Fourth Periodic Report of Albania, 17 October 2024, E/C.12/ALB/CO/4, paras 48-49, The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Croatia, 10 March 2025, E/C.12/HRV/CO/2, para. 50.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

reproductive health education.[86] This issue is certainly inextricably linked to the question of whether a sufficient level of budget is being allocated to education.[87] Although this results only indirectly from the concluding observations, the Committee generally recognises education as a tool for strengthening the protection of economic and social rights in CEE countries. It follows that schools should also aim to combat the perpetuation of gender stereotypes[88] and raise awareness about human rights protection.[89]

VI. Conclusions

To conclude, the Central and Eastern European states' approach to economic and social rights can be characterised by a discrepancy between the way in which economic and social rights were constitutionalised and the states' approach to protecting these rights at the international level. Despite the fact that economic and social rights are defined in CEE national legal systems as subjective rights, which translates into their justiciability before national courts, the same countries do not, in principle, allow individuals to challenge violations of economic and social rights internationally. These countries also struggle with effective implementation of the International Covenant on Economic and Social Rights as can be seen in the concluding observations of the UN Committee on Economic, Social and Cultural Rights regarding states' reports. It is impossible to provide a single answer to explain this paradox, as the reasons behind it are clearly multi-layered.

86 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Fifth Periodic Report of Poland, 2 December 2009, E/C.12/POL/CO/5, para. 31; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Lithuania, 24 June 2014, E/C.12/L TU/CO/2, para. 22.

87 See for example: The Committee on Economic, Social and Cultural Rights Concluding Observations on the Sixth Periodic Report of Romania, 20 March 2024, E/C.12/ROU/CO/6, para. 46; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Seventh Periodic Report of Poland, 24 October 2024, E/C.12/POL/CO/7, para. 48.

88 See for example: The Committee on Economic, Social and Cultural Rights Concluding Observations on the Initial Report of Montenegro, 15 December 2014, E/C.12/MNE/CO/1, para. 11; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Combined Second to Fourth Periodic Reports of the former Yugoslav Republic of Macedonia, 15 July 2016, E/C.12/MKD/CO/2-4, paras 25-26; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Slovakia 2019, 14 November 2019, E/C.12/SVK/CO/3, paras 18-19.

89 See for example: The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Bosnia and Herzegovina, 11 November 2021, E/C.12/BIH/CO/3, para. 5; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Czechia, 28 March 2022, E/C.12/CZE/CO/3, para. 5.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

Among these, however, in our opinion, particular importance should be accorded to the differential approach to civil and political rights versus economic and social rights and mechanisms for their protection. After the collapse of communist regimes starting at the end of the 1980s, attention in this part of Europe was focused on safeguarding civil and political rights which had been neglected and massively infringed throughout the Communist era, rather than on economic and social rights.[90] Our analysis confirms this argument. Despite the constitutional embedding of economic and social rights, some Central and Eastern European countries still question the quality of the rights enshrined in the ICESCR as genuinely subjective (and thus justiciable) rights, either doing so openly – like Estonia and Hungary – or by not presenting any information on the matter in their reports. This is even more visible in the ratification policy that CEE countries have pursued in the context of optional protocols that enable individuals to bring communications on economic and social rights violations at the international level. Our analysis shows that these legal avenues are virtually inaccessible to victims of economic and social rights violations from the CEE region. At the same time, however, the region's countries allow violations of civil and political rights and freedoms to be challenged internationally.[91] This issue, in our view, should be a key point in the dialogue conducted by the CESCR and other UN Committees with each of the Central and Eastern European countries.

Among other factors impeding the implementation of the Covenant by the CEE states the CESCR also highlighted the economic hardship arising during the transition to a market economy.[92] Finally, several crises, including the effects of the global financial crisis in the late 2000s[93] and more recent

90 Beata Faracik, Jernej Letnar Černíč and Olena Uvarova, 'Business and Human Rights in Central and Eastern Europe: Trends, Challenges and Prospects', Business and Human Rights Journal 9 (2024), 1-14 (4, 7-8); Antal Visegrády 'Transition to Democracy in Central and Eastern Europe: Experiences of a Model Country – Hungary', William & Mary Bill of Rights Journal 1 (1992), 245-265 (261).

91 See detailed analysis: Mihaela Şerban, 'Stemming the Tide of Illiberalism? Legal Mobilization and Adversarial Legalism in Central and Eastern Europe', Communist and Post-Communist Studies 51 (2018), 177-188.

92 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Romania, 30 May 1994, E/C.12/1994/4, para. 4; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Bulgaria, 8 December 1999, E/C.12/1/Add.37, para. 3; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Initial Periodic Report of the Czech Republic, 5 June 2002, E/C.12/1/Add.76, para. 7.

93 See for example: The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of the Czech Republic, 23 June 2014, E/C.12/CZE/CO/2, para. 14.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-CA

ones like the COVID-19 pandemic[94] as well as the ongoing war in Ukraine[95] constituted an obstacle in progressively achieving the full realisation of the rights recognised in the Covenant, as the CESCR rightly pointed out. As a side note, these numerous crises have contributed to the extension of the scope of the obligations imposed on the state parties, some of which can be extra-territorial, for example, in terms of 'exercising its leverage in regional and international organisations' to 'advocate for universal, equitable and affordable access to COVID-19 vaccines and drugs'.[96]

It is undeniable that numerous deficits in the implementation of economic and social rights can also be observed in other regions of the world. The present study however, has revealed that there are multiple similarities between the countries covered by the research, which allowed us to identify the specific challenges faced by CEE states and the right-holders seeking the effective enforcement of their rights.

94 The Committee on Economic, Social and Cultural Rights Concluding Observations on the Second Periodic Report of Latvia, 30 March 2021, E/C.12/LVA/CO/2, paras 40-41; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Serbia, 6 April 2022, E/C.12/SRB/CO/3, paras 20-21; The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Lithuania, 30 March 2023, E/C.12/LTU/CO/3, paras 23-25.

95 See for example: The Committee on Economic, Social and Cultural Rights Concluding Observations on the Seventh Periodic Report of Ukraine 2 April 2020, E/C.12/UKR/CO/7, paras 35-36.

96 On this issue see for example: The Committee on Economic, Social and Cultural Rights Concluding Observations on the Third Periodic Report of Lithuania, 30 March 2023, E/C.12/LTU/CO/3, paras 24-25.

https://doi.org/10.17104/0044-2348-2025-3-863 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-SA