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Introduction

This book analyses the impact of Polish courts and the courts of the Czech Republic, Lithuania, Hungary, Russia and Ukraine on international law and on strengthening of the rule of law through international law. It examines the place, which is accorded to international law in domestic legal systems of these Central and Eastern European States and seeks to understand whether their courts enter a dialogue with international courts or domestic courts of other jurisdictions. It surveys how often, in which circumstances and for what purposes the courts refer to other jurisdictions and whether this practice may potentially develop international law. The key concept of the book – the judicial dialogue – is understood broadly as a practice of using any kind of cross-references to reasoning and interpretation of law conducted by other judges.

The book is based on the results of the EUROCORES research project 10-ECRP-028 *International Law through the National Prism: the Impact of Judicial Dialogue*. The research involved the inquiry into domestic settings for application of international law and judicial dialogue. At the beginning of the project the country reports following a set template were prepared.[1] The reports showed that in all the States under examination there exist legal norms, often of constitutional character, determining the relationship between domestic and international law, however, the methods with a help of which the international law regulations are introduced into internal law differs (e.g. Hungary is a dualistic State while Poland's or Lithuania's legal systems display chiefly monistic characteristics). There are also different traditions in the CEE States of the courts' application of law. The research detected the most serious problems in this respect in Ukraine where judges do not habitually refer to case law in their own judgments. The book reveals as well that the quality of references varies according to the country and according

1 The country reports are published as e-book accompanying this volume and available at the University of Lodz Repository (RUŁ) website http://repozytorium.uni.lodz.pl:8080/xmlui/.

to the characteristics of courts: be it administrative, criminal or ordinary courts, or to their place in judicial hierarchy (lower or highest courts).

The first chapter of the book titled *The Central and Eastern European Judiciary and Transnational Judicial Dialogue on International Law* (by Wyrozumska) has an introductory character; it gives the overview of the legal setting in all the States under the review and the most characteristic examples of judicial dialogue recalling i.a. the judgments in *Natoniewski*, *the Slovak Pension Rights*, *the Abortion and Status of Foetus*, *Paksas*, *Markin and Anchugov*, and *Crimea*. This chapter formulates general conclusions, which are developed in the subsequent contributions.

The second chapter deals with interactions between Constitutional Courts (*The Dialogue of CEE Constitutional Courts in the Era of Constitutional Pluralism* by Skomerska-Muchowska). It emphasizes both – the special role of these courts as guardians of national constitutions (based in all these countries on principles of democracy and the rule of law) – and the environment in which Constitutional Courts act – the globalised world. Given the special role and position of these courts, they can no longer ignore the international context, especially the international protection of human rights as granted by the European Convention on Human Rights nor the legal order of the EU, to which the Czech Republic, Lithuania, Hungary and Poland belongs. On the contrary, the Constitutional Courts are continuously confronted with other constitutional orders, not only that of the ECHR or of the EU but also the constitutional orders of other States. The Constitutional Courts often consider and draw inspirations from the case law of foreign constitutional or other highest courts, especially while adjudicating on human rights or EU law. The Chapter relies on the concept of 'constitutional pluralism' and studies the most important cases of judicial dialogue e.g. *Burdov* saga or the case law on EU Data Retention Directive stemming from various EU countries.

The protection of human rights and the interactions with the European Court of Human Rights is the most important area of judicial dialogue. Almost each contribution in this book investigates its manifestations, yet the chapter by Górski is specifically dedicated to explore various forms of dialogue on human rights (*The Dialogue between Selected CEE Courts and the ECtHR*). Górski defines dialogue broadly underling its different functions, especially conflict resolution and classifies dialogue in regard to the accuracy of the referring court's reasoning seeking or failing to involve references to other courts' case law. The author recalls normative framework for dialogue with the ECtHR (with special emphasis on Poland) and carefully studies the practice of CEE courts within which he distinguishes proper, decorative (fake), failed or veiled dialogue. However, some cases, he finds, belong to more than one category. The author provides a general assessment of the practice, explains reasons of occasional failures and suggests the instruments for improvement.

The chapter by Czaplińska deals also with the dialogue in a specific area and with involvement of a specific court, namely the Court of Justice of the European Union (*The Preliminary Reference Procedure as an Instrument of Judicial*

Dialogue in the EU – the CEE Perspective). Czaplińska presents the selection of preliminary rulings on questions referred by the Czech, Hungarian, Lithuanian and Polish courts and assesses their participation in this form of institutionalised dialogue.

The Chapter by Krzemińska-Vamvaka, on the other hand, explores the practice of administrative courts concerning international law, which the author finds sometimes spontaneous and superficial but underlines the structured form of their cooperation allowing for exchange of experiences and best practices, including a web-based dialogue (*Administrative Courts and Judicial Comparativism in Central and Eastern Europe*). This chapter is complemented by the study of practice of administrative bodies, including courts, under refugee law (Kowalski, *International Refugee Law and Judicial Dialogue from the Polish Perspective*). Kowalski focuses on Polish practice and his diagnosis on the state of the dialogue is rather severe. He finds that the Polish contribution to judicial dialogue on refugee law is very modest. Polish courts, contrary to the Polish Refugee Board, almost do not refer to foreign judgments and only rarely refer to international courts' decisions. The latter clearly possesses the deeper expertise on refugee law, yet this does not excuse the limited involvement of the judges in the dialogue between courts.

Four studies are devoted to the practice of Polish, Lithuanian, Hungarian and Ukrainian courts. Matusiak-Frącczak looks more closely at Polish ordinary courts practice and finds that in most cases the courts are quoting the decisions without their detailed examination, mostly to support their own reasoning (the author similarly to Górski distinguishes proper, decorative and failed dialogue). This conclusion can be drawn in respect to Lithuanian, Hungarian and Ukrainian courts as the other chapters show. The chapter by Kuzborska on Lithuania emphasises that since the country regained independence only in 1990, Lithuanian courts had no experience in applying international law. In that context, the progress, especially in relation to human rights standards of protection is immense (*Lithuanian Courts in Dialogue on International Law*).

As far as Ukrainian practice is concerned, both studies by Kolisnyk and by Tsymbrivskyy are very critical of the situation in this country (respectively: *Ukrainian Courts in Dialogue on International Law* and *Problems with Application of International Law in Ukraine: Theoretical and Practical Issues*). They underline decorative character of the references and practical challenges to dialogue such as access to foreign judgments, lack of translations, foreign language skills, commentaries, expertise on international law etc. It must be emphasised that the existing Ukrainian legislation on application of international law is rather ambiguous. The legislation itself brings about specific problems concerning its application and interpretation by domestic courts.

The last chapter of the book contributes to a better understanding of the Hungarian dualistic approach to international law, and especially to the implementation of the ECtHR decisions. Csatlós depicts the problems faced by the administrative organs and the courts on the canvas of famous *Vajnai* and *Fratanoló* cases

concerning the Hungarian prohibition of the use of totalitarian symbols in public life. She tracks down the reaction to these ECtHR decisions both on the part of the judiciary and the executive posing the question as to with whom the actual responsibility of implementation lies (*Who is to Give Effects to the ECtHR Decisions? The* Vajnai *Saga*).

Even though, Csatlós's conclusion is critical, the general conclusion of the book is more optimistic. In all the countries under review it was possible to identify the court's decisions which influence the development of international law (cf. Czech administrative courts decisions on refugee law), including those creating customary international law as part of State practice or *opino iuris* (cf. Polish Supreme Court *Natoniewski* case or the decision of the Lithuanian Constitutional Court on genocide). The courts of CEE countries contribute to the development of the EU law, which is similarly evident upon the examination of the quantity and the quality of issues submitted to the CJEU under the preliminary rulings procedure.

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