

Grażyna Baranowska, *Wymuszone zaginięcia w Europie. Kształtowanie się międzynarodowych standardów zapobiegania i egzekwowania odpowiedzialności państwa* (Enforced Disappearances in Europe. The Shaping of International Standards of Preventing and Enforcing State Responsibility), Wydawnictwo C.H. Beck, Warszawa 2017, 267 pp., ISBN 978-83-255-9340-7

Przemysław Domagała, *Międzynarodowa konwencja ONZ w sprawie ochrony wszelkich osób przed wymuszonym zaginięciem. Perspektywa polska. (International Convention for the Protection of All Persons from Enforced Disappearance. A Polish Perspective)*, Wydawnictwo C.H. Beck, Warszawa 2017, 487 pp., ISBN 978-83-255-9659-0

Two noteworthy books tackling the same problem of international human rights law – albeit from different perspectives – were published in 2017 in Poland. These monographs fulfil a certain lacuna since the international standards against enforced disappearance have been so far only partly noticed and commented upon in the Polish legal doctrine¹. Presumably, the signing of the *International Convention for the Protection of All Persons from Enforced Disappearances*² (hereinafter: the UN Convention) by Poland

¹ See A. Szpak, *Wymuszone zaginięcia. Wybrane zagadnienia* [Enforced Disappearances. Selected Aspects], Toruń 2009.

² United Nations Treaty Series no. 48088. The Convention was adopted by the UN General Assembly on 20.12.2006 and opened for signature on 6.2.2007. It entered into force on 23.12.2010.

in 2013, as well as developments in the case-law of the European Court of Human Rights may have contributed to a rise of interest in this area. Be it as it may, both of the reviewed books deserve the attention of those wishing to study the international legal framework of preventing and responding to enforced disappearances.

Dr. Grażyna Baranowska in her book analyzed the development of international legal standards against enforced disappearances in Europe. This approach obviously embraces the UN Convention and the activities of the treaty committee established on its basis³, however, the attention of the author is focused on distinguishing and enquiring into specific legal regimes which have been operating on the European continent. Predominantly, this approach takes into account the standards developed by the European Court of Human Rights, as well as more specialized bodies set up with a view to resolving disputes and adjudicating on responsibility for human rights violations: the Chamber of Human Rights for Bosnia and Herzegovina, and the Advisory Panel on Human Rights for Kosovo. Additionally, Dr. Baranowska commented on the case-law developed by the Human Rights Committee and international criminal courts.

While Dr. Przemysław Domagała's book also reaches out to regional human rights standards against enforced disappearances, the main part of the author's analysis concerns the UN Convention, with some references to the *acquis* of the Committee on Enforced Disappearances. This monograph constitutes a sound commentary to the Convention, with useful remarks on how the Polish legal order corresponds with the obligations of the Convention. This approach might be particularly interesting for Polish readers, having regard to the anticipated ratification of the UN Convention by Poland.

Let us take a closer look at each of the monographs. The book by Dr. Baranowska goes beyond an institutional and normative analysis, since the author undertakes reflection on how the existing international mechanisms respond to the needs of victims of enforced disappearances. This should be appreciated since on occasions international human rights law faces an accusation of being overly preoccupied with "perpetrators' rights" and insufficiently focused on the rights of victims of crimes and/or human rights abuses. These allegations are actually false since international human rights law sufficiently recognizes the rights of victims, even though

³ The Committee on Enforced Disappearances was established on the basis of Article 26 of the UN Convention.

there is no separate international treaty explicitly covering the basic rights of victims. In any case, the victim-oriented approach adapted by Dr. Baranowska in her book must be considered as the right one, especially that in the context of enforced disappearances it is obvious that the notion of “victim” includes not only the missing persons themselves but also – or even primarily – their relatives⁴.

The author identified four such “victims’ needs”: the recovery of remains of missing persons, the right to truth, the acceptance (recognition) of responsibility for an enforced disappearance by state authorities and the right to reparation. Irrespective of whether the above catalogue is complete (and the author does not claim so), one can concur that these are the principal expectations and needs of those primarily affected by enforced disappearances (i.e. the relatives of a missing person). However, from a legal point of view it is crucial to determine whether all the needs identified by Dr. Baranowska are equally protected by international law. Further analysis undertaken by the author is fortunately not restricted to explaining the “needs” themselves, but strives at determining if and how they are anchored in the international legal framework (as legal rights) and whether they can be effectively transformed into claims derived from international law.

The structure of Dr Baranowska’s book is clear and coherent. The first chapter provides a historical outline of enforced disappearances in European states in the 20th and 21st century. The contents of this chapter are informative and contain not only a description of facts but also a commentary to the aftermaths of each case in terms of their legal consequences. The author begins with a concise portrayal of the Katyń Crime committed by the authorities and agents of the Soviet Union in 1940. Then she proceeds to further examples of enforced disappearances that took place in Spain, Cyprus, Turkey, the former Yugoslavia, Kosovo, Russia, Caucasus, Belarus and Ukraine. This catalogue was also supplemented by reference to states involved in extraordinary renditions, i.e. European states which undertook secret co-operation with the United States, in violation of their human rights obligations, which resulted in their complicity in enforced disappearances and other associated grave violations of human rights. Sadly, such co-operation was undertaken also by Poland and resulted

⁴ Article 24 (1) of the UN Convention provides a broad definition of “victim”: *For the purposes of this Convention, “victim” means a disappeared person and any individual who has suffered harm as a direct result of an enforced disappearance.*

in the judgment of the European Court of Human Rights, finding a violation of Articles 3 and 5 of the European Convention on Human Rights⁵.

The second chapter incorporates a normative analysis of international law documents relating to enforced disappearances, starting from the resolution of the UN Human Rights Commission of 1975 up to the adoption of the UN Convention of 2006. The author thoroughly presented the legal framework aimed at preventing and responding to enforced disappearances. In accordance with the intention expressed at the very beginning of her book, Dr. Baranowska juxtaposed the “victims’ needs” with their reflection in international legal instruments. This led to the conclusion that the return of remains of missing persons has been recognized as a legal obligation only in the UN Convention of 2006 (p. 67). A more global recognition concerns the obligation of reparation to victims of enforced disappearances.

It is useful to highlight the author’s cautious approach towards one of the four identified victims’ needs, and notably the recognition of responsibility by the state concerned. While such a need could be understood from a psychological, social or even emotional standpoint, there is simply no legal norm in international law which would create a duty to acknowledge responsibility by the state which committed an act or acts leading to an enforced disappearance. It would be hardly realistic to expect that such a duty could be accepted by the states concerned. The self-recognition of responsibility is always an option for any state, however, no international norm – whether in the general regime of state responsibility or within those based on *leges speciales* – provides for a “duty to acknowledge”. Nevertheless, the author is right in arguing that the victims’ need to acquire the recognition of responsibility by the state concerned might be partly fulfilled through Article 24 (5) of the UN Convention, which provides that *the right to obtain reparation (...) covers material and moral damages, and, where appropriate, other forms of reparation, such as (...) (c) satisfaction, including restoration of dignity and reputation.*

The next chapters in Dr Baranowska’s book deal with examining state responsibility of enforced disappearances in the case-law of international courts and quasi-judicial bodies. Along these lines, Chapter III is focused on the approach adopted by the European Court of Human Rights, Chapter IV concerns the UN Human Rights Committee, and Chapter V the aforementioned bodies set up to adjudicate selected human rights

⁵ Cf. *Al-Nashiri v. Poland*, ECHR judgment (Grand Chamber) of 24.7.2014.

violations in former Yugoslavia. The final chapter (VI) makes reference to the activities of the treaty committee established under the UN Convention of 2006 and some other mechanisms and procedures, such as the UN Working Group on Enforced or Involuntary Disappearances (a special procedure of the Human Rights Council).

The third chapter – focused on the case-law of the European Court of Human Rights – is of particular interest since the Strasbourg Court might be considered as the principal judicial forum of adjudicating human rights complaints in Europe. Although the European Convention does not explicitly provide for protection against enforced disappearances as such, there is no doubt that the guarantees enshrined in the Convention are relevant when it comes to preventing and invoking state responsibility for this crime. The author tackled several crucial aspects of cases invoking violation of the ECHR in the context of enforced disappearances, i.e. the jurisdiction of the Court *ratione temporis* and the six-month deadline for submitting applications, violations of the right to life (Article 2 of the ECHR) and other Convention provisions, the status of relatives of those missing as a result of enforced disappearance, as well as other issues such as the obligation of states to co-operate with the Court (Article 38 of the ECHR) and specific obligations to undertake concrete actions in the execution of the Court's judgments. The contents of this chapter were adequately structured and leave no doubt as to the author's fluency in analyzing and drawing accurate conclusions relating to the control system of the European Convention. The same view could be expressed with regard to other judicial and quasi-judicial bodies whose case-law and activities were referred to and commented on in the following chapters.

As was noted above, Dr. Domagała's book on enforced disappearances undertakes this problem from a different angle: it focuses on the UN Convention itself and elaborates on how the provisions of the Convention are reflected in the Polish legal system. Let us recall that Poland has signed, but not yet ratified the Convention. Although formally divided into as many as thirteen chapters, the second of the reviewed books comprises in fact two main parts: the introduction to the phenomenon of enforced disappearances (two first chapters) and the systematic commentary to the provisions of the UN Convention intertwined with remarks on the Polish legal system (chapters III-XIII).

The introductory part in Dr. Domagała's book starts with providing examples of enforced disappearances throughout the world. For explicable reasons this overview is not exhaustive, nevertheless, it covers different examples than those mentioned in the monograph by Dr. Baranowska.

The latter author's attention was restricted to Europe, whereas the other author provides examples of enforced disappearances also from Latin America, Africa and Asia (Chapter I). Interestingly, both authors covered practices tantamount to enforced disappearances related with secret detention sites of the Central Intelligence Agency in some European states. Chapter II of Dr. Domagała's book is meant to analyze how the international community responded to the phenomenon being in the centre of the author's attention. This chapter starts with remarks on how international humanitarian law tackles the problem of enforced disappearances. One can argue that it was a good starting point to further reflection on how international law developed towards the adoption of the UN Convention of 2006. However, the structure of Chapter III is slightly disturbed by the inclusion of remarks on the "war on terrorism" (pp. 39-43), since the relevance of these comments for the subject of the book is far from obvious. Another observation is of a linguistic nature: the author rightly refers to activities of the UN Working Group of Enforced and Involuntary Disappearances (p. 44-49), but for unknown reason he omits the word "involuntary" in the Polish translation of the name of the Group. Leaving aside the problem whether "enforced" is synonymous with "involuntary", the latter adjective has been present in the name of the UN Working Group since its creation in 1980, thus it would be preferable to mirror the original wording in any translations, with possible explanations as to the meaning and scope of the above mentioned terms.

The next chapters in Dr. Domagała's book (III-IV) deal with the provisions of the UN Convention itself, starting with general observations on counteracting impunity of perpetrators of enforced disappearance and the general rules of the 2006 Convention, followed by remarks about its scope, definitions used therein, as well as the classification of enforced disappearances as a crime against humanity and as a continuous wrongful act in international law. Chapters V-VI elaborate on the material and procedural aspects of the criminalization of enforced disappearances in Polish law. This part of the book proves the author's fluency in the theory and practice of Polish criminal law, however, it also requires the extraordinary attention of the reader since the author deals with both levels of regulation (domestic and international) at the same time, usually starting with reference to the UN Convention and continuing with his comments with reference to Polish law.

The same methodology was applied in further chapters, which deals with international co-operation in prosecuting and punishing perpetrators (chapter VII), preventing enforced disappearances (chapter

VIII) , the victims' rights (chapter IX), and the rights of children (chapter X). The final parts of the book refer to the Committee on Enforced Disappearances established by the UN Convention (chapters XI and XII which actually should have been merged), as well as the UN Convention's final provisions (chapter XIII). These chapters are followed by the text of the Convention in Polish, which is indeed useful. One could only add that it would be desirable – given the “Polish perspective” of the reviewed book – if the text of the UN Convention was presented in a chart and its provisions were compared to the relevant norms of Polish law commented upon by the author.

In conclusion, both of the reviewed books can be considered as important contributions to a better understanding of the international legal framework against enforced disappearances. The monographs are mutually complementary and provide readers with a chance to study both the European as well as global aspects of preventing and reacting to this crime. Both books demonstrate the in-depth knowledge of the authors who undoubtedly have put a great deal of effort into their research. Therefore it is regrettable that neither of the books includes a summary in English. Even if we assume that the reviewed studies were written first and foremost for a Polish reader, an English summary – necessarily expounding all the conclusions and results of the authors' research – would have been much welcomed and appreciated in the English-speaking world of international lawyers.

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