The political change in Poland which followed the dissolution of the totalitarian system is exemplified by a completely new approach to the issue of the protection of human rights. While the appearance of human rights exists in communist countries, democratic countries provide substance to that appearance. In short, as Poland has embraced democracy it has adopted a new and more substantive approach to human rights. Indeed, respecting human rights is one of the elements that legitimizes law and the attendant respect for law. The substance of the new approach includes the acceptance of the fundamental principle that the domain of freedom of the individual includes everything not legitimately limited by the democratic process.

Thus, a basic transformation is occurring in Poland with regard to implementing international law which protects human rights. Even though Poland ratified the 1966 United Nations Human Rights Covenants in 1977, it neither adjusted its national legislation to its demands nor submitted to the implementation procedures foreseen by the Optional Protocol. Consequently, not much change resulted from its ratification. Similarly, even though Poland ratified the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishments in 1989, it did not submit to the anticipated optional procedures of control. Since Poland’s move to democracy, however, it ratified the Optional Protocol to the 1966 UN Human Rights Covenants in November 1993 and — as a member of the Council of Europe — the European Convention on the Prevention of Torture which most importantly provides for periodical inspections of prisons by international inspectors.

3. The Government’s pronouncement on this matter was published, with a two year delay (!), in *Dz. U.*, 1994, no. 23, pos. 81.
4. Poland was accepted to the Council of Europe on 26 November 1991. The decision of the Committee of Ministers of the Council of Europe was passed on 6 November 1991.
Ratification of the European Conventions on Human Rights and Fundamental Freedoms (ECHR)

Most significantly, Poland ratified the 1950 European Convention on Human Rights and Fundamental Freedoms (hereinafter ‘the Convention’) in January 1993. Poland also submitted to the individual complaint procedure as contemplated by the Convention and acknowledged the jurisdiction and competence of the European Court on Human Rights to receive such complaints from individuals within Polish jurisdiction (the latter since May 1993) and adjudicate the same.\(^6\)

The process of ratification, however, was not as smooth as many had hoped. Indeed, ratification occurred two years after the Convention was signed and only after an extremely vigorous parliamentary debate. One concern raised in the debate by several (predominantly pro-nationalist) members was that ratification would impose unfamiliar values and ethics on the Polish nation.\(^7\) These members sought to ‘protect’ Poland against its full involvement in the system established by the Convention.

Nonetheless, the Convention was ratified and its individual complaint provisions were accepted in practice four months after its ratification and two months before its publication even though publication is a condition of the Convention’s binding force.

The Convention’s Ranking and its Place in the National Legal Order

The significance of ratifying the Convention cannot be over-emphasized. Its effect, however, is weakened because Polish statutory law lacks provisions which rank the priority of treaty norms within the internal legal order.\(^9\) Therefore, because the Convention, as ratified, does not itself provide any such rank, it seems that its internal enforcement will be left to customary

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6. Dz. U., 1993, no. 61, pos. 284-285. Ratification of the Convention, in essence, was performed by additional protocols nos. 2, 3, 5, and 8. In October 1994 Poland also ratified the protocols no. 1 and 4. Additional protocols nos. 7 and 9 are still not ratified. Additional protocol no. 6 was not even signed by Poland. It is open for signature to the countries, which abolished the death penalty. This relict still exists in the Polish Penal Code, even though, since 1989, Poland has not practiced the death penalty.

