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## **Do Companies Enjoy Human Rights - Theoretical Analysis**

*Development of the protection of human rights caused the issues whether or not the companies enjoy human rights. This idea has supporters but at the same time, there are opponents to it. The Article below reviews the main aspects of both approaches, analyzes the case law of US Supreme Court as well as discusses the relation of regional international human rights treaties to their applicability to the companies. The discussion is summed up by opinion that European Convention on Human Rights is the only international multilateral human rights instrument which allows a space for the protection of the relevant rights of the company.*

**Key words:** *European Convention on Human Rights, Companies, Human Rights, American and African Human Rights Systems, Amendment to US Constitution – Bill of Rights.*

### **1. Introduction**

Whether or not companies enjoy human rights has been subject to sharp discussion over the long period. Despite certain case law or other authorities on this issue, there are opinions based on various theories or international legal instruments that companies should not enjoy such rights. It is very important that commercial legal entities participate in international economic and others relations. In many countries such entities are major employers and contribute to the formation and increase of gross domestic product. Therefore, in this article we shall overview the issue of usage of the same rights by commercial legal entities that by means of international agreements are enjoyed by natural persons. We shall also introduce the reader with the case law of US Supreme Court in relation to the issues above. We shall determine which international convention may be applied by commercial legal entities when seeking to protect their rights through international mechanisms and which international agreements excludes possibility of hearing of their claims.

### **2. Opinions in Favor of Companies' Enjoyment of Human Rights**

Despite the absence of any indication of companies in the first multilateral human rights agreements<sup>1</sup>, the practice of usage of conventions made it clear that certain rights could be used by the companies. When corporations are overwhelmed with duties (avoidance of child labor, protection of environment etc.), the suggestion that corporations can also be victims of human rights violations is not so readily appreciated<sup>2</sup>. Of course, there are reasons for that. Number of scholars consider it unacceptable

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<sup>1</sup> For example, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, etc.

<sup>2</sup> *Addo M. K.*, The Corporation as a Victim of Human Rights Violations, in: *Addo M. K.* (ed.), *Human Rights Standards and the Responsibility of Transnational Corporations*, Kluwer Law International, The Hague, London, Boston, 1999, 187.

to identify human being and corporation, for one thing corporations are not human but rather artificial entities<sup>3</sup> with no inherent ability to suffer harms associated with human rights violations<sup>4</sup>. Furthermore, the corporations are often associated with the private commercial domain where the guiding principles are determined by the rules of the free market, whereas the human rights are seen as directed to activities in the public domain especially with regard to governmental actions<sup>5</sup>. Thus, the main obstacle for the enjoyment of human rights by companies might be an artificial character of the companies' and their ties with private domain.

However, it was considered that the reasons articulated for denying human rights to corporations represent only part of the wider picture in this field: a picture which is influenced largely by traditional principles of doctrine and an excessive overlay of the historical basis of human rights<sup>6</sup>. Society is a diversified one and our understanding of human rights has changed considerably<sup>7</sup>. The increasingly central role played by corporations has opened them to as much if not more abuse by public and private authorities<sup>8</sup>.

It is true that corporations are artificial legal entities but they are organized, operated by<sup>9</sup> and for the benefit of human beings<sup>10</sup>. There is a sense in which policies and activities directed at corporations can actually affect the human being behind the corporation<sup>11</sup>. Human rights would have failed in their primary purpose of protecting against abuse if they were to be limited to the direct effect on individuals<sup>12</sup>. The principle of effective protection as well as the need for human rights to be credible can provide a basis for extending the scope of human rights to entities such as corporations<sup>13</sup>.

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<sup>3</sup> *Addo M. K.*, The Corporation as a Victim of Human Rights Violations, in: *Addo M. K.* (ed.), *Human Rights Standards and the Responsibility of Transnational Corporations*, Kluwer Law International, The Hague, London, Boston, 1999, 187, cited: *Teubner G.*, *Enterprise Corporatism: New Industrial Policy and the Essence of the Legal Person*, *Am. J. of Comp. Law*, 1988, Vol. 36, 130.

<sup>4</sup> *Addo M. K.*, The Corporation as a Victim of Human Rights Violations, in: *Addo M. K.* (ed.), *Human Rights Standards and the Responsibility of Transnational Corporations*, Kluwer Law International, The Hague, London, Boston 1999, 187.

<sup>5</sup> *Addo M. K.*, The Corporation as a Victim of Human Rights Violations, in: *Addo M. K.* (ed.), *Human Rights Standards and the Responsibility of Transnational Corporations*, Kluwer Law International, The Hague/London/Boston, 1999, 187, cited: *Clapham A.*, *Human Rights in the Private Sphere* (OUP 1993), 91.

<sup>6</sup> *Ibid.*, 188.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.* Normally, corporations are sponsored by their owners (shareholders or similar groups) and managed by professionals such as managers, directors and the rank and file of workers all of whom are human beings, cited: *Addo M.K.*, The Corporation as a Victim of Human Rights Violations, in: *Addo M. K.* (ed.), *Human Rights Standards and the Responsibility of Transnational Corporations*, Kluwer Law International, The Hague, London, Boston, 1999, 187.

<sup>10</sup> *Ibid.* The most obvious beneficiaries are the consumers, shareholders and to some extent, employees, cited: *Addo M. K.*, The Corporation as a Victim of Human Rights Violations, in: *Addo M. K.* (ed.), *Human Rights Standards and the Responsibility of Transnational Corporations*, Kluwer Law International, The Hague, London, Boston, 1999, 188.

<sup>11</sup> *Ibid.*, 189.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

Some scholars think that the general public humanizes the companies when the society deems companies to be a friend or an enemy which the companies themselves encourage through branding<sup>14</sup>. Humanization has also proved rather advantageous to companies in the legal field, as for example, it has allowed them to use human rights to further their agenda<sup>15</sup>. Most people would accept that companies make invaluable contribution to our societies and thus should be encouraged through a mix of facilitative and restrictive regulation, varying depending on the State's relative priorities<sup>16</sup>.

### **3. Opinions Against of Companies' Enjoyment of Human Rights**

It is obvious that the above-mentioned ideas are opposed by many. They think that companies should not enjoy human rights and this stipulation is based on direct interpretation or on conventional bodies' interpretation of the Universal Declaration of Human Rights and of other fundamental international instruments in the field of human rights.

The international human rights regime is built around the Universal Declaration of Human Rights (UDHR) and its two related covenants, the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>17</sup>. It comprises a system of standards and implementation procedures centered on the United Nations – in particular the Human Rights Council - supported by a small group of regional human rights regimes, key among which is the European Convention on Human Rights<sup>18</sup>.

Despite this fact, some scholars think that “Transnational Corporations have such a decisive influence on international human rights law and discourse that the entire UDHR paradigm stands imperiled by the development of a new paradigm of “trade related, market-friendly human rights (TRMFHR)” that the UDHR paradigm is “being steadily, but surely, *supplanted* by a paradigm that seeks to demote, even reverse, the notion that universal human rights are designed for the attainment of dignity and well-being of human beings and for enhancing the security and well-being of socially, economically and civilizationally vulnerable peoples and communities<sup>19</sup>. The emergent paradigm insists upon the promotion of the collective human rights of global capital, in ways which “justify” cor-

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<sup>14</sup> *Kohl U., The Sun, Liverpoolians and “The Truth”: A Corporate Right to Human Right? in: Harding C., Kohl U., Salmon N., Human Rights in the Market Place, The Exploration of Rights' Protection by Economic Actors, Routledge, London and New York, 2016, 23.*

<sup>15</sup> *Ibid, 24.*

<sup>16</sup> *Ibid, 25.*

<sup>17</sup> *Grear A., Corporations, Human Rights and the Age of Globalization: Another look at the “Dark Side” in the Twenty-First Century“, in: Wilson H. B., Grear A. (eds.), Human Rights in the World Community: Issues and Action, Fourth Edition, University of Pennsylvania Press, Philadelphia, 2016, 420.*

<sup>18</sup> *Ibid 421, with further references.*

<sup>19</sup> *Grear A., Corporations, Human Rights and the Age of Globalization: Another look at the “Dark Side” the Twenty-First Century, in: Wilson H. B., Grear A. (eds.), Human Rights in the World Community, Issues and Action, Fourth Edition, University of Pennsylvania Press, Philadelphia, 2016, 420, see citation: Baxi U., The Future of Human Rights, Oxford University Press, Oxford, 237.*

porate well-being and dignity even when it entails continuing gross and flagrant violation of human rights of actually existing human beings and communities<sup>20</sup>”.

It is also noteworthy that UDHR<sup>21</sup> as well as ICCPR<sup>22</sup> and ICESCR<sup>23</sup> do not directly touch upon the applicability of these covenants to the companies and include no such provision in the text. Therefore, some scholars believe that the only beneficiary of these covenants may be human beings. Although in Georgian translation of Article 2 of ICCPR, it is the word “person” that is mentioned as a term, it does not change the meaning of the English word “individual’s” meaning which is used to indicate to the human being. Opinions expressed in literature tend to imply that the ICCPR does not recognize rights of corporations<sup>24</sup>. The Human Rights Committee took a restrictive approach in the case of *A Newspaper Publishing Company v. Trinidad and Tobago* where it simply stated that “only individuals may submit a communication...A company incorporated under the laws of a State party to the Optional Protocol as such, has no standing... regardless of whether its allegations appear to raise issues under UN Covenant<sup>25</sup>”.

Such a strict explanation does not allow different interpretation of the Covenant and its Optional Protocol but some authors opine that Human Rights Committee indirectly recognized the rights of corporations – “the Human Rights Committee, until 1993 denied that corporate bodies can claim to be victims of violations of any rights under the Covenant for the purpose of founding a right of individual petition under the Optional Protocol<sup>26</sup>. In 1993, it accepted that corporations may have rights under Article 19 of the Covenant which is concerned with freedom of expression<sup>27</sup>”. According to other scholars the principle of effective protection as well as the need for human rights to be credible can provide a basis for extending the scope of human rights to entities such as corporations and the Com-

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<sup>20</sup> Grear A., Corporations, Human Rights and the Age of Globalization: Another look at the “Dark Side” the Twenty-First Century, in: Wilson H. B., Grear A. (eds.), Human Rights in the World Community, Issues and Action, Fourth Edition, University of Pennsylvania Press, Philadelphia, 2016, 420, see citation: Baxi U., The Future of Human Rights, Oxford University Press, Oxford, 237.

<sup>21</sup> See Article 2 of UDHR “Everyone is entitled to all the rights and freedoms set forth in this Declaration”.

<sup>22</sup> See “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant” – Article 2.1 of International Covenant on Civil and Political Rights

<sup>23</sup> “The state parties to the present covenant recognizing that these rights derive from the inherent dignity of the human person”, see Preamble of the International Covenant of Economic, Social and Cultural Rights.

<sup>24</sup> Cassimatis E. A., Human Rights Related Trade Measures under International Law: The Legality of Trade Measures Imposed, in Response to Violations Human Rights Obligations under General International Law, Martinus Nijhoff Publishers, Leiden, Boston, 2007, 45.

<sup>25</sup> Harding C., Kohl U., Salmon N., Human Rights in the Market Place, The Exploration of the Rights Protection by Economic Actors, Routledge, London and New York, 2016, 25, see citation: *A Newspaper Publishing Company v. Trinidad and Tobago* (360/1989).

<sup>26</sup> Dine J., Companies, International Trade and Human Rights, Cambridge University Press, 2005, 205-206, cited: Feldman D., Corporate Rights and the Privilege Against Self-incrimination, in: Feldman D., Meisel F. (eds.), Corporate and Commercial Law: Modern Developments, Lloyds of London, 1996, 365; Novak M., UN Covenant on Civil and Political Rights: CCPR Commentary, Engel, Kehl, 1993.

<sup>27</sup> Dine J., Companies, International Trade and Human Rights, Cambridge University Press, 2005, 205-206.

mittee endorsed this principle of derivative entitlement<sup>28</sup>. When the respondent State in *Allan Singer v. Canada* objected to the admissibility of the communication which alleged a violation of Article 19 of the Covenant the Human Rights Committee decided that: "The state party has contended that the author is claiming violations of rights of his company, and that a company has no standing under article 1 of the Optional Protocol. The Committee notes that the Covenant rights which are at issue in the present communication, and in particular the rights to freedom of expression, are by their nature inalienably linked to the person. The author has the freedom to impart the information concerning his business in the language of his choice. The Committee therefore considers that the author himself, and not only his company, has been personally affected by the contested provisions of Bills Nos. 101 and 178<sup>29</sup>".

Appropriate Article of the International Covenant on Economic, Social and Cultural Rights is of a very general character and avoids specific mention of its subjects<sup>30</sup>.

Some scholars go even further and steadily criticize those scholars who recognized enjoyment of human rights by the companies in their academic works. According to such critics: "The corporation, while representing one manifestation of a human right to association, reflecting the outcome of autonomous human choices, and serving human interests in property an profit, is not reducible, in any straightforward way, to the embodied vulnerability of the human sub-stratum beneath it<sup>31</sup>". The legal personality of an institution grants the institution an existence independent of its members<sup>32</sup>. It can be sued in its own name, it can own property in its own name and that property does not, thereby, become the property of the human being who at any moment make up human sub-stratum<sup>33</sup>. These facts should alert us to the absence of any simple continuity between the corporation and its human sub-stratum for the purposes of attributing the individual human rights of human beings to the corporate form<sup>34</sup>.

Although the idea that "transacting business under the forms, methods and procedure pertaining to so-called corporations is simply another mode by which *individuals* or *natural persons* can enjoy their property or engage in business<sup>35</sup>" is partially supported, still it is believed that the main difference

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<sup>28</sup> *Addo M. K.*, The Corporation as a Victim of Human Rights Violations, in *Addo M. K.* (ed.), *Human Rights Standards and the Responsibility of Transnational Corporations*, Kluwer Law International, 1999,189.

<sup>29</sup> *Ibid.*

<sup>30</sup> See paragraph 2, Article 2 of the Covenant – "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

<sup>31</sup> *Grear A.*, Challenging Corporate "Humanity": Legal Disembodiment, Embodiment and Human Rights, *Hum. Rights Law Rev.* Vol. 7, Issue 3, 2007, Oxford University Press, 7.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Grear A.*, *Redirecting Human Rights. Facing the Challenge of Corporate Legal Humanity*, Palgrave Macmillan, 2010, 33, cited: *Hohfeld W. N.*, Nature of Stockholders Individual Liability for Corporate Debts, (1909) 9 *Columbia Law Review* 288, with further reference: *Finnis*, The Priority of Persons, in: *Horder J.* (ed.), *Oxford Essays in Jurisprudence*, Volume IV, (Oxford: Oxford University Press, 2000).

in enjoyment of human rights between the corporation and human being is “embodies vulnerability” pertaining to human beings<sup>36</sup>.

#### 4. Bill of Rights and the Case Law of US Supreme Court

From this point of view it is very interesting to observe US Supreme Court’s interpretation over the applicability towards companies of the amendments of the US Constitution - Bill of Rights – one of the first documents in the field of human rights.

Human rights and private corporations, traditionally, have not been linked terms<sup>37</sup>. There are at least two explanations for this phenomenon<sup>38</sup>. One explanation is that the discussion of human rights initially took place in the sphere of international law, where, until recently, nation states were the sole actors<sup>39</sup>. The other explanation is that the relative economic significance of private corporations when compared with the nation states escaped our attention until quite recently<sup>40</sup>.

In the United States, the recognition of the separate personality of the corporations with existence as a juridical entity, separate from its shareholders, has gone through three stages and is now entering a fourth<sup>41</sup>. The content and scope of the rights and duties of the corporations have developed over the years in response to evolving theoretical understanding of the nature of the corporate persona<sup>42</sup>. One’s choice of theory of corporate personality also has significant implications for whether one is likely to consider corporations as having human rights<sup>43</sup>.

As early as in 1819, in one of the cases Chief Justice Marshall declared the following:” A corporation is an artificial being, invisible, intangible and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which charter of its creation confers upon it, either expressly or as incidental to its very existence<sup>44</sup>”. This approach is called *artificial entity* or *fic-*

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<sup>36</sup> Grear A., *Redirecting Human Rights. Facing the Challenge of Corporate Legal Humanity*, Palgrave Macmillan, 2010, 32.

<sup>37</sup> Wood S. G., Scharff B. G., *Applicability of Human Rights Standards to Private Corporations: An American Perspective*, Am. J. Comp. L., Vol 50, Oxford University Press, 2002, 541, <[http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references\\_tab\\_contents](http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references_tab_contents)>, [02.08.2017].

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Blumberg Ph., *The Corporate Personality in American Law: A Summary Review*, Faculty Articles and Papers, 197, 1996, 49, <[http://digitalcommons.uconn.edu/law\\_papers/197](http://digitalcommons.uconn.edu/law_papers/197)>, [27.07.2017].

<sup>42</sup> Wood S. G., Scharff B. G., *Applicability of Human Rights Standards to Private Corporations: An American Perspective*, Am. J. Comp. L., Vol. 50, Oxford University Press, 2002, 541, <[http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references\\_tab\\_contents](http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references_tab_contents)>, [02.08.2017].

<sup>43</sup> Ibid.

<sup>44</sup> Blumberg Ph., *The Corporate Personality in American Law: A Summary Review*, Faculty Articles and Papers, 197, 1996, 49, Cited: *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 636 \*1819); <[http://digitalcommons.uconn.edu/law\\_papers/197](http://digitalcommons.uconn.edu/law_papers/197)>, [27.07.2017].



tion doctrine. When the corporation is viewed as an artificial or fictional entity, it would appear quite unlikely that a corporation would be viewed as a holder of “human rights”<sup>45</sup>.

As the Supreme Court commenced determination of the rights of the corporation under the new federal Constitution, a second, more complex theory of the corporate personality emerged reflecting the interests of the incorporators and shareholders of the corporation<sup>46</sup>. The corporation was perceived as an association of individuals contracting with each other in organizing the corporations, with its core attributes as an artificial legal person supplemented by the attribution to it of constitutional rights of its shareholders<sup>47</sup>. As justice Field noted: “ Private corporations are, it is true artificial legal persons but... they consist of aggregation of individuals united for some legitimate purpose...The courts will always look beyond the name of the artificial being to the individuals whom it represents<sup>48</sup>”. This theory is called *aggregation* or *associational* theory. Because the corporation is not viewed as an entity in its own right, from an aggregationalist perspective one might argue that the corporation does not itself have rights and duties, since the enterprise is comprised of individuals who themselves have disparate interests, rights and duties<sup>49</sup>.

According to third approach, referred to as *natural entity* or *real entity* approach, corporation has been perceived as an organic social reality with an existence independent of, and constituting something more than, its changing shareholding<sup>50</sup>. When the corporation is viewed as a natural entity, it is much more likely that the corporation will be seen as having rights and duties that are very similar to those of human beings<sup>51</sup>.

Based on all three approaches the US Supreme Court elaborated its case law, under which it empowered legal persons in general, including companies number of rights stipulated by US Constitution, including those rights that according to the text of the norm could have been attributable only to natural person. For example, corporations have been granted such rights as freedom of speech, free-

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<sup>45</sup> Wood S. G., Scharff B. G., Applicability of Human Rights Standards to Private Corporations: An American Perspective, Am. J. Comp. L., Vol 50, Oxford University Press, 2002, 542, <[http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references\\_tab\\_contents](http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references_tab_contents)>, [02.08.2017].

<sup>46</sup> Blumberg Ph., The Corporate Personality in American Law: A Summary Review, Faculty Articles and Papers 197, 1996, 50, <[http://digitalcommons.uconn.edu/law\\_papers/197](http://digitalcommons.uconn.edu/law_papers/197)>, [27.07.2017].

<sup>47</sup> Ibid.

<sup>48</sup> The Railroad Tax Cases, 13 F. 744 (C.C.D. Cal. 1882), appeal Dismissed as moot sub nom. San Mateo County v. Sothern Pac. R.R., 116 U.S. 138 (1885) in: Blumberg Ph., The Corporate Personality in American Law: A Summary Review, Faculty Articles and Papers 197, 1996, 49, <[http://digitalcommons.uconn.edu/law\\_papers/197](http://digitalcommons.uconn.edu/law_papers/197)>, [27.07.2017].

<sup>49</sup> Wood S. G., Scharff B. G., Applicability of Human Rights Standards to Private Corporations: An American Perspective, Am. J. Comp. L., Vol. 50, Oxford University Press, 2002, 544, <[http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references\\_tab\\_contents](http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references_tab_contents)>, [02.08.2017].

<sup>50</sup> Blumberg Ph., The Corporate Personality in American Law: A Summary Review, Faculty Articles and Papers 197, 1996, 49, <[http://digitalcommons.uconn.edu/law\\_papers/197](http://digitalcommons.uconn.edu/law_papers/197)>, [27.07.2017].

<sup>51</sup> Wood S. G., Scharff B. G., Applicability of Human Rights Standards to Private Corporations: An American Perspective, Am. J. Comp. L., Vol. 50, Oxford University Press, 2002, 544, <[http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references\\_tab\\_contents](http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references_tab_contents)>, [02.08.2017].

dom from unreasonable searches and seizures, etc<sup>52</sup>. It is especially interesting to note that in relation to the latter right the 7-th amendment to the US Constitution terminologically refers to “people” as to the subjects of the norm: “The right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized<sup>53</sup>”. The Supreme Court in *Hale v. Henkel*<sup>54</sup> held that the term “people” protected corporations against the production of corporate records seized under circumstances violating the provision<sup>55</sup>. All the above mentioned indicates that terminological difference have not been a burden for the Supreme Court to attribute appropriate rights to companies.

Since 1960 the Court has stopped theorizing about the nature of corporation and retreated to more pragmatic means of deciding the degree of constitutional rights available to corporations<sup>56</sup>. Rather than determine the extent to which corporations deserved to be treated like natural persons, the Court assessed the degree to which according corporations constitutional protections would benefit natural persons<sup>57</sup>.

Taking into consideration that legal person was created by natural persons in order to regulate certain relations of individuals, most probably, the later approach should be the main cornerstone when deciding in practice enjoyment by the corporation of this or that right attributable to the individuals.

## 5. American and African Human Rights Systems

The situation is slightly different in non-European regional human rights systems. American Convention on Human Rights<sup>58</sup> even in its preamble points to the natural persons as to the beneficiaries of those rights – “recognizing that the essential rights of man are not derived from one’s being a national of a certain state” and “reiterating that in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his

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<sup>52</sup> For detailed review of constitutional right attributable to companies, please, see: *Wood S. G., Scharff B. G.*, Applicability of Human Rights Standards to Private Corporations: An American Perspective, *Am. J. Comp. L.*, Vol. 50, Oxford University Press, 2002, 544, <[http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references\\_tab\\_contents](http://www.jstor.org/stable/840888?seq=1&cid=pdf-reference#references_tab_contents)>, [02.08.2017].

*Blumberg Ph.*, The Corporate Personality in American Law: A Summary Review, *Faculty Articles and Papers* 197, 1996, 49 -69, <[http://digitalcommons.uconn.edu/law\\_papers/197](http://digitalcommons.uconn.edu/law_papers/197)>, [27.07.2017].

<sup>53</sup> See, 7-th amendment to the US Constitution.

<sup>54</sup> 201 U.S. 43 (1906).

<sup>55</sup> *Blumberg, Ph.*, The Corporate Personality in American Law: A Summary Review, *Faculty Articles and Papers*, 197, 1990, 60, <[http://digitalcommons.uconn.edu/law\\_papers/197](http://digitalcommons.uconn.edu/law_papers/197)>, [27.07.2017].

<sup>56</sup> *Graver D.*, Personal Bodies: A Corporeal Theory of Corporate Personhood, *The University of Chicago Law School Roundtable*, 1999, Vol. 6, Iss. 1, Art. 11, 240, <<http://chicagounbound.unchicago.edu/roundtable/vol6/iss1/11>>, [26.07.2017].

<sup>57</sup> *Ibid.*

<sup>58</sup> American Convention on Human Rights, 1969.

civil and political rights<sup>59</sup>”. It is significant to underline that the Convention does not confine itself to limit the rights attributed by the Convention only to natural persons and additionally, in paragraph 2 of Article 1 declares that “for the purpose of this Convention, “person” means every human being<sup>60</sup>”.

Preamble of the African Charter on Human and Peoples’ Rights<sup>61</sup> does not make a special reference on usage of the rights included therein by only natural persons. However, in the text of the Charter, Article 2 absolutely clearly indicates only to natural persons, by applying the terms “individual”, which makes it impossible to apply the normative content of Article 2 of the Charter to other persons except of natural persons – “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status<sup>62</sup>”.

Eventually, it’s hard not to agree with the Dutch scholar Uta Kohl’s conclusion made after review of the concepts about applicability of human rights by companies:

- “1. There is no general consensus on the corporate right to human rights;
2. Positions at either of the spectrum are taken with the confidence attached to obvious unarguable facts (which can partly be attributed to the wording of the instruments in question);
3. Where, as in Europe, companies have been granted the victim status in respect of some human rights, the basis for that protection appears to have been the status of the company as a legal person<sup>63</sup>.
4. The company’s most explicit entitlement is to the right to the protection of property, and
5. The artificial nature of the corporate person has even in Europe meant that companies cannot take advantage of all human rights<sup>64</sup>”.

## **6. European Convention on Human Rights**

Based on the present research it can be maintained that it is the European Convention on Human Rights which is the only multilateral international agreement in the field of human rights which directly stipulates protection of the rights of the companies. Such a conclusion derives from the Preamble of the Convention as well as from text of number of Articles of the Convention referring to the

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<sup>59</sup> See, paragraphs 2 and 4 of the Preamble of the American Convention on Human Rights, 1969.

<sup>60</sup> Ibid, paragraph 2, Article 1.

<sup>61</sup> African Charter of Human and People’s Rights, 1981.

<sup>62</sup> See, Article 2 of the African Charter of on Human and Peoples’ Rights, 1981.

<sup>63</sup> This phenomenon is by no means limited to Europe; see Article: *Ohlin J. D.*, Is the Concept of the Person Necessary for Human Rights? *Colum. L. Rev.* 105:209, 2005, 226ff: cited *Kohl U.*, *The Sun*, Liverpooldians and “The Truth”: A Corporate Right to Human Right?, in: *Harding C.*, *Kohl U.*, *Salmon N.*, *Human Rights in the Market Place. The Exploration of Rights’ Protection by Economic Actors*, Routledge, 2016, 29.

<sup>64</sup> *Kolh U.*, *The Sun*, Liverpooldians and “The Truth”: A Corporate Right to Human Right?, in: *Harding C.*, *Kohl U.*, *Salmon N.*, *Human Rights in the Market Place. The Exploration of Rights’ Protection by Economic Actors*, Routledge, 2016, 29.

companies as to the subjects of appropriate Articles. Attribution of some other norms to companies is determined by the rule on admissibility of the claim and by Case Law of European Court of Human Rights. According to scholars, “Court has never engaged in a technical legal sense with the question of whether the artificiality of the corporation imposes limitations on its ability to be the victim of a rights violation<sup>65</sup>”.

Under Article 1 of the European Convention on Human Rights: “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section I of this Convention”. The term “everyone” might be more applicable to natural persons rather than to the legal entities. However, the content of the Conventional norms as well as practice of their applicability allows not only to deviate from this term but also, based on other norms, to attribute them to legal entities including companies. Therefore, the opinion expressed in the academic environment that Article 1 “incorporates *inter alia* a supervisory responsibility for the states within their domestic jurisdictions which encompasses the potential violations from all and every dimension – private or public<sup>66</sup>” is fully grounded.

If we follow the numbering of the Conventional Articles the first norm which is directly attributed to companies is paragraph 1 of Article 10, according to which “Everyone has the right to freedom of expression. This right shall include to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring licensing of broadcasting, television and cinema enterprises”.

Thus, we face a situation when one of the material Articles of the Convention directly envisaged its applicability to the companies and this fact undoubtedly indicates a link of other articles to the companies. Of course, it would have been illogical to assume that only this very article applies to the companies simply because only it refers to the enterprises. The final confirmation on this debate took place in paragraph 1 of Article 1 of the First Protocol of the Convention defining that “every natural or legal person is entitled to the peaceful enjoyment of his possession. No one shall be deprived of his possession except in the public interests and subject to the conditions provided for by law and by general principles of international law”. This provision fully excluded any assumption about whether or not the companies may enjoy the rights set out in the Convention.

Despite expression in material norms, the ability of legal persons to apply the Convention is also prescribed in Section II of the Convention dealing mostly with procedural principles and stipulates procedures and rules. Article 34 of the Convention underlines “The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of

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<sup>65</sup> *Kolh U.*, *The Sun*, *Liverpudlians* and “The Truth”: A Corporate Right to Human Right?, cited: *Dignam A. J.*, *Allen D.*, *Company Law and the Human Rights Act 1998*, Butterworths, London 2000, 173, in: *Harding C.*, *Kohl U.*, *Salmon N.*, *Human Rights in the Market Place*, *The Exploration of the Rights Protection by Economic Actors*, Routledge, 2016, 27.

<sup>66</sup> *Addo M. K.*, *Applicability Human Rights Act to Private Corporations*, in: *Betten L.* (ed.), *The Human Rights Act 1998, What It Means. The Incorporation of the European Convention on Human Rights into the Legal Order of the United Kingdom*, Martinus Nijhoff Publishers, The Hague, London, Boston, 1999, 197.

violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right”. Taking into consideration the fact that material right should also have a procedural guarantee it was correctly stressed out in the doctrine that “given the explicit reference to “legal person” in respect of the right to property seems justified also to interpret “person” in Article 34 broadly, as otherwise companies would have a right but not a remedy (in terms of making a complaint)<sup>67</sup>”.

Although there is no indication to legal persons and especially, to companies in this article, but the Court itself through many decisions on admissibility or judgments on merits, underlined that term “non-governmental organization” also implies the companies. This very issue is discussed in the Practical Guide on Admissibility Criteria that emphasizes that “application may be submitted by any non-governmental organization in a general sense of this term e.i. by any organization except of those who exercise governmental powers<sup>68</sup>”. Taking into consideration those criteria, it is evident that since companies do not perform any governmental powers (except of cases of delegation, which are very rare), they fully satisfy *ratione personae* status provided that the issue concerns rights attributed to them. Based on these considerations, the scholars consider such an approach of European Court of Human Rights as progressive, which is absolutely correct. “The institutions of the ECHR are not commonly associated with a dogmatic approach to the interpretation of human rights standards. It is not surprising that the case law of the Convention has extended beyond governmental activities in the public law domain. The ECHR has found application within the private sphere including instances which involve private corporation. The legal bases for the progressive use of the Convention is found in the text of the Convention as well as in what is the true and purposive interpretation of the Convention<sup>69</sup>”.

## 7. Conclusion

There is no unanimous approach within human rights scholars, whether or not the enterprises should enjoy the human rights. At the same time, the practice of US Supreme Court allows applicability of certain rules of Bill of Rights to commercial legal entities. As regards the multilateral international legal instruments, the universal agreements do not contain direct norms in relation to companies, while the dispute resolution bodies established by above mentioned multilateral instruments are not ready at this stage to apply conventional rules in relation to commercial legal entities. The regional

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<sup>67</sup> *Kolh U., The Sun, Liverpooldians and “The Truth”: A Corporate Right to Human Right?*, in: *Harding C., Kohl U., Salmon N., Human Rights in the Market Place. The Exploration of Rights’ Protection by Economic Actors*, Routledge, 2016, 27.

<sup>68</sup> Practical Guide on Admissibility Criteria, Council of Europe/ European Court of Human Rights, 2011, 10, <[http://echr.coe.int/Documents/Admissibility\\_guide\\_KAT.pdf](http://echr.coe.int/Documents/Admissibility_guide_KAT.pdf)>, [20.01.2018] (in Georgian).

<sup>69</sup> *Addo M. K., Applicability Human Rights Act to Private Corporations*, in: *Betten L. (ed.), The Human Rights Act 1998, What It Means. The Incorporation of the European Convention on Human Rights into the Legal Order of the United Kingdom*, Martinus Nijhoff Publishers, The Hague, London, Boston, 1999, 197.

agreements also do not recognize the rights of companies except of the European Convention of Human Rights.

Despite theoretical contradictions, companies do have certain space to protect their rights based on the provisions of international human rights treaties. Although at this stage, such space is limited only to European Convention on Human Rights, overall, it is still a huge achievement in the sphere of human rights and enlarges practical applicability of international instruments on human rights.

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