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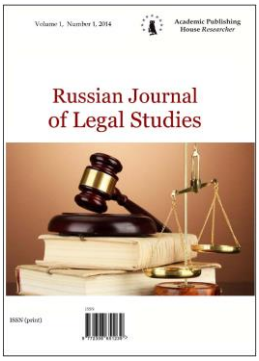

Rethinking Limited Liability of Businesses with Regard to the Environment: the ECtHR' Approach

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Abstract

The objective of this paper is to analyse to what extent the case-law of the European Court of Human Rights in the sphere of environment may be relevant for the purposes of corporate responsibility. For the elucidation of the main research question, the author will first elaborate on the environmental standards under the European Convention on Human Rights using the methods of both analysis and description. Second, the article will expose on the legal standing of businesses under this treaty. Third, the applicability of the ECHR standards on the protection of the environment to business enterprises will be discussed. As a result of the applied methods and treatments, the author comes to conclusions that the certain principles established by the practice of the ECtHR are relevant also for business entities and may serve as guidelines for their activities concerning the environment. Given that the provisions of the UNGP in this regard are not sufficiently detailed, the norms of the ECHR help to fill in the gap in the instructions given to businesses. Although the ECHR is only a regional human rights treaty, the study shows that the standards established therein may be applied universally.

Keywords: ECHR, ECtHR, UNGP, liability, indirect obligations, business; environment.

L'obligation positive de prendre toutes les mesures raisonnables et adéquates pour protéger les droits que les requérants puisent dans le paragraphe 1 de l'article 8 implique, avant tout, pour les États, le devoir primordial de mettre en place un cadre législatif et administratif visant à une prévention efficace des dommages à l'environnement …

ECtHR, Tătar v. Romania, Appl. No. 67021/01, Judgment 27 January 2009, para. 88.

1. Introduction

Liability of businesses nowadays in widely discussed in the forums of academia, international organisations and states (Deva and Bilchitz, 2013; Ruggie, 2007; Legally Binding Instrument, 2018). However, there are little deliberations (Augenstein, 2011) on how the practice specifically of the European Court of Human Rights (ECtHR) may shape the concept of corporate responsibility in the context of human rights. This can be partially explained by the fact that companies are not directly responsible for the protection of human rights under this treaty. Nevertheless, the situation in our global world is changing and the time came to rethink limited liability of businesses. The enterprises today hold much stronger position than in the era of the establishment of international law. Some companies obtain an income that is higher than the state budgets of small countries and this gives them a possibility to hold extremely powerful position on the world markets. One must keep in mind

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that the rights bring with them also responsibility. This is even more crucial with regard to the business activities that could be harmful to the environment.

Today, it is impossible to live on an island; everything is related. Butterfly effect forces us to think of the environmental conduct, which takes place far away from our homes. When the water is contaminated in a river situated hundreds of kilometres from our place, it does not mean that we are safe. The contamination will be spread to the other watercourses, to the soil and to the animals who drink this water. It means that not only the water itself, but also food produced in this area, will be dangerous for our health. Such contaminated products can easily appear at the shelves of supermarkets in our city (as a result of the global economy) and the consequences can be easily predicted. Therefore, it is clear that the environmental problems of the particular members of international society are also the concern of the whole international society. All this leads to a need of rethinking the limited international liability of businesses in the environmental sphere. When the local governments are not able to control the activities of companies on the appropriate level, the international society must appear on the scene.

Most of the international law documents regulating the right to healthy environment are of a soft law nature (Rio Declaration 1992, Earth Charter 1994, Universal Declaration 2005). Nonetheless, in Europe, we have a powerful tool, the European Convention on Human Rights (ECHR).

Although the text of this treaty does not contain directly the provisions on the right to a healthy environment as such, the ECtHR has been called upon to decide on various cases in which the quality of an environment was at issue. It has led to development of the case-law in environmental matters on account of the fact that the exercise of certain rights may be undermined by the existence of harm to the environment and exposure to environmental risks. The judgments of the ECtHR are binging for the parties, which means that their execution may require from the states to introduce regulations and practices based on the ECHR environmental standards (Biriukov, Galushko, 2018). Accordingly, one of the additional purposes of this manuscript is to identify these standards in order to create the "waymark" for business entities in assessing their activities that could be harmful to the environment.

Moreover, it would be desirable to follow the approach taken by Prof. John Ruggie noting that the purpose of the modern international law, which faces the unwillingness of the state to become parties to the international treaties, is not to create new legal obligations, but to encourage the corporations and the states to comply with the certain standards (Ruggie, 2008). These standards with respect to human rights were summarised in the UN Guiding Principles on Business and Human Rights (UNGP). The commentaries to the UNGP directly refer to the UN Covenants of 1966 (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights). Nonetheless, it should be remembered that the Covenants were developed also based on the ECHR of 1950. Additionally, the UNGP do not limit the content of human rights to the UN documents. Therefore, nothing prevents the companies and the states from taking into account the provisions of the ECHR. Moreover, as it will be shown later, most of the ECtHR standards are of universal nature.

We all need to care together about our mother Earth. Companies sometimes behave as children who do not know what is good and what is bad (Mayakovsky, 1979). Although the UNGP remember the issue of the protection of an environment, it is discussed to a very limited extent. The reference can be found only in the commentary to Principle 18 of the UNGP, which requires from the business enterprises to identify and assess adverse human rights impacts with which they may be involved, including the environment harmful activities. The new draft of the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises of 16 July 2018 speaks about the environmental rights in its Article 4 titled Definitions, then in Article 8 named Rights of Victims and Article 9 with a title Prevention. All these provisions discuss the issue of environment from the very general perspective, without setting forth any specific rules of behaviour for companies. Only Article 9 of the draft treaty specifies that due diligence should include "*undertaking pre and post environmental and human rights impact assessments covering its activities and that of its subsidiaries and entities under its control, and integrating the findings across relevant internal functions and processes and taking appropriate action*". It is of interest that the draft treaty distinguished between the environmental and human rights. Probably, there existed a need to stress specifically the need of protection of the human rights in the area of environment.

Given the aforementioned, the aim of this legal study is to create guidance, which will help the businesses to better understand the rules of the environment friendly conduct. The case-law of the ECtHR on the right to healthy environment is a valuable source of information on the subject matter, which should not be overlooked. The analysis at issue will help to access the impact of the idea of the corporate social responsibility on the state duty to protect human rights and the obligations of businesses to respect human rights. All this will give the opportunity for the victims of human rights violations to have a better access to remedies and to obtain compensation or just satisfaction in the sense of Article 41 of the ECHR. The first step on this way is to identify the ECHR environmental standards based on the analysis of the case-law of the ECtHR.

2. Materials and Methods

The study in questions was based on the both well-established and new methods of research. The traditional methods of the content analysis, collecting data and synthesis were used all over the text of the paper. The method of description was primarily used in relation to the summary of the case of *Taşk?n and Others v. Turkey*. The explanation on the study approach concerning the relevance of the ECHR standards to the activities of business entities was given in the beginning of the third subsection of the current paper.

3. Discussion

3.1. The ECtHR environmental standards

Although the text of the ECHR does not contain a right to a healthy environment as such, the ECtHR in its case law addressed environmental matters. This was based on the fact that the exercise of certain rights may be undermined by the existence of environmental risks. The ECtHR has dealt with the allegations concerning environmental risks mostly under Articles 2 (right to life - *Öneryıldız v. Turkey*), 3 (prohibition of torture - *Elefteriadis v. Romania*), 6 (fair trial - *Gorraiz Lizarraga and Others v. Spain*) and Article 8 (private life - *Tătar v. Romania*) of the ECHR and Article 1 of Protocol No. 1 to the ECHR (right to property - *Pine Valley Developments Ltd and Others v. Ireland*).

The ECHR in its jurisprudence refers to different types of environmentally harmful activities, namely, exposure to nuclear radiation (*L.C.B. v. the United Kingdom*), industrial emissions (*Cordella and Others v. Italy* (no. 54414/13) and *Ambrogi Melle and Others v. Italy* (no. 54264/15)), noise pollution (*Powell and Rayner v. the United Kingdom*), water supply contamination (*Dzemyuk v. Ukraine*) and others (*Calancea and Others v. the Republic of Moldova*). It does not point out that one type of environmental threat is worse than the other. What is of importance is a level of negative impacts of such activities. They may not overcome certain boundaries.

The analysis of the ECtHR case-law shows that the following standards which govern environmental protection based on the ECHR may be derived therefrom. The ECHR imposes on the obligations:

- to adopt reasonable and appropriate measures capable of safeguarding the right of those concerned to a healthy and protected environment (*Di Sarno and Others v. Italy*);
- to apply the existing sanction system in a timely and effective manner (*Bor v. Hungary*);
- to carry out a judicial enquiry into the environmental disaster and to implement land-planning and emergency relief policies in the hazardous area (*Budayeva and Others v. Russia*);
- to conduct the investigation promptly in order to determine the responsibilities and the circumstances in which the environmentally harmful act took place, and thus to avoid any appearance of tolerance of illegal acts or of collusion in such acts (*Özel and Others v. Turkey*);
- to ensure access to court on the environmental matters not only to individuals (*Howald Moor and Others v. Switzerland*, and *Karin Andersson and Others v. Sweden*), but also to legal persons (*L'Erablière asbl v. Belgium*);
- to enforce final judicial decisions concerning the environmental harm (*Apanasewicz v. Poland*, *Bursa Barosu Başkanlığı and Others v. Turkey* or *Dzemyuk v. Ukraine*);
- to secure the right to respect for their private and family life, namely that severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely (*Guerra and Others v. Italy*, *Taşk?n and Others v. Turkey*, or *Deés v. Hungary*);

- to provide an information about the risks that can be ran by living in the polluted area (*Öneryldz v. Turkey*);
- to provide an effective and accessible procedure enabling access to all relevant and appropriate information which would allow individuals to assess any risk to which they may be exposed as a result of the participation in mustard and nerve gas tests (*Roche v. the United Kingdom*) or the use of rapid decompression tables (*Vilnes and Others v. Norway*), exposure to asbestos (*Brincat and Others v. Malta*);
- to strike a fair balance between the interest of the country economic well-being and the individual's effective enjoyment of the right to respect for home and private and family life (*Lopez Ostra v. Spain*);
- to assess, to a satisfactory degree, the risks that the activity of the company might entail (*Tătar v. Romania*);
- to take appropriate measures to remedy the situation of the adverse environmental effects (*Dubetska and Others v. Ukraine*);
- to take action to deal with the night-time disturbances (*Moreno Gómez v. Spain*), to deal with the problem of offensive smells coming from the tip (*Brânduse v. Romania*), to stop the noise and nuisance (*Mileva and Others v. Bulgaria*), to mitigate the motorway's harmful effects (*Grimkovskaya v. Ukraine*);
- to carry out an environmental feasibility study before turning the street in question into a motorway (*Grimkovskaya v. Ukraine*);
- to enable groups and individuals to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment (*Steel and Morris v. the United Kingdom*) and to guarantee the right to impart information on the environmental issues (*Vides Aizsardzbas Klubs v. Latvia*);
- to take measures to protect a prisoner from the harmful effects of passive smoking where medical examinations and the advice of doctors indicated that this was necessary for health reasons (*Elefteriadis v. Romania*, and *Florea v. Romania*);
- to ensure freedom of assembly and association to the environmental associations (*Costel Popa v. Romania*);
- to protect the property owners' rights adequately, in particular with respect to the adverse environmental effects (*Papastavrou and Others v. Greece*, *N.A. and Others v. Turkey*, and *Turgut and Others v. Turkey*).

The abovementioned standards may be grouped into **seven main categories**:

1. Securing the environmental rights both on national and international levels;
2. Embedding environmental rights in the national policy and legal framework;
3. Establishing control over potentially harmful environmental activities;
4. Securing public participation and access to information on environmental matters;
5. Making environmental rights judiciable and enforceable;
6. Requiring and carrying out environmental impact assessments;
7. Conducting the investigation of the environmental catastrophe adequately and promptly.

Before making an assessment on how these standards may be applicable to businesses with regard to their environmental activities, it should be examined what is the position of companies in the proceedings before the ECtHR, what are their rights and obligations under the ECHR. All these constitutes the legal standing of businesses under the ECHR, which is decisive for the applicability of the mentioned standards to corporate subjects. The analysis of the standing will be based on the text of the ECHR as well as on the case-law of the ECtHR.

3.2. The legal standing of businesses under the ECHR

The analysis of the legal standing of businesses in the proceedings before the ECtHR should cover both the rights and duties of these subjects. Although the text of Article 34 of the ECHR does not remember the companies, nobody has doubts that they possess certain rights under this treaty (Emberland, 2006: 35; Rezai, Van den Muijsenbergh, 2012: 49). What can be of interest is the list of these human rights. The research conducted by the author demonstrates that business entities may enjoy at least some rights envisaged in the following provisions of ECHR: Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 13, Article 14, Article 1 of Protocol No. 1, Article 3 of Protocol No. 1, Article 2 Protocol No. 7, Article 3 Protocol No. 7 and Article 4 of Protocol No. 7 (Tymofeyeva,

2015). In view of the applicability of the non-discrimination requirements set forth in Article 14 of the ECHR to businesses, there is nothing to exclude Article 1 of Protocol No. 12 to the ECHR from the list of the applicable provisions, notwithstanding the fact that the relevant case-law is currently missing. Theoretically, following the logic of the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, business entities may allege a violation of all the provisions of the ECHR. However, it should be remembered that the applicant in the *Câmpeanu case* was a non-profit organisation, which may be different in case of profit-making companies. Moreover, the ECtHR did not recognise the applicant as a victim under Article 34 of the ECHR but granted them a special status of a *de facto* representative. Consequently, it is very unlikely the businesses will be allowed to submit their claims under Article 2, 3, 4 and the other similar provisions, which have strongly personal nature.

With regard to the possible obligations of companies under the ECHR, it has to be observed that Article 1 of the mentioned human rights treaty clearly stipulates that the "*High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in* [this treaty]". It means that only the states are directly bound by this international treaty. This interpretation is confirmed by the case-law of the ECtHR, where the applications submitted to it against a private business entity were declared inadmissible as being incompatible *ratione personae* with the provisions of the ECHR (*Mihăilescu v. Romania*). However, in the case of *Calvelli and Ciglio v. Italy* the ECtHR observed: "*...The aforementioned positive obligations therefore require States to make regulations compelling hospitals, whether public or* ***private****, to adopt appropriate measures for the protection of their patients' lives...*". The reference to the activities of private entities may lead to the conclusion, that under some circumstances the ECtHR also requires compliance with the ECHR norms with respect to private businesses. Again, it should be stressed that the direct positive obligations (Akandji-Kombe, 2007: 32) under the ECHR in this regard may arise for the states only. However, one may distinguish between direct and indirect human rights obligations (Biriukov, 2015, Karavias, 2013; Vázquez, 2005). A notion 'direct obligation' signifies that there is a duty straight imposed on a person by law and a term 'indirect obligation' means that the duty is implied, derived from the objective and purpose of a statute, in our case from the ECHR. In this regard, it is possible to say that indirectly the ECHR may impose also obligations on businesses. The logic is clear: if a private company does not comply with the ECHR norms, in view of the existence of the states' positive obligations, the contracting party will be found responsible for breaches of human rights under its jurisdiction. As a result, the businesses may expect changes in the legislation or the state practice, which will force them to comply with the ECtHR norms.

Given the abovementioned observations on the position of businesses in the proceedings before the ECtHR it is possible to suggest a list of Articles, where the responsibility of business entities to respect human rights may be involved. The preliminary research made by the author demonstrates that the corporate human rights abuses may be examined by the ECtHR under Articles 2, 3, 4, 5, 8, 9, 10, 11, and 14 (Tymofeyeva, 2017). The indirect obligations of businesses may also be derived from the norms set forth in the additional Protocols to the ECHR, such as Article 1 of Protocol No. 1 (*Fuklev v. Ukraine*), and Article 2 of Protocol No. 1 (*Catan and Others v. the Republic of Moldova and Russia*). Protocols No. 6 and No. 13 establish obligations to protect human life and are similar to the notion of Article 2 of the ECHR. Consequently, it is possible to consider indirect duties of businesses under Article 1 of these Protocols to the ECHR, as well as Article 2 of Protocol No. 6 to the ECHR. The similar logic may be applied to Article 1 of Protocol No. 12 and Article 14 of the ECHR. Deprivation of liberty by businesses on the basis of Article 1 of Protocol No. 4 to the Convention and Article 5 of the Convention has common features, as well as the restriction of freedom of movement under Article 2 of Protocol No. 4 to the Convention. Accordingly, based on the *Storck v. Germany* we may again suppose certain indirect obligations of private companied under these provisions. In theory, the duties for businesses may arise under Article 3 of Protocol No. 1, Articles 3 and 4 of Protocol No. 4 and Articles 1 and 5 of Protocol No. 7 to the ECHR. As to Articles 2, 3 and 4 of Protocol No. 7 to the ECHR, they concern the issue of criminal proceedings before the domestic courts, which are traditionally managed by the states. Therefore, it would be hard to impose obligations of business entities under these provisions. However, if criminal justice in a state is exercised by non-state entities this might become an issue. Nonetheless, the thorough analysis of the attribution of such conduct to the state under the Draft articles on Responsibility of States for Internationally Wrongful Acts (Draft articles on Responsibility of States) should be made first.

In the previous part of this subsection, the legal standing of businesses comprised of their rights and duties under the ECHR has been discussed. The case-law shows that business entities under this treaty not only enjoy certain rights, but indirectly should comply with certain human rights obligations. The further subsection will focus on possible indirect obligations of businesses in the sphere of the protection of environment.

3.3. Applicability of the ECHR environmental standards to businesses

The third subsection of the paper will discuss the relevance or applicability of the environmental standards based on the case-law of the ECtHR for the compliance of the obligation of business entities to respect human rights as set forth in the UNGP as well as in the latest draft of the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises of 16 July 2018.

Before providing the reader with the results of the author's research, an example explaining the methods of work will be given. The results in question are based on the analysis of the relevant ECtHR' case-law. Accordingly, the examination of the one judgment of the ECtHR will demonstrate the approach applied in this research.

The case of *Taşkın and Others v. Turkey* concerned the activities of the Ovacik Gold Mine owned by a private company. In 1989 the public limited company E.M. Eurogold Madencilik ("the company"), subsequently renamed Normandy Madencilik A.Ş., currently Koza Gold Operations Company (Koza Altin) received authorisation to begin prospecting for gold. The permit authorised the use of cyanide leaching in the gold extraction process. Referring to the risk of their health and the environment local residents, who were farmers or stockbreeders, applied for cancellation of this permit. In 1997 the Supreme Administrative Council of Tyrkey ruled that the use of sodium cyanide presented dangers for the local ecosystem and for human health. It concluded that the operating permit was not compatible with the public interest and that the safety measures which the mine's owners had undertaken to implement were insufficient to overcome the risk inherent in such operations. The Turkish authorities were slow to enforce this decision. Meanwhile the company filed new applications for permits, claiming that it had taken measures to ensure the site's safety and the authorities granted again permission for continued operations using cyanide leaching at the mine. Since that procedure did not comply with the legal provisions, the courts cancelled the permit again and ordered the execution of that decision. In 2004 the Izmir provincial governor's office ordered the mine to cease gold extraction.

The ECtHR observed that the authorities had not ordered the mine's closure and refused to comply with the courts' decisions for a long period. In spite of the procedural safeguards laid down by Turkish legislation and the practical effect given to those safeguards by the judicial decisions which cancelled subsequent permits, the Turkish government authorised continued activity at the gold mine and thus deprived the procedural safeguards available to the applicants of all useful effect. The ECtHR found a violation of Article 8 of the ECHR. In accordance with Article 41 of the ECHR Turkey had to pay each of ten applicants three thousand euros (*Taşkın and Others v. Turkey*). In the action plan submitted on 22 February 2012 the Turkish authorities indicated that several general measures have been taken regarding the sanctions imposed for environmental pollution (*Taşkın and Others v. Turkey*, Appl. No. 46117/99, Judgment of 10 November 2004, execution).

This judgment demonstrates that a private company not only failed to comply with the national legislation on environmental matters, but also continued to conduct environmentally harmful activity, notwithstanding the presence of the judicial decisions which stated that the use of sodium cyanide presented dangers for the local ecosystem and for human health. Given this, the state was obligated to compensate the victims of these human rights violations. Consequently, it decided to amend the national legislation and practice in this regard, which definitely had an impact on the activities of companies in the mining sector. Therefore, from this judgment we may derive at least following environmental standards relevant to businesses. The private companies are under an obligation to safeguard the rights of those concerned to a healthy and protected environment. They are obliged to evade environmental pollution, which may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life. The business enterprises must assess, to a satisfactory degree, the risks that their activity might entail.

Based on the abovementioned example, the list of the ECHR environmental obligations, which in theory may be imposed indirectly on businesses, was produced. It includes the following principles.

- The businesses should adopt internal norms and policies, which would be reasonable, appropriate and capable to safeguard the rights of those concerned to a healthy and protected environment (*Guerra and Others v. Italy*, *Taşk?n and Others v. Turkey*, or *Deés v. Hungary*);
- If a company in its documents set forth the sanction system for breaches of the environmental rules, these sanctions should be applied in a timely and effective manner (*Bor v. Hungary*);
- The business enterprises are required to implement land-planning and emergency relief policies in the hazardous area in compliance with the national and international standards (*Budayeva and Others v. Russia*);
- The companies should conduct promptly an internal investigation of ecological disaster in order to determine the responsibilities and the circumstances in which the environmentally harmful act took place (*Özel and Others v. Turkey*);
- The businesses are obliged to avoid severe environmental pollution, which may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life (*Deés v. Hungary*);
- The business enterprises are under an obligation to provide an information about the risks that can appear as result from their environmentally harmful activities (*Vilnes and Others v. Norway,* and *Brincat and Others v. Malta*);
- The businesses must assess, to a satisfactory degree, the risks that their activity might entail (*Tătar v. Romania*);
- They should take appropriate measures to remedy the situation of the adverse environmental effects (*Dubetska and Others v. Ukraine*);
- If the activity of a company results in the night-time disturbances, noise and nuisance, production of offensive smells, etc., the businesses are required to take action to deal with and when necessary to cease this type of activity (*Moreno Gómez v. Spain, Brânduse v. Romania, Mileva and Others v. Bulgaria,* and *Grimkovskaya v. Ukraine*);
- The business enterprises are under an obligation to carry out an environmental feasibility study before commencing their activity (*Grimkovskaya v. Ukraine*);
- The businesses may be required to enable their employees to contribute to the public debate by disseminating information and ideas on the environment and to impart information on the environmental issues (*Steel and Morris v. the United Kingdom*);
- The companies should ensure freedom of assembly and association to their employees (*Costel Popa v. Romania*);
- The business enterprises must take into account the interests of the owners of the property with respect to their activity, which may have a negative environmental impact (*Papastavrou and Others v. Greece*, *N.A. and Others v. Turkey*, and *Turgut and Others v. Turkey*).

These general obligations to respect human rights with regard to the environment may be summed up into the **five followings groups.** The businesses should:

1) secure the environmental rights both of their employees and all the persons on which their activities may have an adverse impact;

2) establish control over their potentially harmful environmental activities;

3) secure participation of their employees in environmental issues and to impart information on environmental matters;

4) require from the related persons and carry out their own environmental impact assessments;

5) conducting internal investigations of the environmentally harmful acts or omissions adequately and promptly.

As to the subsequent developments in the *Taşkın* case, currently the web of the Koza Gold Operations Company operating Ovacik Gold Mine contains an information on the social responsivity in the sphere of the environment. The company introduced its environmental policy, which includes, *inter alia*, the following matters: compliance with all applicable provisions of legal and regulatory requirements, adoption to amended procedures; implementation, assessment and effective control under environmental factors and risks; communication with local community and stakeholders about environmental issues and social impacts; conduction studies on reducing, reusing and recovering of the wastes and reflection environmental performance to the public in an transparent manner. Moreover, the company carries out environmental measurement and provides rehabilitation on the subject-matter. As we see, the judgment of the ECtHR had a positive effect on the activity of

the company and resulted in the due diligence. In the next part of the paper the author will prove that the environmental standards of the ECtHR are applicable not only to the businesses operating their activity on the territory of the forty-seven Council of Europe member states, but also to all business enterprises in the United Nations Charter parties.

4. Results

The conducted research permits to conclude that the business entities may be indirectly bound also by the provisions of the ECHR and their interpretation in the ECtHR case-law. The given example suggests that the practice of the ECtHR should be reflected by private companies in their activities, which may entail risks for the environment.

As it was stated before, the UNGP does not provide the companies with the exact standards of the environmentally friendly behaviour. This gap may be filled in by the described principles set forth in the case-law of the ECtHR. The study shows, that given the nature of business, not all of the ECHR standards are relevant for the companies. Given the fact that businesses are not the legislative body, it would be absurd to expect from them adoption of laws and subordinate acts. However, the companies are free to adopt their internal environmental policies.

In view of the role of judiciary in the states, no one expect that the business will make environmental rights judiciable and enforceable. At the same time, the company may cooperate with the court by means of providing necessary information. They may conduct also own independent investigation of the activities, which lead to environmental pollution. In some cases, they may even provide necessary financial and legal support to their employees who aim to pursue a dispute on the environmental matters.

It is also true that the businesses are not the part of the execution and may not enforce judicial decisions. Nonetheless, they may comply voluntary with the judicial verdicts when found liable for the commitment of illegal acts. In order to act in conformity with judicial decisions and national acts, the companies may amend their practices, implement and maintain an environmental management system that identifies, assesses and effectively controls environmental factors and risks. The businesses may propose their own compensation and rehabilitation to the victims of environmental violations.

Article 8 of the draft of the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises set forth the right of victims to environmental remediation and ecological restoration where applicable, including covering of expenses for relocation of victims, and replacement of community facilities (Legally Binding Instrument, 2018). This rule reflects the practice of the ECtHR and Article 41 of the ECHR. Similarly, the requirement of reporting publicly and periodically on environmental rights matters, including policies, risks, outcomes and indicators as envisaged in Article 9 of the draft treaty corresponds to the standards of the ECHR.

The Aarhus Convention envisages the obligation to provide for transparent and accessible dissemination of information on the environmental matters. This is again reproduced in the ECtHR case-law, which shows that its standards are the same as the ones at the universal level. The same rules steam from the Rio Declaration of 1992.

Given this, one may conclude that the ECtHR standards in the sphere of the protection of environment are relevant not only to the companies conducting their activity in the states that ratified the ECHR, but also universally. The case-law of the ECtHR reflects international documents in the environmental sphere. This could be confirmed also by the table with the list of references in the judgments of the ECtHR to the international environmental instruments, which can be found in the Council of Europe Manual on human rights and the environment (Manual on human rights and the environment, 2012).

Given the limited space for the publication, it was impossible to describe in detail the relevant case-law of the ECtHR, where the state was found responsible for the environmentally harmful conduct of private entities. The future research on the subject matter could concentrate on the analysis of the judgments relating separately to the noise pollution, industrial pollution, radiation. The study could also focus on the certain provisions of the ECHR and to deal, for instance, precisely with the cases, when the activity of business has led to a breach of the right to life (Article 2 of the ECHR) or the right to property (Article 1 of Protocol No. 1 to the ECHR).

5. Conclusion

The purpose of the current study was to conduct an evaluation to what extent the case-law of the ECtHR could be relevant for the businesses when aiming to comply the corporate responsibility standards in the area of environment. In order to address this objective, first, the environmental standards under the ECHR were elaborated on. Second, the author explained the position of the companies under this treaty. The study demonstrated that businesses possess certain rights under the ECHR. The list of the provisions of this treaty applicable to companies together with reference to the related case-law is provided. Then the author expounded on the possible obligations of companies under the ECHR. The research showed that in view of Article 1 of the ECHR, only indirect obligations may be imposed on the companies. The corresponding Articles of the ECHR together with the judgments of the ECtHR on the subject matter were summed up. Thirdly, the paper discussed the applicability of the ECHR standards on the environmental issues to business enterprises. It was proved that the majority of these standards concern both the states and private subjects. The proposed list of the possible indirect obligations, compliance with which may be required in order to preserve the ECHR standards, was introduced. The tool at issue is of more importance given the absence of the appropriate rules in the UNGP. In the discussion it was illustrated that notwithstanding the fact that the ECHR is a regional human rights treaty, the standards envisaged therein may be applied universally.

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