

## HUMAN RIGHTS AND BUSINESS-DOES IT EVEN MATTER?<sup>1</sup>

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### **Abstract**

Our starting point implies that the idea of protecting human rights is based on the relationship between citizens and government. Therefore, the essential function of human rights has been to protect areas of individual freedom from interference by public authorities. However, in today's society, businesses, particularly big multinational corporations, play a very important role and have a big impact on how people use their rights. It is enough to think of companies such as Facebook, Twitter, Google etc. Business companies may significantly contribute to the fulfilment of human rights, through their actions, as demonstrated by the exercise of the right to employment, the right to education, the right to access information, the freedom of expression, and freedom of speech etc. However, their commercial endeavours could potentially violate human rights. The enjoyment of the right to health and privacy, among other rights, might be considered as having such an influence. Therefore, the issue of corporate responsibility for human rights has become one of the major challenges for human rights in the 21st century.

This paper aims to show the relationship between the business and economic sector and human rights, as well as the necessary reforms for their protection. Thus, the concept of corporate responsibility for human rights represents a reshaping of the traditional concept of human rights, which emphasizes the role of the state. The United Nations Guiding Principles on Business and Human Rights (UNGPs), the ECHR and the state legislature will all be reviewed when considering a corporate duty to protect human rights.

**Keywords:** human rights, corporate responsibility, business, constitution, UNGPs, NAPs

### **1. Introductory**

The traditional paradigm of human rights protection is focused on the interaction of citizens and state governments. The primary purpose of human rights is to protect areas of individual liberty from interference by public authorities. The state's role is at the heart of this traditional framework for human rights protection. Meanwhile, a large number of businesses and other private law participants have grown to be so powerful that they may affect both the government choices and the implementation of human rights. Nowadays, corporations, play a significant role in society with implications for the exercise of human rights. All companies, regardless of size or

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<sup>1</sup> The article is the result of funding by the Ministry of Education, Science and Technological Development of the Republic of Serbia (contract no. 451-03-68/2022-14/200120)

industry, influence human rights, either directly, through their employees, or indirectly through the supply chain. This effect extends to a variety of rights, including the right to equality and non-discrimination, workplace health, the right to privacy, freedom of association, the environment, and property, among others. Companies often recognize and respect their social responsibility through socially responsible business initiatives. These activities should be distinguished from the ideas of human rights and business, nevertheless. However, there is a distinction to be made between these initiatives and the concepts of human rights and business. While these initiatives are important, they are only implemented in limited situations and only deal with certain problems; whereas the concept of human rights and business refers to adherence to all applicable human rights standards.

Human rights and business are very topical issues. The debate over the responsibility of economic actors concerning human rights became a major subject in the 1990s, because of the abundance of oil, gas, and other natural resources. In today's globalized world, the state is no longer the main source of power. Multinational companies with incomes exceeding the gross domestic product of many countries have a great impact on people's lives. The application of new technologies has led to the emergence of large multinational companies that play a dominant role in the production and management of digital technology products on a global scale. Through their actions, these companies have the opportunity to play an important role in society; they promote economic growth, have an impact on financial investments, and moreover show up in the constitutional scenario as new players in addition to the nation-states that already exist. Business entities can make a significant contribution to the realization of human rights, which is particularly evident in the exercise of the right to work, the right to education, and the right to access information. However, their business activities can also have a negative impact on human rights. The exercise of such rights, such as those to health, the right to the environment, and the right to privacy, among others, might be perceived as having an influence.

Although digital technologies may not directly lead private actors to violate fundamental rights, their usage has made corporate responsibility for human rights an important and unavoidable part of the larger concept- the relationship between business and human rights. Companies like Facebook, Twitter, Google, and Microsoft control network access and circulation of user-generated content, but they must exercise caution to prevent the spread of unlawful material like child pornography, hate speech, and other material that may be harmful to society or people (content that promotes terrorism, suicide, etc).

Corporate accountability for human rights is a massive burden that cannot be handled by existing legal procedures, necessitating the development of new supervision mechanisms. The issue of complete corporate immunity for serious human rights violations demands „the imposition of mandatory forms of direct corporate human rights responsibility”<sup>2</sup>.

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<sup>2</sup> Gear Anna, Weston Burns, *The Betrayal of Human Right and the Urgency of Universal Corporate*

The focus of the article is to analyse the existing legal framework for corporate responsibility to respect human rights. We'll start with international law, including the ECHR and then move to solutions of the national order.

## 2. Guiding Principles on Business and Human rights

The relationship between business and human rights is recognized by the United Nations in particular. In 2005, the Human Rights Committee established the mandate of the Special Representative of the Secretary-General on Human Rights, Transnational Corporations and Other Business Enterprises, Professor John Ruggie. In June 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights<sup>3</sup>. These principles represent the first international document on corporate responsibility to respect human rights. In addition, this document dispels previous notions that corporate responsibility should be based on a limited list of human rights and establishes the responsibility of the corporate sector for almost all recognized international rights. Corporate responsibility exists independently of state responsibility; the distinction between a „primary” State and a „secondary” corporate obligation, which can lead to endless strategic games about who is responsible for what is superfluous<sup>4</sup>. Although it is a „soft law” instrument, it has been pointed out that, just as companies are obligated to comply with national laws, they should also respect human rights. It is certainly encouraging that many companies, especially transnational companies, have adopted codes of conduct in which they define their responsibility to respect human rights.

The Guiding Principles on Business and Human Rights are based on the three-pillar model: protect, respect and remedy. The first pillar („Protect”) involves the obligation of states to protect against human rights abuses by third parties, including businesses. It relies on appropriate policies, normative rules, and judicial resolution of disputes. The second pillar („Respect”) refers to the responsibility of companies to respect human rights and includes the obligation of companies to act with due diligence and not to violate the rights of others. The third pillar („Remedy”) refers to the need to provide victims with access to effective judicial and non-judicial remedies. Each pillar is a necessary component of an interrelated and dynamic system of preventive and remedial measures: the state’s duty to ensure the protection of human rights because that is the essence of the international human rights regime; the corporate responsibility to respect human rights because society expects it when it comes to the relationship between human rights and business, and access to justice because even the most coordinated efforts cannot prevent all human rights violations.

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*Accountability: Reflections on a Post-Kiobel Lawscape*, Human Rights Law Review, god. 15, 2015, p. 21

<sup>3</sup> UN Guiding Principles on Business and Human Rights: Implementing the “Protect, Respect, and Remedy Framework” (2011) (“UNGPs”)

<sup>4</sup> Ruggie John, Protect, Respect and Remedy, A Framework for Business and Human Rights, p.15 Retrieved from <https://www.business-humanrights.org/en/latest-news/pdf-protect-respect-and-remedy-a-framework-for-business-and-human-rights/>

The Guiding Principles are a set of 31 principles that follow the three-pillar structure. These principles are based on the recognition of (a) the existing obligations of the State to respect, protect and exercise human rights and fundamental freedoms, (b) the role of business enterprises, which are specialized entities of society that perform certain functions and must comply with all applicable laws and respect human rights, and (c) the need to ensure respect for rights and obligations through appropriate effective remedies in case of violation.

Within the framework of these principles, the obligation of the State to ensure protection against human rights violations by third parties, including companies, on its territory and/or within its jurisdiction is emphasized first. States are not inherently responsible for human rights violations committed by private entities, but they have obligation to take measures to prevent, investigate, and punish such violations. States should provide effective guidance to companies on respecting human rights in business and, where appropriate, require companies to publish information on how to address their negative human rights impacts.

The section titled „Corporate Responsibility for Respecting Human Rights” establishes the obligation of companies to respect human rights, regardless of whether states fulfil their obligations related to human rights. The responsibility of entrepreneurs to respect human rights is based on internationally recognized human rights, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the principles relating to fundamental in the International Labor Organisation’s Declaration on Fundamental Principles and Rights at Work. Business enterprises may adhere to international standards depending on their operations, particularly when those activities may result in abuses of the human rights of certain vulnerable members of society.

Business entities can have a detrimental impact on human rights in three ways: a) they can cause it, b) they can contribute to it or (c) they can be indirectly involved in it. Regarding to these actions, the nature of their responsibility to uphold human rights is decided. The company should suspend or adjust the given operations in the first two circumstances to avoid any influence or repetition. It is vital to encourage the perpetrator of the harmful impact to prevent or limit the recurrence of such effect in the case of indirect liability of an economic entity. It’s crucial to note that all businesses, regardless of their size, operating environment, form, ownership, or structure, are obliged to respect human rights. Corporate responsibility for human rights compliance necessitates the adoption of a commitment policy in accordance with the Global Compact. Due diligence for human rights is a key criterion that firms must meet in order to identify and prevent their negative human rights consequences, mitigate them and report on how they resolve them. Assessing the actual and prospective implications on human rights, taking appropriate action based on the outcomes of that assessment, monitoring reactions and reporting on how they are addressed should all

be part of this process. The goal of this action is for the corporation to learn more about the specific human rights implications of the proposed commercial activity. These approaches could be used in conjunction with others to assess risk or the impact on the environment or society.

Acting with due respect for human rights should help businesses reduce the risk of litigation since it demonstrates that they have taken all reasonable steps to avoid being associated with the alleged violation of human rights. Due diligence, according to the UN Guiding Principles (17-20), includes identifying human rights risks, preventing and mitigating negative human rights impacts, and verifying that adverse human rights impacts have been addressed. However, such actions do not free companies of culpability for human rights breaches automatically and totally. Businesses must simultaneously evaluate the steps that have been taken to reduce their detrimental effects on human rights. Enterprises' obligation to protect human rights implies that they adopt a commitment policy and can learn about and demonstrate how they respect human rights in practice. This demonstration included information disclosure, which ensures openness and accountability to individuals or groups who may be at risk, as well as other important stakeholders, such as investors. According to the United Nations Guiding Principle No.17, due diligence is a continuous process that must begin as soon as possible. The requirement of „due diligence” is referred to as „the fundamental element of the need to respect human rights”<sup>5</sup>. This phrase, which indicates the use of business vocabulary in a document addressing human rights concerns, is commonly used in contract and company law, but not in human rights law<sup>6</sup>. However, this is acceptable if we keep in mind that corporate responsibility is a result of human rights in the realm of international trade and investment law.

In line with Guiding Principle No.22, if the company, in addition to the due diligence and best practices, challenges or contributes to a detrimental impact on human rights, it shall give or cooperate in providing compensation through legal procedures. In this context, the state's involvement is critical, and it should give protest against the company's infringement of human rights. Therefore, the state must take the necessary measures to ensure that persons whose rights are violated have access to effective remedies. The material and procedural components of access to legal remedies are both important. Possible remedies include apologies, restitution, rehabilitation, financial or non-financial compensation, as well as legal penalties, and the prevention of future infractions. Remedies should be unbiased and free of corruption, as well as political and other attempts to influence their conclusion. The state judicial and out-of-court appeal mechanisms form the foundation of the legal protection system. The premise for giving remedies is an effective judicial apparatus based on impartiality. Administrative, legislative and other non-judicial mechanisms play an essential role in completing judicial mechanisms. The state should consider

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<sup>5</sup> Beširević, Violeta, „Uhvati me ako možeš”: osvrt na problem (ne)odgovornosti transnacionalnih korporacija zbog kršenja ljudskih prava, *Pravni zapisi*, Vol. 9, No.1, 2018, p. 30

<sup>6</sup> *Ibidem*

enabling access to effective non-state grievance redress procedures to address human rights breaches by enterprises, according to Guiding Principle No. 28. Non-state grievance mechanisms also include those run by enterprises, either alone or in collaboration with stakeholders, and are distinguished by quick access, lower costs and the potential to address global issues. Companies should set up the system to deal with early-stage complaints and provide rapid immediate redress, companies should establish or participate in effective grievance mechanisms at the operational level for individuals and communities that may be adversely affected<sup>7</sup>.

Although the UNGP began as soft law, they have increasingly been incorporated or reflected in law, regulation, judicial and administrative decision-making, public policy, multistakeholder norms, commercial and financial transactions, leading companies' practices and policies, and civil society advocacy since their endorsement.<sup>8</sup>

### **3. ECHR and the jurisprudence of the European Court of Human Rights**

It is crucial to understand how the ECHR approaches this matter and what the European Court of Human Rights' corporate responsibility practice is. The ECHR can only take into account petitions submitted against states since its main focus is protecting the rights of persons who are citizens of the state. Human rights breaches, on the other hand, are not just the responsibility of state organizations; they can also be perpetrated by third parties, such as corporations and other economic enterprises. Such situations are recognized in the context of employment discrimination based on race or other factors, invasions of privacy, violations of health and safety at work, etc. The provisions of Art.1 and Art. 17 of the Convention are relevant in this sense. Article 1 states the obligation of the High Contracting Parties to guarantee to everyone within their competence the rights and freedoms set out in the Convention, with no additional requirements imposed in the sense that these rights must be directly violated by state authority. This issue of indirect corporate responsibility was explored in this leaver room. Nothing in this Convention shall be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction or limitation of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention, according to Article 17.

We should also look into the European Court of Human Rights case law. Although the ECHR does not apply to corporate human rights abuses, corporations are not immune from responsibility. ECtHR imposes two types of responsibilities on governments in this context: positive and negative. Governments are subject to two different kinds of obligations under ECtHR. Positive responsibilities necessitate governmental intervention, which might take the form of enacting specific legislative

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<sup>7</sup> Principle No. 29

<sup>8</sup> Sherman John F. III, Beyond CSR: The Story of the UN Guiding Principles on Business and Human Rights, Retrieved from [https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crj/files/CRI\\_71.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crj/files/CRI_71.pdf) Accessed 29 May 2022

laws or implementing specific practical measures. The positive responsibilities stem from governments' obligation to safeguard people under their authority, and they aim to provide the specific material and legal conditions for the effective enjoyment of the Convention's rights.

One must be aware of the strategies the European Court employed to implement the concept of indirect liability of corporate entities in order to ascertain the extent of the ECHR's applicability to businesses. The concepts of horizontal impact and state positive obligations, along with the ideas of evolutionary interpretation and efficacy, serve as the cornerstones of this idea. Corporations carry negative duties because, like states, they must refrain from violating human rights. Negative obligations apply to corporations since, like notions, they are prohibited from abusing human rights. Corporations should focus their efforts on achieving societal goals, i.e. they should be the bearers of positive obligations<sup>9</sup>. Although the activities of companies cannot be directly attributed to the state when it comes to positive responsibilities, states are expected to regulate and oversee their activities in order to preserve the rights guaranteed by the Convention. Thus, the state is directly responsible for human rights violations by corporations if it violates its negative obligations; in the case of violation of positive obligations, we speak of indirect responsibility of the state for human rights violations<sup>10</sup>.

The main weakness of the indirect corporate responsibility system is that the European Court is unable to determine precisely what human rights obligations corporations have and to what extent they can investigate violations allegedly committed by them. The lack of a systematic approach by the European Court is also reflected in the inconsistent terminology used in this matter. Moreover, the Court does not use the term „corporate responsibility” but rather terms such as „accountability” , „companies”, „business interests”, „commercial interest” when attempting to explain its approach to corporate responsibility.<sup>11</sup>

We will discuss the case of *Delphi AS v. Estonia* (appl. no. 64569/09), in which the European Court of Human Rights established the web portal's duty for user content and reader comments for the first time. It is interesting to note that the responsibility of this company was established on the occasion of the petition filed by itself.<sup>12</sup> Delfi filed a petition to the European Court claiming that its right to freedom

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<sup>9</sup> Beširević, Violeta, *op.cit.*, note 4, p. 37

<sup>10</sup> Polakiewicz Jörg, *Corporate Responsibility to Respect Human Rights-Challenges and Opportunities for Europe and Japan*, CALE Discussion Paper No. 9, October 2012

<sup>11</sup> Ćorić, Vesna, Knežević Bojović, Ana, *Indirect approach to accountability of corporate entities through the lens of the case-law of the European Court of Human Rights*, *Strani pravni život*, No. 4. 2018, p. 33

<sup>12</sup> The Delphi Internet Portal functioned in such a way that under each published news, i.e. article, it was envisaged that readers could leave comments. In its „Rules for Posting Comments” the company distanced itself from the published content, pointing out that they do not represent the position or opinion of the company, but that each comment has its author who is responsible for its content. In January 2006, an article was published on the portal about the decision of the ferry company to change

of expression had been violated, in violation of Article 10 of the Convention, by being held liable for the comments of third parties published on its Internet news portal. The corporation had to put together a team of moderators to monitor and „filter” remarks, imposing obligations that were not mandated by law. They acknowledged that there had been reputational damage, but it was the commentator’s fault, not the company’s. The European Court should have addressed whether the corporation can be deemed a „publisher” of the challenged statements or just a „warehouse” for which it is not liable in settling the issue. The Court stated that the „applicant company’s news portal was one of the largest Internet media publications in the country”. Furthermore, in this case, the allegedly offensive remarks „mainly constituted hate speech and speech that directly advocated acts of violence.” Even though the initial article was correct and did not contain inflammatory speech, the Court found that Delfi must have expected such remarks given the matter it was dealing with. Delfi needed to be proactive and go above and above to prevent culpability for reputation damage to individuals. „Pursuant to the relevant provisions of the Constitution, the Civil Code (General Principles) Act and the Obligations Act, as interpreted and applied by the domestic courts, the applicant company was considered a publisher and deemed liable for the publication of the unlawful comments. Accordingly, the Court considers that these principles could not have been unknown to Delfi, and the above-mentioned restrictions on freedom of expression were prescribed by domestic law, as required by Art. 10 of the ECHR. The Court noted that „the applicant company cannot be said to have wholly neglected its duty to avoid causing harm to third parties”.

In determining whether restrictions on freedom of expression are required in a democratic society, the Court considered the environment in which the disputed comments were published, the company’s actions, and the question of the responsibility of the authors of the comments. The ECtHR concluded that the domestic court’s decisions holding Delfi liable for the insulting comments were justified, that the restriction of the applicant’s right to freedom of expression was proportionate and necessary in a democratic society, and that there had been no violation of the Convention’s Art. 10 provisions.

#### **4. The business and human rights-national framework**

The issue of human rights and business is gaining more and more attention in the national context. The corporate responsibility of business in the constitutional order is based on the principle of horizontal application of rights. The effect of the fundamental right can be vertical or horizontal. The vertical effect is based on the

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the route to certain islands, which led to the publication of numerous comments, including offensive and defamatory announcements about the ferry company. Therefore, this company demanded the removal of offensive comments and compensation of 32,000 euros. Portal Delfi removed the comments on the same day, but refused to pay compensation, so this dispute received the court epilogue. The courts in Estonia, headed by the Supreme Court, judged that the Delphi was responsible, because it had to provide better protection mechanisms against offensive comments.



historical function of the right, which protects the individual against the actions of the state power. The horizontal effect of fundamental rights means that „they prevail also between individuals; and influence or determine the legal relations of private actors”<sup>13</sup>. The doctrine of horizontal effect of law, known as *Drittwirkung* (third party applicability), was developed in the German Federal Constitutional Court’s jurisprudence. Constitutional rights are primarily the rights of people with regard to the state, but, as the Court has stated, the purpose of basic rights does not end there, rather fundamental rights represent objective values and serve as the highest principles of the entire legal system. Constitutional rights are a set of universal values that apply to all aspects of society, including private law. Horizontal activity towards third parties can be divided into two categories: direct and indirect. According to the theory of indirect third-party effect (*mittelbare Drittwirkung*), the fundamental rights norms of the Constitution are directly applicable to private law relations; they are used as an aid to interpretation in determining private-law relations between individuals. There is an indirect horizontal effect if the obligations under private law are interpreted in conformity with fundamental rights. It is the task of the state, i.e. the legislature, to create the rules of private law (commercial, investment law) in accordance with constitutional and international law.

Regardless of the theoretical nature of fundamental rights, EU member states are required to produce a „national plan for the implementation of the United Nations Guiding Principles” (NAPs). By 2017, thirteen Member States have published their national plans in the fields of business and human rights, and the process is still ongoing in others: there are currently 19 countries participating at the global level. The adoption of these national plans has many advantages, including promoting the national dialogue on the implementation of guiding principles, raising awareness and understanding of business and human rights, strengthening a culture of respect for human rights and international obligations, preventing and reducing human rights violations in business, reducing social conflicts related to business, and promoting sustainable development based on human rights, among others.<sup>14</sup>

United Kingdom was the first country to adopt NAP on 4 September 2013, and the first to publish and Updated NAP three years later on 12 May 2016. The Updated NAP details a number of planned actions taken by the UK Government. It contains eight Government commitments for ongoing actions, and five commitments to help businesses fulfil their responsibilities<sup>15</sup>. The German NAPS specifies the essential components of due diligence in the area of human rights, and it recommends, among other things, voluntary reporting that the businesses „are aware of the actual and

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<sup>13</sup> Chronowski Nóra, *International and Constitutional Approach of Business and Human Rights, niwersalny i regionalny wymiar ochrony praw człowieka. Nowe wyzwania – nowe rozwiązania*, tom. 3 (red. Jerzy Jaskiernia), Warszawa, 2015, 704.

<sup>14</sup> National Action Plans on Business and Human Rights Toolkit, 2017 edition, The Danish Institute for Human Rights

<sup>15</sup> <https://globalnaps.org/country/united-kingdom/>

potential impact of their corporate activity on human rights and are taking appropriate steps to address the situation”.<sup>16</sup> The „National Plan for the Implementation of the UN Guiding Principles and Human Rights” in France was drafted on the basis of recommendations issued by the National Consultative Commission on Human Rights, and work conducted by the National CSR Platform, created by Prime Minister in June 2013, served as a forum for dialogue and cooperation for the various actors of French society<sup>17</sup>. Italy’s National Action Plan (2016-2020) mainly focuses on six priorities representing the business and human rights areas that NAP intends to address<sup>18</sup>. The National Action Plan of the Republic of Slovenia on Business and Human Rights is intended to ensure that the UN Guiding Principles on Business and Human Rights are implemented, to promote respect for human rights in business operations at the national, regional and international levels, and to contribute to policy harmonisation in this field. This Action Plan forms part of the measures aimed at implementing the EU commitments as defined in the EU Action Plan on Human Rights and Democracy (2015-2019) and the Council Conclusions on Business and Human Rights of June 2016.<sup>19</sup> The Action Plan defines the expectations of the Government of the Republic of Slovenia about respect for human rights by economic operators.

Corporations are increasingly being required to report on their human rights policies and due diligence procedures under domestic legislation. In this context, it’s worth mentioning that significant corporations in France have been required to publish non-financial reports on social and environmental issues since 2001. During 2009 and 2010, two laws, Grenelle Act I and Grenelle Act II, were passed in this area. Companies must disclose in their annual reports how they consider the social and environmental repercussions of their activities, as well as their social obligations that are conducive to sustainable development, under Grenelle Act II. It entails a significant expansion of reporting duties; beginning December 31, 2013, all enterprises with more than 500 employees have been required to produce yearly „social and environmental report”<sup>20</sup>. We should mention also Duty of Vigilance Law

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<sup>16</sup> National Action Plan Implementation of the UN Guiding Principles on Business and Human Rights (2016-2020), German Federal Foreign Office, Retrieved from <https://www.auswaertigesamt.de/blob/610714/fb740510e8c2fa83dc507afad0b2d7ad/nap-wirtschaftsmenschenrechte-engl-data.pdf>

<sup>17</sup> France National Action Plan for the Implementation of the United Nations Guiding Principles on Business and human rights, Retrieved from <https://globalnaps.org/wp-content/uploads/2017/11/france-nap-english.pdf>

<sup>18</sup> 1. Promoting human rights due diligence processes, 2. Tackling carporalato and other forms of exploitation, forced labour, child labour, slavery and irregular work 3. Promoting fundamental labour rights 4. Strengthening the role of Italy in a human rights-based international development cooperation; 5. Tackling discrimination and inequality and promoting equal opportunities; 6. Promoting environmental protection and sustainability. See more: <https://globalnaps.org/wp-content/uploads/2017/10/NAP-Italy.pdf>

<sup>19</sup> National Action Plan of the Republic of Slovenia on Business and Human Rights (2018). Retrieved from <https://globalnaps.org/wp-content/uploads/2017/11/slovenia-bhr-nap-english.pdf>

<sup>20</sup> Kaya Idil, *The Mandatory Social and Environmental Reporting: Evidence from France*, Procedia-Social and Behavioral Sciences, 2016, p. 207

of 2017<sup>21</sup>, which requires French businesses that employ at least 5,000 employees in France or at least 10,000 employees worldwide must publish and implement a „vigilance plan”. The plan must include a reasonable measure of vigilance to identify risks and prevent serious violations of human rights and fundamental freedoms, serious physical harm, environmental harm, and health risk that may result directly or indirectly from business operations, including certain subcontractors and suppliers.<sup>22</sup> The legislation gives victims and other interested persons to right to petition judges when business violate these commitments.

Similarly, the Financial Reporting Act in Denmark requires major and state-owned firms to publish non-financial information (including human rights and climate change) for large and state-owned enterprises, in accordance with the Financial Reporting Act. In Italy, Legislative Decree No. 231/2001 introduced a due diligence process for human rights violations, including slavery, human trafficking, forced labour, etc. The relevant legal framework in the UK includes Companies Act 2006, which was revised in October 2013 to ensure that directors of quoted companies consider human rights issues when making their annual strategic reports<sup>23</sup>.

## **5. The case of Serbia in terms of business and human rights**

When it comes to the relationship between business and human rights in Serbia, it’s important to keep in mind that the UN Guiding Principles have yet to be officially adopted by the country. Serbia has ratified the majority of UN human rights treaties about human rights and business<sup>24</sup>, as well as 76 International Labour Organisations Convention, including eight fundamental conventions and the revisited European Social Charter. Serbia voted in support UN Human Rights Council Resolution 26/22 which extended the UN Working Group on Human Rights and Business’s mission. Serbia (together with other signatories) recognizes the importance of responsible business behaviour and its contribution to sustainable economic development by joining the EFTA Free Trade Agreement. Serbia also supports efforts to promote applicable international standards. Serbia, on the other hand, lacks a Human Rights Strategy, which might include a special section on business and human rights.

We will analyze the link between business and human rights, as well as corporate responsibility for respecting human rights, via the lens of constitutional and legal remedies in the absence of sufficient strategies and national plans. Corporate

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<sup>21</sup> French Law on the Corporate Duty of Vigilance (LOI n ° 2017-399 du mars 27, 2017). Retrieved from <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&fastPos=1&fastReqId=2064245787&categorieLien=id&oldAction=rechTexte>

<sup>22</sup> D. Jescke, J. Severson, M. Vanikiotis (2020), Trends in Business and Human Rights Law in the Group of Seven, A Resource for Business and Human Rights, Retrieved from [https://humanrights.berkeley.edu/sites/default/files/trends\\_in\\_business\\_and\\_human\\_rights\\_law\\_in\\_the\\_g7\\_hrbi\\_august\\_2020.pdf](https://humanrights.berkeley.edu/sites/default/files/trends_in_business_and_human_rights_law_in_the_g7_hrbi_august_2020.pdf)

<sup>23</sup> Good Business Implementing the Un Guiding Principles on Business and Human Rights (updated May 2016). Retrieved from <https://globalnaps.org/wp-content/uploads/2017/11/uk-2016.pdf>

<sup>24</sup> The list of ratified treaties is available on the website: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=154&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=154&Lang=EN)

responsibility for human rights respect is not specifically defined in the constitutional framework. The relationship between business and human rights can be indirectly derived from the provisions on human rights, economic regulation, consumer protection, and environmental protection. The Serbian Constitution proclaims in its first article that the state is based on the rule of law and social justice, the principles of civic democracy, human and minority rights and freedoms, and a commitment to European principles and values. The Constitution guarantees the right to work, the right to freely choose an occupation, the right to respect for the person at work, safe and healthy working conditions, necessary protection at work, limited working hours, daily and weekly breaks, paid annual leave, fair remuneration for work performed, and legal protection in the case of labour relations<sup>25</sup>. The Serbian Constitution also enshrines a healthy environment and the right to timely and complete information about the state of the environment.<sup>26</sup>

Part three of the Constitution deals with economic regulation and public finances, establishing a constitutional framework for economic entities' actions. Serbia's economic system is built on a market economy, open and free markets, freedom of entrepreneurship, independence of business entities and equality of private and other types of assets<sup>27</sup>. Serbia represents a unique economic area with a single commodity, labour, capital and service market. The Constitution recognizes freedom of entrepreneurship, which may be limited by Law for the protection of people's health, the environment, natural resources, and the Republic of Serbia's security. The Constitution also regulated the position in the market, the property rights of foreigners and the equality of all types of assets. Particularly important are the provisions on consumer protection. Indeed, for the first time, consumer protection has constitutional character. However, the Constitution does not prescribe the forms and content of this protection; but, only stipulates that actions against the health, safety and privacy of consumers, and all other unfair activities in the market, are strictly prohibited.

Companies Act<sup>28</sup>, Law on the Capital Market<sup>29</sup>, Law on Takeovers of Joint Stock Companies<sup>30</sup>, Consumer Protection Law<sup>31</sup> and Law on Accounting<sup>32</sup> are all relevant legislative frameworks in this sector. The Companies Act is the most important formal source of commercial law's status element.<sup>33</sup> This Act regulates the legal status of corporations and other forms of organization, including their incorporation,

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<sup>25</sup> Art. 60 Constitution of Serbia (Official Gazette of the RS" No. 98/2006, 16/2022)

<sup>26</sup> Art. 74 Constitution of Serbia

<sup>27</sup> Art. 82 Constitution of Serbia

<sup>28</sup> Companies Act (Offic. Gazette of the RS, No. 36/2011..109/21),

<sup>29</sup> Law on Capital Market (Official Gazette of the RS, No. 31/2011..153/2020)

<sup>30</sup> Law on Takeovers of Joint Stock Companies (Official Gazette of the RS, no. 46/2006,..108/2016)

<sup>31</sup> Consumer Protection Law (Official Gazette of the RS, no. 88/2021)

<sup>32</sup> Law on Accounting (Official Gazette of the RS, no. 62/2013,73/2019)

<sup>33</sup> Mijatović, Marija, „Meko” uređenje oblasti korporativnog upravljanja u pravu Srbije-metodološko ugledanje na legislativu Evropske unije, Civitas, God. 9, No.1, 2019, p. 45

management, status changes, legal form modifications, dissolution and other related matters, as well as the legal position of sole traders. However, this act, together with the Law on Takeovers of Joint Stock Companies and Law on the Capital Market, do not address corporate responsibility. We can argue that corporate social responsibility has not yet taken hold in Serbia, and then we can say even less about the need to protect human rights. The solutions contained in the Law on Accounting, which has been in effect since January 1, 2020, and imposes the duty of non-financial reporting (art. 37), are the closest to that. Non-financing reporting entities are significant legal entities that are public-interest corporations with an average employee of 500. The non-financial report is included in the annual business report and comprises information on the outcomes of operations linked to environmental protection, social and personnel concerns, human rights, and the fight against corruption and bribery issues, among other things.

The Serbian Chamber of Commercés's Code of Corporate Governance and the Code of Business Ethics are two examples of "soft law" instruments. The Serbian Chamber of Commerce and Industry's Corporate Governance Code aims to be an effective instrument for improving corporate governance systems in Serbian corporations. It includes principles and recommendations for all companies, which are divided into categories based on the complexity of the corporate governance structure and the growth of small and big capital enterprises. This Code, on the other hand, makes no mention of human rights. Which bodies are in charge of enforcing commercial and human rights legislation has yet to be defined? A series of rules in a Code of Business Ethics advocate for free and fair competition, understanding that fair market competition is one of the most important requirements of business ethics<sup>34</sup>. The Code defines essential employee rights such as the right to pay and regulated working rights, political rights of employees, and particular data protection for employees. The Code also specifies how businesses should approach environmental protection. Economic entities are resolved to support the strengthening of awareness of the need for environmental preservation via their actions.

## 6. Conclusion

The issue of corporate responsibility for respecting human rights is one of the greatest human rights challenges of the 21<sup>st</sup> century. The conventional idea of human rights, which is founded on the state's obligation to uphold human rights, is being redesigned by this issue. This modifies the paradigm of human rights protection since, under new circumstances, existing laws cannot be directly applied to the economic organizations' actions, necessitating new regulations that will establish and control corporate responsibility for respect for human rights. In addition to the current role of the state, it is critical to acknowledge private actors in the context of exercising human rights and to set regulations that will restrict the authority of both categories of players.

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<sup>34</sup> Vučković, Vladimir, Vučković, Sanja, Stefanović, Milan, *Laws and Institutions for fair competition and fair business practices*, Ekomonika preduzeća, Vol. 64, No. 1-2, 2013, p. 182

The adoption of the UN Guiding Principles on Business and Human rights and NAPs is a significant step forward in this field. It was defining moment in the evolution of human rights protection because it focused on the practical actions that businesses must take in terms of human rights accountability. The worldwide discussion on human rights and businesses has human rights commitments, but rather on what efforts should be done to implement them. Within the national framework, much progress has been done, and many domestic laws govern this subject.

We are still a long way from regulating the question of business and human rights in Serbia. Expecting improvement in this area and on a normative level in the near future, we should recognize that many global firms and enterprises operating in Serbia are fully aware of their portion of responsibility for human rights. These businesses implement reports that assess their impact on human rights in accordance with the United Nations Guiding Principles.

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