PROTECTION OF HUMAN RIGHTS IN THE FUNCTIONING OF BUSINESS ENTITIES IN THE REPUBLIC OF SLOVENIA

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Business entities can directly or indirectly abuse human rights. Therefore, the bearers of obligations in the field of human rights protection are, beside the state, also business entities. The purpose of this paper is to study the extent of these business entities' obligations. In order to clarify the tasks of the state and business entities, the United Nations Guiding Principles on Business and Human Rights were adopted, and they serve as a (unbinding) tool to the state and business entities in implementing their tasks in the field of human rights protection in business. In accordance with the requirements of the UN Guiding Principles on Business and Human Rights it is important that states establish all the necessary legal foundations that will ensure human rights protection against abuses by third parties and access to an effective remedy when a human rights abuse occurs, while business entities have to identify areas where abuses can occur, integrate mechanisms to prevent them from occurring and mechanisms which will help conduct the measures for an immediate prevention of abuses and remediation if an abuse occurs. The objective of the paper is to find out if there is an appropriate legal basis for human rights protection in the Republic of Slovenia and if the state and business entities in the Republic of Slovenia have started fulfilling their tasks in the field of human rights protection in business. Based on these findings the author assesses if the requirements of the UN Guiding Principles on Business and Human Rights in the Republic of Slovenia have already been appropriately implemented and what the state and business entities will have to do in future.

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1. INTRODUCTION[1]

At the establishment of the international human rights regime the states were designated as the sole duty-bearers and the only subject that can violate international law of human rights. The circumstances eventually changed so that the bearer of the duty to respect human rights is not only the state, but all organs of the society and individuals. Business entities can directly or indirectly abuse human rights, therefore the bearers of obligations in the field of human rights protection are, beside the state, also business entities. Business entities must take measures to prevent and mitigate adverse human rights impacts and refrain from actions that could lead to human rights abuse.

The protection of human rights in business is regulated mostly by legally non-binding instruments (e.g. OECD Guidelines for Multinational Enterprises, Standard ISO 26000), because in spite of numerous ideas for the adoption of an international legal instrument that would impose obligations in the field of human rights protection on business entities, every effort to impose obligations to date has failed (i.e. UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights). In order to clarify the tasks of the state and business entities, the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework 2011 ('UN Guiding Principles')[2] were adopted in 2011. They are non-binding recommendations and serve as a tool to the state and business entities in implementing their tasks in the field of human rights protection in business.

The purpose of this paper is to study the extent of business entities' obligations in the field of human rights protection. The author will focus on the question of how the protection of human rights in business is regulated in the Republic of Slovenia. The objective of the paper is to find out if there is an appropriate legal basis for human rights protection in the Republic of Slovenia and if the state and business entities in the Republic of Slovenia have started

[1] The paper was prepared on the basis of PhD thesis with the title "The protection of human rights in the functioning of business enterprises under the United Nations Guiding principles" that the author defended on 7th March 2016 under the mentorship of Prof. Branko Korže, PhD and co-mentorship of Prof. Ciril Ribičič, PhD at Faculty of Law, University of Ljubljana.

[2] UN Doc A/HRC/17/31.

fulfilling their tasks in the field of human rights protection in business. Based on these findings the author will assess if the requirements of the UN Guiding Principles in the Republic of Slovenia have already been appropriately implemented and what state and business entities will have to do in the future.

2. HUMAN RIGHTS

The definitions of the term human rights[3] vary, but what they all have in common is that they are rights, intended for an individual and the protection of his values. Cerar defines them as a 'progressive means for the protection of individuals integrity'[4] or as a 'legal instrument for the protection of fundamental human values'.[5] Donnelly defines them as a special category of rights that belong to all people purely on the basis of being human.[6] Recognized human rights differ considerably one from another, therefore it is difficult to find common characteristics that would apply uniformly to all human rights, but Lampe believes that it is at least possible to have joint theoretical and legal foundations.[7] It is emphasized that human rights are universal, indivisible, interdependent and interrelated.[8] Beside universality (they apply to everyone regardless of any status), indivisibility (no rights may be selectively ignored) and interdependability (the realization of one right contributes to the realization of other rights) the international standard ISO 26000 attributes them also the characteristic of being inherent (they belong to every person by virtue of being human) and

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3 The term human rights in the whole paper applies to human rights and fundamental freedoms. More about the terminology delimitation between these terms see Cerar, M., *O naravi človekovih pravic in dolžnosti*, in: Pavčnik, M.; Polajnar-Pavčnik, A.; Wedam-Lukić, D. (eds.), *Temeljne pravice*, Cankarjeva založba, Ljubljana, 1997, pp. 55 – 9.

4 *Ibid.*, p. 52.

5 *Ibid.*, p. 68.

6 Donnelly, J., *Universal Human Rights in Theory and Practice*, 2nd edn, Cornell University Press, Ithaca and London, 2003, p. 7. Korže B. (*Obligations of the Social Market State and Business Entities According to the EU Guiding Principles*, International journal of business and public administration, Vol. 11, No. 2, 2014, p. 6) claims that the objects of human rights protection are also business entities.

7 Lampe, R., *Pravo človekovih pravic: Sistem človekovih pravic v mednarodnem, evropskem in ustavnem pravu,* Uradni list Republike Slovenije, Ljubljana, 2010, p. 41.

8 Vienna Declaration and Programme of Action 1993, A/CONF.15/23, para. 5, reaffirmed in Resolution 60/1. 2005 World Summit Outcome, GA Res A/RES/60/1, para. 13.

inalienability (people cannot consent to giving them up or be deprived of them by governments or any other institutions).[9]

Human rights are already given to a human by his nature, therefore they are deemed to belong to a person and are not granted by somebody.[10] People have had to earn the recognition of these rights in the individual social groups' battles and therefore we can also define them as acquired rights. In accordance with the principle of universality human rights are granted to all people, and thus every person is entitled to their enjoyment, without discrimination.[11] Human rights originate from human dignity.[12] Also, international legal acts, such as the Universal Declaration of Human Rights 1948 (UDHR)[13], the International Covenant on Civil and Political Rights 1966 (ICCPR)[14] and the International Covenants on Economic, Social and Cultural Rights 1966 (ICESCR)[15] justify human rights by linking them to human dignity. Pavčnik defines human dignity as a 'measure of legality' and 'joint value-based starting point of fundamental rights', human rights as such are intended to protect the dignity of living and deceased persons and also future generations.[16] Human rights should provide to every individual justice and certainty, regardless of the specificity of economic, political and legal systems, in which he is included.[17] Korže emphasises that a person's individual and collective nature originates from human rights, and therefore, they are one of the fundamental prerequisites for understanding

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9 International Organization for Standardization (ISO), *ISO 26000 – Guidance on social responsibility, ISO 26000:2010*, para. 6.3.2.1, https://www.iso.org/iso-26000-social-responsibility.html (July 15, 2015).

10 Ruggie, J. G., *Just Business: Multinational Corporations and Human Rights,* Norton, New York and London, 2013, p. xxviii; McBeth, A., *International Economic Actors and Human Rights,* Routledge, London and New York, 2010, p. 11.

11 Cerar, *op. cit.* in note 3, p. 69; United Nations, Office of the High Commissioner for Human Rights, *The Corporate Responsibility To Respect Human Rights: An Interpretive Guide,* 2012, p. 7, ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf (July 15, 2015).

12 More about dignity as a basis of all human rights see Lampe, supra note 7, pp. 171-84.

13 GA Res 217A (III), A/810.

14 999 UNTS 171.

15 993 UNTS 3.

16 Pavčnik, M., *Razumevanje temeljnih (človekovih) pravic,* in: Pavčnik, Polajnar-Pavčnik, Wedam-Lukić (eds.), *op. cit.* in note 3, pp. 97, 99.

17 Sruk, V., *Prolegomena k človekovim pravicam*, in: Jambrek, P.; Perenič; A.; Uršič, M. (eds.), *Varstvo človekovih pravic: razprave, eseji in dokumenti*, Mladinska knjiga, Ljubljana, 1988, p. 259.

modern economic, political and legal systems and procedures.[18] There is also no hierarchy between human rights, and so it is not possible to speak of a higher or lower meaning of any human right, because they are all equally important.

3. THE PROTECTION OF HUMAN RIGHTS IN THE FUNCTIONING OF BUSINESS ENTITIES

At the establishment of the international human rights regime the states were designated as the sole duty-bearers and the only subject that can violate international law of human rights, which is the reason why only the states were responsible for implementation of individual human rights in their own legal order, their respect and appropriate legal protection.[19] Ruggie defines states as 'the primary duty-bearers under international human rights law'.[20] As such they have a duty to respect, protect and fulfil human rights, laid down in the ratified international human rights conventions and other human rights declarations and commitments, adopted by the state.[21] The duty to respect means that the states have to refrain from restricting or interfering in human rights enjoyment; protection means they have to protect individuals and groups from human rights abuses, also from business entities; and fulfilment means they have to undertake positive actions for accelerated enjoyment of fundamental human rights.[22] If third parties (among others business entities) violate human

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[18] Korže, B., *Do takeovers downgrade the contents of human rights and freedoms in EU?*, The IPSI BGD Transactions on Advanced Research, Vol. 2, No. 1, 2006, p. 51.

[19] Ruggie, J. G., *Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, United Nations, E/CN.4/2006/97, 22 February 2006, para 9, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/110/27/PDF/G0611027.pdf?OpenElement (July 15, 2015).

[20] United Nations Human Rights Council (UNHRC), *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Guiding principles on business and human rights: Implementing the United Nations 'Protect, Respect and Remedy Framework'*, A/HRC/17/31, 21 March 2011, commentary to guiding principle No. 4, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/121/90/PDF/G1112190.pdf?OpenElement (July 15, 2015).

[21] Van Huijstee, M.; Ricco, V.; Ceresna-Chaturvedi, L., *How To Use The UN Guiding Principles On Business And Human Rights In Company Research And Advocacy - A Guide For Civil Society Organisations,* SOMO, CEDHA, Cividep India, 2012, p. 8.

[22] *Ibid.*, p. 8.

rights, international law obliges states to ensure appropriate sanctioning.[23] The violation of a state's duty can cause the state's omission to accept appropriate measures to prevent, punish and compensate for damage caused by non-state actors.[24] States are responsible for preventing business entities from abusing human rights; failure to achieve this means a violation of international human rights treaties by states themselves.[25] Consequently, the affected stakeholder has access to the remedy provided by judicial or non-judicial grievance mechanisms. These mechanisms include national and international courts (for example, the Inter-American Court of Human Rights, the European Court of Human Rights), National Human Rights Institutions, National Contact Points under the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development, etc.

The circumstances eventually changed in the way that states were no longer the only subject bound by the international human rights law. Now 'anyone who is the bearer of rights and duties in the international law and is subjected to the international legal order' is a subject of international law.[26] This was recognized as early as in the UDHR, which states in its preamble that this Declaration is proclaimed with the aim that 'every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction'. The bearer of the duty to respect human rights is therefore not only the state, but all organs of society and individuals. Henkin[27] emphasises that no one is excluded as a guardian of human rights under the UDHR, no company, no market and not even cyberspace. This is reaffirmed in the Declaration on the Right and Responsibility of

[23] Martin-Ortega, O., *Business and Human Rights in Conflict*, Ethics & International Affairs, Vol. 22, No. 3, 2008, p. 280.

[24] Human Rights Committee, General Comment No 31: Nature of the General Legal Obligation on States Parties to the Covenant, 29 March 2004, para 8.

[25] Kamatali, J.-M., *The new guiding principles on business and human rights' contribution in ending the divisive debate over human rights responsibilities of companies: is it time for an ICJ advisory opinion?*, Cardozo Journal of International & Comparative Law, Vol. 20, No. 2, 2012, p. 442. Similar Lampe, *op. cit.* in note 7, pp. 153-4.

[26] Letnar Černič, J., *Mednarodnopravna odgovornost multinacionalnih družb za kršenje temeljnih človekovih pravic*, Pamfil, No. 25, 2003, p. 25.

[27] Henkin, L., *The Universal Declaration at 50 and the Challenge of Global Markets*, Brooklyn Journal of International Law, Vol. 25, No. 1, 1999, p. 17.

Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1998[28], which recognises in its preamble 'the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels'. Article 18 also states that 'everyone has duties towards and within the community', and that 'individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes'. McBeth justifies his claim that duty-bearers in the field of human rights protection are also non-state actors by the fact that human rights are based on dignity, not on tasks of the state, therefore all should protect them, not only the state.[29]

As a result of all these considerations, a position was formed that non-state actors, among whom business entities, also have certain obligations in the field of human rights protection.[30] International law undoubtedly indirectly obliges business entities to respect human rights, because it imposes on the states the duty to adopt appropriate legislation ensuring that non-state actors, among whom business entities, do not abuse the recognised human rights.[31] Based on the majority point of view[32] the author concludes that although binding international legal instruments that regulate human rights do not explicitly impose obligations to respect human rights on business entities, they are nevertheless also bearers of direct obligations to respect internationally recognised human

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28 GA Res 53/144, A/RES/53/144.

29 McBeth, *op. cit.* in note 10, p. 14. Similar Clapham, A. (*Human Rights Obligations Of Non-State Actors,* Oxford University Press, Oxford (UK) and New York, 2006, p. 546) – `If the main objective is to protect victim's dignity, then the victim has to be protected against all, state and non-state actors´.

30 Important duty-bearers in the field of human rights protection also include international organizations, such as the World Bank, the World Trade Organization, NATO etc., but are intentionally excluded from this paper because of the focus on business entities.

31 Ruggie, *op. cit.* in note 10, p. 39.

32 Muchlinski, P., *Human rights and multinationals: is there a problem?*, International Affairs, Vol. 77, No. 1, 2001, pp. 36-44; Letnar Černič, J., *Corporate Human Rights Obligations: Towards Binding International Legal Obligations?*, Dignitas, No. 49/50, 2011, pp. 62-3; De la Vega C.; Mehra, A., *International Legal Accountability over Non-State Actors: An Analysis of the Report of the Special Representative of the Secretary General*, Zeitschrift für Menschenrechte, Vol. 3, No. 2, 2009, p. 37.

rights.[33] The author is of the view that their direct obligation originates from the UDHR that obliges in the preamble every organ of society to respect human rights. The author believes that the provisions of the UDHR represent the generally accepted principles of international law that have to be respected by all member states of the United Nations (UN), and Sovdat[34] shares the same opinion. According to Article 8 of the Constitution of the Republic of Slovenia (RS), all laws and other regulations have to be in accordance with the generally accepted principles of the international law and international contracts that are binding for the RS. This kind of provision in a national legal act creates direct obligations for business entities to respect human rights. As the generally accepted principles of international law can be applied directly[35], when their nature allows, it is possible to use them to impose an obligation to respect human rights on business entities. At the same time this obligation is also justified by the characteristics of a modern society and a democratic regime that prevails in it. The declared value system of the modern society puts in the centre a person as an individual and as a member of the society, which is the reason for every organ of society to be bound to respect human dignity as a core value, from which individual human rights derive.[36] States with a democratic regime are founded on the respect for human rights by every organ of society, otherwise their long-term successful development is prevented. Also, the preamble to the Constitution of the RS puts in the first place a free democratic constitutional regime that ensures the protection of fundamental human rights.[37] Democracy as a form of regime and state governance is closely connected with the freedom of an individual and a free society, by which the subject is free when he alone determines his own thinking and actions on the basis of the right to autonomy and self-determination.[38] But the society and individuals cannot be free if someone interferes with their rights, and therefore, the respect of rights by every organ of society is an imperative. Due to this reason business entities have to be the bearers of the obligation to respect human rights.

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[33] Of course, there are still opponents of this view, especially among business entities that are of the opinion that they cannot have direct obligations if there are no binding international legal instruments that would impose them.

[34] See Sovdat, J., in: Šturm, L. (ed.), *Komentar Ustave Republike Slovenije,* Fakulteta za državne in evropske študije, Kranj, 2010, Art. 8, para. 4.

[35] *Ibid.*, Art. 8, para. 9.

[36] *Ibid.*, Art. 2, para. 110.

[37] *Ibid.*, Art. 3, para. 11.

[38] *Ibid.*, Art. 1, para. 27.

Furthermore, there is also a question of the extent of their obligations. The author agrees with Nolan and Taylor[39], who see the obligation to respect human rights as being based on the principle of causing no harm (*neminem laedere*), but also as going well beyond this. For example businesses should develop and implement codes of conduct, carry out risk assessment, monitor production in value chains, offer assistance in the event of human rights abuses etc. They must take positive steps to ensure that human rights are respected, and not just avoid infringements. This is also the opinion of the General Assembly of the Organisation of American States that stated in the preamble of the Resolution on the Promotion of Corporate Social Responsibility in the Hemisphere 2012[40] that while business entities have an obligation to respect human rights, the states have the responsibility to support the rule of law and implement the obligations regarding human rights. Also, ISO 26000 states that the responsibility of the state to protect human rights is different from the responsibility of business entities to respect human rights.[41] Narrower obligations of business entities in comparison to the state should reflect the fact that business entities are not organs of society, but a specialized organ that has specialized functions (and not general ones like the state).[42] Also Soh[43] and Letnar Černič[44] state that the obligations of the state and business entities are different by nature and scope and that obligations of the state are much wider than those of business entities. Ruggie is of the view that if obligations of business entities were mixed with the state obligations it would not be possible to answer the question of who is responsible for them in practice.[45] Letnar Černič claims that the very nature of some obligations regarding human rights protection points to the fact that

[39] Nolan, J.; Taylor, L., *Corporate responsibility for economic, social and cultural rights: rights in search of a remedy?*, Journal of Business Ethics, Vol. 87, 2009, p. 443. Same also Muchlinski, *op. cit.* in note 32, p. 35.

[40] AG/RES. 2753 (XLII-O/12).

[41] ISO, *op. cit.* in note 9, para 3.4.

[42] Ruggie, J. G., *Business and Human Rights: The Evolving International Agenda*, Corporate Social Responsibility Initiative, Working Paper No 31, June 2007, p. 12, ksg.harvard.edu/m-rcbg/CSRI/publications/workingpaper_38_ruggie.pdf (July 15, 2015).

[43] Soh, C., *Extending Corporate Liability to Human Rights Violations in Asia*, Journal of international and area studies, Vol. 20, No. 1, 2013, p. 25.

[44] Letnar Černič, *op. cit.* in note 32, pp. 71-2.

[45] Ruggie, J. G., *Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, United Nations, A/HRC/8/5, 7 April 2008, para. 6, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/128/61/PDF/G0812861.pdf?OpenElement (July 15, 2015).

business entities cannot be bearers of these obligations – e.g. obligations arising from the rights that are inherently connected to the state.[46] Ruggie claims that in two cases business entities can also have special obligations to protect; this is the case when business entities perform a certain public function[47] and when the terms of operation impose additional requirements on business entities (Ruggie defines it as operationalisation of responsibility to respect).[48]

The author agrees with Ruggie and some other authors[49] who defend the position that business entities have only a negative duty to respect, and that the protection and fulfilment of human rights lies only in the hands of the state. Respecting human rights in business consists of actions and omissions of business entities. Business entities must take measures to prevent and mitigate adverse human rights impacts and refrain from actions that could lead to human rights abuse. If human rights abuse happens nonetheless, it is their task to take measures for remediation. Business entities have the responsibility to respect human rights in all the areas of their operation. This is a general obligation that exists in all legal relations, contractual or non-contractual. Likewise, business entities have to respect human rights in all internal and external legal relations. All potentially affected stakeholders are protected against human rights abuses in business. The most common stakeholders whose rights can be violated are the employees of a business entity, but employees of business partners, buyers, inhabitants of a local community and the like also have to be protected. For example, a business entity has to respect the right of employees to just and favourable working conditions in terms of not being exposed to danger and receiving a just remuneration for their work. Likewise, a business entity has to respect the prohibition of discrimination of buyers by not unjustly discriminating against them when buying products or services. At the same time a business entity also has to respect the right to the highest attainable standard of physical and mental

[46] Letnar Černič, *op. cit.* in note 32, p. 72. Similar Kinley, D.; Tadaki, J., *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, Virginia Journal of International Law, Vol. 44, No. 4, 2003-2004, p. 967.

[47] Ruggie, J. G., *Business and human rights: Towards operationalizing the "protect, respect and remedy" framework, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, United nations, A/HRC/11/13, 22 April 2009, para. 64, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/128/88/PDF/G0912888.pdf?OpenElement (July 15, 2015).

[48] *Ibid.*, para 63.

[49] Campbell, T., *A human rights approach to developing voluntary codes of conduct for multinational corporations*, Business Ethics Quarterly, Vol. 16, No. 2, 2006, p. 259; Letnar Černič, *op. cit.* in note 32, pp. 71-2; Soh, *op. cit.* in note 43, p. 25; Muchlinski, *op. cit.* in note 32, pp. 45-6.

health of inhabitants of a local community in a way that does not pollute the local community by their operations (e.g. preserving access to potable water). If a business entity abuses human rights, it is accountable for the abuse. The consequences of human rights abuse depend on the modality of abuse and on the national legal regulation of sanctions. An affected stakeholder can seek a remedy for a human rights abuse, in a judicial procedure or otherwise, which depends on established grievance mechanisms. In more developed countries the majority of these rights are already regulated by law (i.e. employment legislation, social protection legislation, criminal legislation, etc.), while the problem occurs in less developed countries where this is not yet regulated to a sufficient extent. The goal is to ensure that business entities in every state would be uniformly accountable for human rights abuses, regardless of their national regulation.

The protection of human rights in business is regulated mostly by legally non-binding acts that range from acts of international organisations to internal codes of conduct of individual business entities. These are mostly documents that regulate the CSR and also include provisions intended for human rights protection. Additionally, legal acts that are fully intended for human rights protection have been adopted. In spite of the numerous ideas for the adoption of an international legal document that would impose obligations in the field of human rights protection on business entities (i.e. UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights), every effort to impose obligations failed, and only voluntary initiatives were successful (e.g. OECD Guidelines for Multinational Enterprises, ISO 26000 standard). The latest among the non-binding recommendations were the UN Guiding Principles adopted in 2011 that clearly defined the tasks that states and business entities had in the field of human rights protection in business. They are divided into three pillars: the state's duty to protect against human rights abuses by third parties ('Protect'), corporate responsibility to respect human rights ('Respect') and access by victims to an effective remedy when abuse occurs ('Remedy'). The UN Guiding Principles do not impose any new international legal obligations, they only build on obligations arising from the existing international legal documents in the field of human rights protection.[50] In accordance with the requirements of the UN Guiding Principles it is important that states establish all the necessary legal foundations that will ensure human rights protection against abuses by third parties and access to an effective remedy when a human rights abuse occurs, while business entities have to identify areas where abuses can occur, integrate mechanisms to prevent them

[50] UNHRC, *op. cit.* in note 20, General principles.

from occurring, and those that will help conduct measures for an immediate prevention of abuses and remediation if an abuse occurs.

Since the adoption of the UN Guiding Principles, many activities regarding the implementation of requirements laid down therein have been conducted, where the greatest role is played by the states, business entities and civil society.[51] Beside official guidelines on the use of the UN Guiding Principles that were developed by the UN Office of the High Commissioner for Human Rights in cooperation with Ruggie[52], many other tools and guidelines emerged regarding how to put the requirements from the UN Guiding Principles into practice.[53] Various international organizations and institutions – Organisation for Economic Co-operation and Development, International Organization for Standardization, International Finance Corporation, International Organisation of Employers, International Chamber of Commerce, Council of Europe, European Union – have already accepted the UN Guiding Principles as the foundation for the development of their policies and standards in the field of human rights protection in business. For the implementation of the requirements from the UN Guiding Principles that apply to the states, various actions were accepted.[54] The most important among them is the adoption of the national action plan on business and human rights (for example Great Britain, the Netherlands, Denmark).[55]

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[51] For a detailed overview of all activities regarding the implementation of requirements from the UN Guiding Principles see Business & Human Rights Resource Centre, *Implementation – tools & examples*, www.business-humanrights.org/UNGuidingPrinciplesPortal/ToolsHub (July 15, 2015).

[52] United Nations, Office of the High Commissioner for Human Rights, *op. cit.* in note 11.

[53] For example: Van Huijstee, Ricco, Ceresna-Chaturvedi, *op. cit.* in note 21; Shift & Mazars, *UN Guiding Principles Reporting Framework*, 2015, www.ungpreporting.org (July 15, 2015); The Danish Institute for human rights, The International Corporate Accountability Roundtable, National action plans on business and human rights, *National action plans on business and human rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks*, 2014, http://business-humanrights.org/sites/default/files/documents/DIHR%20-%20ICAR%20National%20Action%20Plans%20%28NAPs%29%20Report.pdf (July 15, 2015).

[54] For a detailed review of all actions see Business & Human Rights Resource Centre, *By type of initiative*, http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative (July 15, 2015).

[55] For an analysis of the existing national action plans see: International Corporate Accountability Roundtable, European Coalition for Corporate Justice, *Assessment of Existing National Action Plans (NAPs) on Business and Human Rights*, www.icar.

Various most successful business entities have already harmonised their politics and processes with the requirements from the UN Guiding Principles (Adidas, Coca-Cola, Deutsche Telekom, H&M, Microsoft, Nestlé etc.).[56]

4. LEGAL BASIS OF THE HUMAN RIGHTS PROTECTION IN THE REPUBLIC OF SLOVENIA

Human rights protection is the foundation of the legal system of the Republic of Slovenia (RS). It is written in the preamble of the Constitution of the RS[57] that it originates from fundamental human rights and freedoms and the Article 5 imposes on the state the obligation to protect human rights and freedoms in its territory. The Constitutional Court of the RS states in Decision U-I-25/95 that human rights are 'a starting and central point of the constitutional system which justifies the definition of the RS as a democratic state with the rule of the law'.[58] According to Article 15(1,2) of the Constitution of the RS, human rights are exercised directly on the basis of the Constitution, and a law can stipulate the manner of exercising human rights only if the Constitution so provides or where this is necessary due to the particular nature of an individual right. Article 15(4) of the Constitution of the RS guarantees the judicial protection of human rights and the right to obtain redress for the violation of such rights.

The RS is bound to protect human rights on the basis of various universal, regional and national legal documents. The RS is bound by international human rights protection documents from the United Nations, the International Labour Organisation, the Council of Europe and the European Union. The core national legal document binding the RS to protect human rights is the Constitution of the RS. The Constitution of the RS contains a charter of guaranteed human rights and freedoms in Chapter 2 and partially in Chapter 3. Ribičič believes that 'by their scope, importance and position, human rights are the most important component of the Constitution'.[59] Beside the Constitution of the RS

ngo/publications/2017/8/23/assessments-of-existing-national-action-plans-naps-on-business-and-human-rights-august-2017 (April 13, 2018).

[56] For a detailed overview of measures see Business & Human Rights Resource Centre, *Company Action Platform,* www.business-humanrights.org/en/company-action-platform (April 13, 2018).

[57] Official Gazette of the RS, no. 33/91-I, 42/97, 66/00, 24/03, 69/04, 69/04, 69/04, 68/06, 47/13 and 47/13.

[58] U-I-25/95, para. 30.

[59] Ribičič, C., *Evropsko pravo človekovih pravic: izbrana poglavja,* Pravna fakulteta, Ljubljana, 2007, p. 230.

there are also many laws and executive regulations that specifically regulate individual human rights.

Corporate responsibility to respect human rights is not explicitly regulated in the Slovene legal system. It partially originates from the individual sectoral law, but the RS has not systematically regulated this area in the way that the generally accepted principles of international law require, although Article 8 of the Constitution of the RS does prescribe that laws and other regulations must comply with the generally accepted principles of the international law. By ratifying international legal documents the states are bound to respect human rights, but this does not explicitly refer to business entities. The RS has the right and a duty to impose the respect of human rights on business entities. Due to the fact that human rights are exercised directly on the basis of the Constitution in accordance with Article 15, the duty of the legislator is to regulate by law all those human rights that could not be exercised completely only on the basis of the constitutional provisions.[60] Most human rights or individual forms of their exercise are of such a nature that legislative operationalisation is needed for their protection. The Slovene legislator has already operationalised some individual human rights and by the law imposed the respect of individual human rights, as guiding principle No. 28 requires. For example, the Slovene legislator has adopted the Personal Data Protection Act[61] for the operationalisation of Article 28 of the Constitution of the RS (personal data protection), for the operationalisation of Article 51 of the Constitution of the RS (right to health care) the Health Care and Health Insurance Act[62], and for the operationalisation of Article 66 of the Constitution of the RS (security of employment) the Employment Relationship Act.[63] Unfortunately, the rights are defined with sufficient clarity only in some fields (i.e. employment); in other fields (i.e. health care, social security) the rights are not defined clearly enough to be exercised to the greatest extent possible. Under the national legislation some business entities are already directly bound to respect at least some human rights. Concerning human rights, where the Slovene legislator has not conducted or conducted adequately its duties, the UN Guiding Principles will be of great help.

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60 The Constitution of the RS in Article 15 (2) provides: `The manner in which human rights and fundamental freedoms are exercised may be regulated by law whenever the Constitution so provides or where this is necessary due to the particular nature of an individual right or freedom.´

61 Official Gazette of the RS, no. 94/07.

62 Official Gazette of the RS, no. 72/06 and amendments.

63 Official Gazette of the RS, no. 21/13 and amendments.

With respect to those human rights that are operationalized in Slovene legislation, individuals have the right to seek redress against violations of human rights in court against business entities. It is easier to achieve corporate respect of human rights with the possibility of judicial enforcement of rights than without it. In cases where the rights have not been operationalised, only the state is currently responsible for corporate human rights abuses (on the grounds of a potential omission of the pertinent legal regulation), but this responsibility all too often remains only on a theoretical level. The reason lies in the fact that the RS has not yet established any special judicial or non-judicial mechanisms for human rights protection in business.

5. ACTIVITIES OF THE REPUBLIC OF SLOVENIA FOR THE IMPLEMENTATION OF REQUIREMENTS FROM THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The first and third pillars of the UN Guiding Principles define the tasks of the state regarding the protection of human rights in business. While these principles are only guidelines and not binding on the state, its language suggests obligations and not recommendations. According to the first pillar, the RS is required to ensure human rights protection against abuses by business entities by taking appropriate measures. According to the third pillar, the RS is required to ensure access to an effective remedy by judicial or non-judicial grievance mechanisms to those affected if abuse occurs.

The first step regarding the fulfilment of the tasks set out by the UN Guiding Principles was accomplished in December 2012 at the Forum on Business and Human Rights, where the RS formally made a commitment to implement the requirements of the UN Guiding Principles.[64] It is declared in the statement that 'Slovenia ascribes great importance to the activities that the EU is undertaking in promoting human rights and business, and fully supports a coordinated EU approach'.[65] At the same time it states that the cooperation of various ministries, as well as cooperation with non-government organizations and civil society, will be required for the implementation of human rights protection according to the UN Guiding Principles.[66]

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[64] Slovenian Government, *Statement by Slovenia*, Forum on Business and Human Rights, 4 December 2012, www.ohchr.org/Documents/Issues/Business/ForumSession1/SubmissionsStatements/Slovenia.doc (July 15, 2015).

[65] *Ibid.*

[66] *Ibid.*

The Ministry of Foreign Affairs took over the leading and coordinating role for regulating human rights protection in business, and in December 2013 it translated the UN Guiding Principles into the Slovene language, published them on their website. It also organised a Forum on entrepreneurship and human rights in cooperation with the Chamber of Commerce and Industry of Slovenia, where the meaning of the respect of human rights in business was discussed.[67] A representative of the Ministry of Foreign Affairs introduced the tasks laid down in the UN Guiding Principles at a conference on social responsibility in March 2014, organized by the Institute for development of social responsibility.

With the intention to prepare a National Action Plan of the RS for the respect of human rights in business, in accordance with the UN Guiding Principles and the EU Action Plan on Human Rights and Democracy[68], in May 2014 the Inter-Ministerial Commission on Human Rights, headed by the Ministry of Foreign Affairs, formed an Expert Subcommittee for the Preparation of the National Action Plan on Business and Human Rights. In spite of the initial drive, the subcommittee has not yet managed to produce the action plan.

At a normative level the Slovene legislator has not yet taken steps to operationalize human rights protection in business in accordance with the requirements of the UN Guiding Principles. As a rule, the RS ratifies every international convention and assumes obligations to respect international instruments, but this is rarely followed by their further operationalisation. Considering the fact that the global progress on this topic is accelerating, it is justified to expect that it will soon get serious attention in the RS.

6. ACTIVITIES OF BUSINESS ENTITIES IN THE REPUBLIC OF SLOVENIA FOR THE FULFILMENT OF THE REQUIREMENTS FROM THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The Slovene legal order defines business entities in Article 13(3) of the Code of Obligations[69] as business enterprises and other legal persons that can perform a gainful activity, and sole traders. According to Article 13(4) of the Code of Obligations, other legal persons, when, pursuant to the regulations,

[67] Ministry of Foreign Affairs, *Forum o podjetništvu in človekovih pravicah*, 11 December 2013, http://www.mzz.gov.si/nc/si/medijsko_sredisce/novica/article/141/32933/ (July 15, 2015).

[68] Council of the European Union, Council Conclusions on the Action Plan on Human Rights and Democracy 2015 – 2019, no. 10897/15, 20 July 2015.

[69] Official Gazette of RS, no. 97/07.

they occasionally or in addition to their prevalent activity engage in a gainful activity (for example institutes, associations, foundations) are also considered as business entities. It is evident from the provisions that the defining elements of a business enterprise are organisation in a certain legal form (business enterprise or sole trader) or engagement in a gainful activity.[70] Article 3(2) of the Companies Act defines a gainful activity as every activity that is conducted in the market with the intention of gaining profit.

Tasks of business entities under the UN Guiding Principles are defined in their second and third pillars. According to the second pillar, business entities in the RS are required to respect internationally recognized human rights and prove this by appropriate politics and processes (policy commitment, human rights due diligence and remediation). As regards the third pillar, business entities in the RS have to establish or participate in the effective operational-level grievance mechanisms for the potentially affected stakeholders. While the language of the UN Guiding Principles refers to obligations of business entities, these are only recommendations until the requirements are implemented in the legislation of the RS.

In order to find out the extent to which business entities under the Slovene jurisdiction meet the requirements of the UN Guiding Principles, the author reviewed 15 medium-sized and large companies. It was found out that the reviewed business entities regulated the issue of social responsibility in their internal acts, while only three of them explicitly mentioned human rights. The acts of this three business entities were limited to a general policy commitment regarding human rights, without specifically defining their tasks in this field. No explicit reference to the UN Guiding Principles and/or policies and processes prescribed by the UN Guiding Principles was found in any of the reviewed business entities' internal acts.

Business entities in the RS should dedicate more attention to the respect of human rights. Following the example from other countries, where business entities have developed and implemented many appropriate means for the respect of human rights in their functioning, as the UN Guiding Principles require from them, Slovene business entities should also develop strategies and practices for respecting human rights in accordance with the requirements of the UN Guiding Principles. The activities in this field can be significantly accelerated by commerce associations that could identify appropriate strategies and practises for human rights respect because of their closeness to the business entities and

[70] More about this see Plavšak, N. *et al.*, *Obligacijski zakonik (OZ) s komentarjem*, 1st book, GV Založba, Ljubljana, 2003, pp. 140–3.

knowledge about the specific circumstances in business in the RS, and adjust the requirements of the UN Guiding Principles to the conditions in the RS. On this basis appropriate recommendations could be provided as to how to align the functioning of business entities with the requirements of the UN Guiding Principles. The newest initiative on corporate responsibility and business ethics by commerce associations has resulted in the Guidelines of Corporate Integrity[71], whose purpose is to help business entities systemically enforce the principles on corporate integrity in their operations. In spite of all the compliments on the efforts put in the development and enforcement of the Guidelines of Corporate Integrity, which will definitely contribute to an improvement of business ethics, it is regrettable that they do not mention the respect of human rights. A task that remains to be taken up will involve creating a document that will help business entities in the RS ensure the respect of human rights in future.

7. THE LEVEL OF THE RESPECT OF HUMAN RIGHTS IN BUSINESS IN THE REPUBLIC OF SLOVENIA (EMPIRICAL RESEARCH)

The test of the actual respect of human rights in business in the RS was performed on the basis of an empirical research.[72] The author tried to find out by an anonymous survey if business entities regulated human rights respect under the Slovene jurisdiction on a normative level and if they respected them in their practical operations. One of the goals of the empirical research was to determine if business entities in the RS were aware of the UN Guiding Principles and if they implemented their requirements in their functioning (policy statement, human rights due diligence and remediation).

Seeing as the UN Guiding Principles refer to the respect of human rights by all business entities, the research included all types of business entities in the RS, regardless of their size, sector, ownership and operational context. The entire sample comprised 60 business enterprises, while only 46 enterprises completed the entire survey. The sample consisted of 11 micro (18.33%), 23 small

[71] Slovenska korporativna integriteta, *Smernicam korporativne integritete na pot*, http://www.korporativna-integriteta.si/ (July 15, 2015).

[72] Empirical research was conducted between 19 November 2014 and 19 February 2015. The survey questionnaire, that consisted of 44 questions, divided in 5 sets, was formed on the basis of author's theoretical findings and was published in online form via tool for online surveys. Surveys distribution was conducted by Strategic Communication and Marketing Service of Chamber of Commerce and Industry of Slovenia and their InfoCenter.

(35.33%), 17 medium-sized (28.34%) and 9 large enterprises (15%). The size of the enterprises was determined in accordance with Article 55 of the Companies Act. Comparing the sample with the statistical data on business enterprises in the RS (of which 94.3% were micro, 3.6% small, 1.1% medium-sized and 1.0% large enterprises)[73], it becomes evident that the sample was not representative in terms of the mentioned data, so the findings of the research do not completely reflect the level of the respect of human rights in business in the RS, but it was at least possible to draw conclusions about the trends in this field. As many as 80% of the surveyed enterprises were in Slovene private ownership, the rest were Slovene in the ownership of the state or the local authorities (13.33%) or foreign (6.67%). The surveyed enterprises were from various sectors, with the majority being from commerce, transport and manufacturing sectors. The average age of the surveyed enterprises was 32.5 years, the shortest was 3 years and the longest 145 years. As to the question about net profit or loss for the year 2013, 76.66% of the respondent enterprises revealed that they operated with net profit, 11.67% operated with net loss and 11.67% had neither profit nor loss.

The results on the set of questions regarding human rights showed a surprisingly high awareness of human rights obligations among business entities. Of the 50 respondents who answered, 62% were aware of the risk that business entities could abuse human rights in their functioning, 36% thought that they could not and 2% did not know. It was surprising that only three of eight surveyed enterprises owned by the state or the local authorities were aware of this risk, although these business enterprises had special obligations regarding human rights protection. The question if they believed that business enterprises had to respect human rights in their functioning was answered affirmatively by 54 respondents or 94%. Of the 49 respondents who answered this question, 82% thought that they had to respect civil and political rights, as well as economic, social and cultural rights, 16% thought that they had to respect only economic, social and cultural rights, and 2% of respondents believed that they had to respect only civil and political rights. Of the 50 respondents who answered this question, as many as 86% thought that the state had to provide the protection against human rights abuses by business enterprises, 8% did not agree with that and 6% did not know. Of the 50 respondents who answered this question, 70% believed that respecting human rights in their functioning was their legal obligation, 18% thought it was their voluntary commitment, 2% thought that was their moral obligation, and 4% thought that was their legal and moral obligation.

[73] AJPES, *Informacija o poslovanju gospodarskih družb v Republiki Sloveniji v letu 2014*, May 2015, http://www.ajpes.si/doc/LP/Informacije/Informacija_LP_GD_zadruge_2014.pdf (July 15, 2015).

The answers from the set of questions referring to the respect of human rights in the functioning of the surveyed business enterprises showed that most respondents believed that they sufficiently respected human rights in their functioning. Of the 51 respondents who answered this set of questions, 76% said that they respected human rights to a sufficient degree (all business enterprises owned by the state or the local authorities answered this way), 8% answered that they did respect them, but not sufficiently, only 4% answered they did not and 12% did not know. Of the 42 affirmative answers, 23 business enterprises confirmed their respect of human rights by answering the question asking them to list the human rights that were the most respected in their functioning and to state the form in which this respect was evident. To the question which human rights they respected the most, some answered with general answers, stating that they respect all human rights, while others listed individual human rights. It was evident from the answers to the question about the ways in which this respect was evident that the respect of human rights was not regulated in a complex manner and that it did not correspond to the requirements of the UN Guiding Principles. It was evident from the answers that respecting human rights meant operating in accordance with the legislation and voluntary efforts to satisfy the employees. The respondents connected respect for human rights only with the rights of employees and completely neglected other stakeholders whose rights could be abused. This points to a great shortcoming of actual respect for human rights in business. In addition, no answer was given that would imply that any of the respondents implemented appropriate policies and processes as envisaged by the UN Guiding Principles. In spite of high awareness of the importance of respecting human rights, of the 47 respondents, only 34% stated that their internal acts explicitly imposed on a business enterprise to respect human rights, 49% stated that their legal acts did not regulate this and 17% did not know. Regardless of a relatively solid level of actual human rights respect as shown in the answers, it was concluded that business enterprises unfortunately did not regulate the respect of human rights by appropriate internal acts.

The last set of questions referred to the knowledge about the content of the UN Guiding Principles and the conclusion to what extent the surveyed business entities regulated the respect of human rights in line with its requirements. The results of the last set showed that the majority of the surveyed enterprises were not acquainted with the UN Guiding Principles. Of the 51 respondents who answered, only 24% were acquainted with the content of the UN Guiding Principles, 59% did not know it and 18% did not know. Out of eight surveyed business enterprises, owned by the state or the local authorities, only one was acquainted with the content of the UN Guiding Principles. That was a clear sign that understanding of this problematic had to be improved, especially

among business enterprises owned by state or the local authorities, which have a special obligation in the field of human rights protection. Of the 24% respondents who claimed they were acquainted with the content of the UN Guiding Principles, 20% stated that they operated in accordance with these Principles and 4% thought that they did not. It became evident in further answers that the respondents who claimed they were acquainted with and operated in accordance with them were in fact not acquainted with them nor that they operated in line with them. Of the 46 respondents who answered, 24% said that they had an internal act in which they demonstrated their commitment to fulfilling their responsibility to respect human rights, 65% did not have such an act and 11% did not know. Of the 11 affirmative answers, seven respondents stated the name of this act, but it was evident that these were not acts that met all the requirements of the UN Guiding Principles. Of the 46 respondents who answered, 11% stated that they conducted human rights due diligence, 80% stated that they did not and 9% did not know. Of the 5 affirmative answers, three answered the question on how and who conducted it, but it was evident that these were not processes in accordance with the UN Guiding Principles. Of the 46 respondents who answered this question, 24% stated that they had established grievance mechanisms for employees and third parties in case of human rights abuses, 54% that they did not and 22% did not know. Of the 11 affirmative answers, 6 explained this mechanism, but these were not mechanisms in accordance with the UN Guiding Principles. From the answers to questions designed to find out if appropriate politics and processes were established it was again shown that business enterprises established only processes for resolving claims of employees and not those of other stakeholders. So policies and processes that are established in only a few business enterprises are not in accordance with the requirements of the UN Guiding Principles, and it can be concluded that business entities in the RS have not regulated human rights protection in accordance with the UN Guiding Principles.

The results of the empirical research confirmed the conclusion from Chapter 6 that business entities in the RS had to improve the level of respect of human rights. It was identified that there was a great gap between the opinion of business entities on the respect of human rights and their actual respect. The answers to the questions that were formed with the intention to identify the perception of business entities as to whether they respected human rights showed that business entities thought that they respected human rights to a sufficient degree. The answers to questions on the manner in which this respect was fulfilled, which were intended to examine the credibility of the answers, showed that their understanding of the respect of human rights was limited to the respecting of the human rights of employees and they were not aware

of the rights of other stakeholders (or their possible abuse). Business entities linked human rights with labour rights, because the legislation in this field was the most structured. The fact that respondents did not state all human rights, but only a few that mainly applied to the labour rights protection, is a strong indicator that business entities in the RS are not aware of all human rights that they have to respect and, therefore, it can be concluded that they do not respect them sufficiently. This finding was additionally confirmed by the fact that the respondents did not establish appropriate policies and processes, as proposed by the UN Guiding Principles. This is the reason for which there is a need for a quick implementation of human rights protection in the normative acts of business entities in accordance with the UN Guiding Principles and consistent execution of these normative commitments.

8. CONCLUSION

Until recently human rights protection in business was to a great extent an unresearched field. Only those human rights that the national legislator had explicitly regulated with sectoral (i.e. labour) legislation were protected against abuses by business entities. Other rights were protected against abuse by business entities only in exceptional circumstances, i.e. if the state failed to adopt appropriate measures to ensure human rights protection against abuses by business entities. The UN Guiding Principles have substantially changed the situation and drawn attention to this neglected problematic, and it has become the subject of discussion in many conferences and workshops and published papers of academics, members of civil society and others. States and business entities have started to become aware of their tasks in this field and started performing them. The UN Guiding Principles are not a magic wand that will allow an immediate establishment of human rights protection in business, but they are an important tool for executing the necessary steps for the regulation of this field. In order for policies and processes for the implementation of the commitments of the states and business entities to be established, time and patience will be needed and, most of all, a serious intention to achieve this goal.

In the RS the state and business entities have not fulfilled their assignments in this area to a satisfactory extent. On the basis of the empirical research it was identified that business enterprises in the RS are aware of their responsibility to respect human rights, but also that there are shortcomings in the actual fulfilment of this responsibility. These shortcomings originate mostly from the poor knowledge of the states' and business entities' assignments in this area. This is mostly evident in the lack of knowledge of the requirements set forth in the

UN Guiding Principles. The results of the conducted survey showed that the level of executed assignments from the UN Guiding Principles was extremely poor in the majority of business entities in the RS, so their assignment is to overcome this shortcoming as fast as possible.

It was noted that to overcome the shortcomings and to improve the level of the respect of human rights in business in the RS, the following measures should be taken:

- The state should regulate human rights contained in the convention and constitution by implementing laws in other fields beside labour. Business entities should clearly define their obligations to respect human rights and undertake tasks to identify their human rights risks, forming mechanisms for preventing abuses and grievance mechanisms when an abuse occurs;
- The state should accept a national action plan in which it will define assignments and measures for ensuring human rights protection in business;
- Following the example of foreign business entities (e.g. Adidas), Slovenian business entities should also devise policies and processes for respecting human rights in accordance with the UN Guiding Principles;
- Following the example of some foreign tools the for implementation of requirements from the UN Guiding Principles[74], the Chamber of Commerce and Industry of Slovenia and other associations in which business entities are aligned should formulate clear recommendations that would help business entities in fulfilling their responsibility to respect human rights;
- The state and local communities should show an example and, in all public undertakings which they established and business entities in which they hold stakes, use their leverage to ensure the respect of human rights on the normative and executive levels;
- The role of the national institutions for the human rights protection should be strengthened so that they can accept individual claims directed at business entities.

The state and business entities still have a lot of work at establishing appropriate policies and processes for ensuring human rights protection. In spite of the important role of the state, various organizations and grievance mechanisms, the most important element for ensuring human rights protection is still the awareness of business entities that they should respect human rights. Respecting human rights has to become their value. The UN Guiding Principles can

[74] See: Van Huijstee, Ricco, Ceresna-Chaturvedi, *op. cit.* in note 21.

be a helpful tool for awareness-raising and implementing measures of business entities only if business entities internalize these commitments and integrate them in their everyday operations. Only with an actual consideration of human rights in strategic decisions will the implementation of requirements from the UN Guiding Principles be achieved.

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Sažetak

Ana Čertanec, Ph.D. *

ZAŠTITA LJUDSKIH PRAVA U DJELOVANJU PODUZEĆA U REPUBLICI SLOVENIJI

Poduzeća mogu izravno ili neizravno zlorabiti ljudska prava. Stoga su i ona uz državu nositelji obveza u području zaštite ljudskih prava. Cilj ovoga rada je analizirati koliki je doseg tih obveza. Radi razjašnjenja i utvrđenja zadataka države i poduzeća u području zaštite ljudskih prava usvojene su Smjernice Ujedinjenih naroda o poslovnom sektoru i ljudskim pravima. Smjernice pritom služe kao (neobvezujuće) sredstvo koje treba pomoći državi i poduzećima u provođenju zadaća zaštite ljudskih prava u poslovnom sektoru. U skladu sa zahtjevima Smjernica Ujedinjenih naroda o poslovnom sektoru i ljudskim pravima za države je važno da uspostave nužne pravne temelje koji će osigurati zaštitu ljudskih prava protiv zloraba od strane trećih osoba te omogućiti pristup učinkovitoj pravnoj zaštiti kada se povrede dogode. S druge strane, poduzeća trebaju identificirati područja u kojima može doći do povreda, uspostaviti mehanizme koji će spriječiti nastanak povreda te mehanizme prevencije neposredno prijetećih povreda i popravka nastalih povreda. U radu se obrađuje pitanje postoje li u Republici Sloveniji odgovarajući pravni temelji zaštite ljudskih prava u poduzećima te jesu li država i poduzeća u Republici Sloveniji počeli s ostvarenjem zadataka u pogledu zaštite ljudskih prava u poslovnom sektoru. Na temelju navedenih rezultata istraživanja autorica donosi procjenu o tome jesu li i u kojoj mjeri zahtjevi Smjernica Ujedinjenih naroda o poslovnom sektoru i ljudskim pravima u Republici Sloveniji ispunjeni, odnosno što još država i poduzeća trebaju učiniti u budućnosti.

Ključne riječi: ljudska prava, poduzeća, Smjernice Ujedinjenih naroda o poslovnom sektoru i ljudskim pravima, poštovanje ljudskih prava

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