Bialystok Legal Studies
Białostockie Studia Prawnicze
2023 vol. 28 no. 4

sciendo

DOI: 10.15290/bsp.2023.28.04.01

Received: 31.03.2023
Accepted: 8.09.2023

Adam Wiśniewski
University of Gdańsk, Poland
adam.wisniewski@prawo.ug.edu.pl
ORCID ID: https://orcid.org/0000–0002-4921–0215

The Protection of Entrepreneurs and the European Convention on Human Rights

Abstract: In comparison to the European Convention on Human Rights, the EU Charter of Fundamental Rights, which provides in its Article 16 for the freedom to conduct a business, is a much more modern instrument. In this article I argue that the Convention nevertheless appears to be no less important a document offering protection of entrepreneurs' rights. This is the case even though it does not provide any particular rights devoted to the running of a business by entrepreneurs. This is possible, first of all, due to the right of individual application which may be lodged directly with the European Court of Human Rights in its capacity as an international court. No comparable measure for an individual complaint is available under the UN Charter. Secondly, the extensive case law of the Strasbourg Court has made it possible for entrepreneurs to rely on a number of Convention rights, despite the fact that these rights, at least at first glance, are not connected with the running of a business. This refers not only to the right to a fair trial on the protection of property, which offer entrepreneurs the protection of a number of their interests, but also to rights which at first glance have nothing to do with the running of the business, such as the right to respect for private and family life protected under Article 8 of the Convention. As a result, the right of individual complaint to the ECtHR should be perceived as an important measure of the protection and enforcements of entrepreneurs' rights at the international level, in case of any failure to secure the protection of those rights at the national level.
Keywords: entrepreneurs, European Convention on Human Rights, European Court of Human Rights, individual complaint, human rights

Introduction

The European Convention on Human Rights (ECHR or the Convention), signed on 4 November 1950 in Rome, can be regarded as the most important instrument

among the conventions adopted within the Council of Europe and the most important regional instrument in the field of human rights in Europe. It was the first international treaty in history that implemented the idea of comprehensive protection of human rights. Thanks to the introduction of the institution of an individual complaint, it broke the existing paradigm of state sovereignty by introducing the idea of the individual as a subject of international law.[1] The Convention, as well as the case law of the European Court of Human Rights (the ECtHR or the Court) acting on it, provides the basis for standards for the protection of these rights in 46 Member States of the Council of Europe.

The Convention, which entered into force on 3 September 1953, is a relatively old international instrument.[2] Compared to the ECHR, the Charter of Fundamental Rights of the European Union (the Charter) is a much more modern document. It was signed on 7 December 2000 in Nice on behalf of the European Parliament, the EU Council and the European Commission, and again, with some amendments, by the presidents of these bodies at the Lisbon Summit on 12 December 2007. This instrument became binding on the basis of the Lisbon Treaty of 13 December 2007, which entered into force on 1 December 2009. Unlike the Convention, the Charter provides in its Article 16 for "the freedom to conduct a business in accordance with Community law, and national laws and practices". The ECHR does not explicitly provide any rights directly connected with the running of economic activities. Why, then, could the ECHR be said to play any role in the protection and enforcement of the rights of entrepreneurs?

Entrepreneurs are individuals who engage in commercial activities, whether as sole proprietors, partners or managers of companies. Entrepreneurs are also companies through which business activities are conducted. However, it is true that, especially in the case of multinational corporations, business may have an impact which amounts to an abuse of human rights, and there is a growing concern regarding the threat to human rights from the activities of privately owned entities, which is a subject which certainly merits in-depth research.[3] However, no less important appears to

1 B. Gronowska, Pozycja jednostki w systemie procedury kontrolnej Europejskiej Konwencji Praw Człowieka z 1950 r., (in:) M. Balcerzak, A. Czeczko-Durlak (eds.), Księga Jubileuszowa Prof. dra hab. Tadeusza Jasudowicza, Toruń 2004, p. 162.

2 Also see D. Harris, M. O'Boyle, E. Bates, C. Buckley, Law of the European Convention on Human Rights, Oxford 2018, pp. 18–19.

3 Also see European Law Institute, Business and Human Rights: Access to Justice and Effective Remedies: Report of the European Law Institute 2022, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Business_and_Human_Rights.pdf (20.03.2023), p. 10; United Nations Office of the High Commissioner, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, New York/Geneva 2011, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (20.03.2023).

be the protection of the rights of entrepreneurs as being essential for the promotion of economic growth, job creation and innovation.

Under Article 34 of the Convention, the Court may receive applications not only from natural persons but also from any non-governmental organisation claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols; the High Contracting Parties undertake not to hinder the effective exercise of this right in any way. This means that entrepreneurs may benefit from the protection of the ECHR regardless of the legal form in which they run their business activities, be it as an individual business activity or in the form of, for example, companies having legal personality set up under the provisions of national law.

Amazingly, the issue of the protection of entrepreneurs' rights through the ECHR and Strasbourg case law has not so far received much attention in the legal literature. A lot of the literature in English on business in the context of human rights focuses rather on the aforementioned threats to human rights posed by business practices and especially large corporations.[4] Authors who touch upon the subject of the protection of entrepreneurs' rights under the ECHR tend, in turn, to focus on specific aspects of such protection, for example problems with the application of particular criteria of admissibility in cases involving persons running business activities.[5] A notable example of a study dealing with various interesting aspects of the relationship between business and human rights is the book Wpływ Europejskiej Konwencji Praw Człowieka na funkcjonowanie biznesu (The Impact of the European Convention on Human Rights on the Functioning of Business).[6]

The aim of this article is to explore individual applications to the ECtHR as a means for enforcing the rights of persons running business activities, having regard to the specific nature and needs of entrepreneurs. The specific research problems to be addressed in this study refer to the issue of which rights protected in the ECHR can be invoked by entrepreneurs seeking international protection through an individual application lodged with the ECtHR. Another research issue refers to specific procedural aspects that appear under the ECHR when entrepreneurs seek protection in Strasbourg. These issues will be analysed on the basis of selected case law of the Strasbourg Court. As was already mentioned, there is not much legal literature on the issue of the protection of entrepreneurs' rights through the ECHR and Strasbourg case law. Therefore, as regards the methodological aspect of this study, the main point

4 See for example C.M. O'Brien, Business and Human Rights: A Handbook for Legal Practitioners, Council of Europe, Strasbourg 2018.

5 See L. Deshko, Application of Legal Entities to the European Court of Human Rights: A Significant Disadvantage as the Condition of Admissibility, 'Croatian International Relations Review' 2018, vol. 24, no. 83, pp. 84–103.

6 A. Bodnar, A. Ploszka, Wpływ Europejskiej Konwencji Praw Człowieka na funkcjonowanie biznesu, Warsaw 2016; European Law Institute, Business and Human Rights…, *op. cit*.

of reference will be the text of the Convention itself as well as the case law of the ECtHR, analysed from the perspective of the specific needs and problems of persons running business activities.

The main hypothesis of this study is that despite the fact that the ECHR drafted in 1950 is a relatively old international instrument which was not specifically designed to protect entrepreneurs' rights, it nevertheless still plays an important role as regards the protection of entrepreneurs' interests at the international level. This is mostly due to certain specific solutions adopted in the text of the ECHR itself, as well as the dynamic, rich and extensive case law of the Strasbourg Court.

1. The individual application under the ECHR

An individual complaint is a procedural measure that allows an individual who alleges a violation of his or her rights by a state to independently initiate proceedings before an international institution, of a judicial or extrajudicial nature, in order to clarify the question of the state's liability for the alleged violation. Although, as was already mentioned, the Charter of Fundamental Rights is a much more modern instrument than the ECHR, it does not provide for a measure which is analogous to an individual complaint to the supranational court as is provided under the ECHR.[7] It is important to note that the individual complaint to the ECtHR provides entrepreneurs with a recourse for seeking justice in cases where their human rights have been violated at the national level.

In accordance with Article 34 of the ECHR, '[t]he Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.' While this provision gives entrepreneurs a right to take legal action at international level to protect their interests and rights affected at the national level, it is important to keep in mind the importance of meeting requirements for submitting a complaint. More than 90% of the applications examined by the Court are declared inadmissible.[8] Therefore understanding the process and requirements for submitting a complaint to the ECtHR is crucial for increasing the chances of success.

Under Article 34 of the Convention, applicants enjoy the freedom to exercise the right of individual application. This means that the right to apply to the Court is absolute, may not be hindered by states, and applicants have freedom to communicate

7 For more on this subject, see H. Bajorek-Ziaja, Skarga do Europejskiego Trybunału Praw Człowieka oraz skarga do Trybunału Sprawiedliwości Unii Europejskiej, Warsaw 2010.

8 Notes for Filling in the Application Form, p. 1, https://www.echr.coe.int/Documents/Application_Notes_ENG.pdf (20.03.2023).

with the Court.[9] However, it is important to keep in mind the specific nature of the ECtHR as an international court and, in particular, that it does not have the function of a fourth-instance court. The powers of the Court were laid down in Article 19 of the Convention, according to which it was established 'to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto'. The powers of the ECtHR were thus limited to the verification of the contracting states' compliance with the ECHR. In the process of such verification, the Court has to respect the autonomy of national legal systems and does not have the power to intervene directly in these systems, in particular by overturning a ruling of a national court.[10]

Respecting the autonomy of national legal systems also means that it is not the function of the Court to 'deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention',[11] 'for instance where they can be said to amount to "unfairness" in breach of Article 6 of the Convention'.[12] Explaining its role in respect of the assessment of evidence or a finding by national courts in the light of the right to a fair trial protected under Article 6 of the Convention, the Court observed:

> while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the national courts. In principle, issues such as the weight attached by the national courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review. The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable.[13]

Another important feature of the system set up under the ECHR is its subsidiarity. The principle of subsidiarity entails that the task of protecting these rights should primarily be fulfilled by states, and only when that fails should protection be set in motion at the international level.[14] On the basis of Protocol 15 to the Convention, the reference to this principle was made in the preamble to the ECHR, alongside refer-

9 European Court of Human Rights, Practical Guide on Admissibility Criteria, pp. 11, 22 and 57, https://www.echr.coe.int/documents/admissibility_guide_eng.pdf (07.03.2023).

10 *Ibidem*, p. 73.

11 Judgment of the ECtHR of 21 January 1999 on the case of *García Ruiz v. Spain*, application no. 30544/96, § 28.

12 Judgment of the ECtHR of 23 February 2017 on the case of *de Tommaso v. Italy*, application no. 43395/09, § 107.

13 *Ibidem*.

14 L. Garlicki (ed.), Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, vol. I: Komentarz do artykułów 1–19, Warsaw 2011, p. 15.

ence to the exercise of the margin of appreciation by state parties. As the Court observed, this principle

> reiterates its fundamentally subsidiary role in the supervisory mechanism established by the Convention, whereby the Contracting Parties have the primary responsibility of securing the rights and freedoms defined in the Convention and the Protocols thereto […]. Protocol No. 15 to the Convention has recently inserted the principle of subsidiarity into the Preamble to the Convention. The Court further notes that the principle of subsidiarity imposes a shared responsibility between the States Parties and the Court, and that national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the Convention.[15]

The doctrine of the margin of appreciation is well known to state parties to the Convention, as is evident from the frequent appeal to this principle by national authorities in proceedings before the ECtHR. This doctrine is in fact a construction created for the purposes of Strasbourg case law, which allows the discretionary powers of national authorities to be taken into account when monitoring the application of the Convention and its protocols by state parties. Therefore, this doctrine is, as Garlicki notes, 'a pure creation of "judicial law".[16]

In accordance with Article 35, Section 1 of the Convention on admissibility criteria, the Court may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken. Moreover, as is provided for in Section 2, the Court shall not deal with any application submitted under Article 34 that (a) is anonymous or (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

Under Article 35, Section 3, the ECtHR will declare inadmissible any individual application submitted under Article 34 if it considers that the application is incompatible with the provisions of the Convention or its protocols, is manifestly ill-founded or is an abuse of the right of individual application, or if the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the protocols thereto requires an examination of the application on its merits.

Due to the limited framework of this study, it is not possible to analyse in detail all aspects of admissibility issues under the ECHR. Therefore the aim of this section of the article is rather to highlight the most important issues as regards the admissi-

15 Judgment of the ECtHR (Grand Chamber) of 15 March 2022 on the case of *Grzęda v. Poland*, application no. 43572, § 324.

16 L. Garlicki, Wartości lokalne a orzecznictwo ponadnarodowe – 'kulturowy margines oceny' w orzecznictwie strasburskim? 'Europejski Przegląd Sądowy' 2008, no. 4, p. 5.

bility criteria, having special regard to the specificity of entrepreneurs as applicants before the Court.

It follows from Article 34 of the ECHR that applications to the ECtHR may be lodged not only by natural persons but by legal entities as well. This is one of the distinctive features of the protection system set up under the ECHR. A legal entity may bring a complaint on the condition that it is a 'non-governmental organisation' within the meaning of this provision of the Convention. This means, *a contrario*, that 'governmental organisations' have no standing before the Court. Therefore an individual complaint may not be brought either by central organs of the state or by decentralised authorities that exercise 'public functions'. As was explained by the Court in its decision on the case of *Radio France and Others v. France*, '[t]he term "governmental organisations", as opposed to "non-governmental organisations" within the meaning of Article 34, applies not only to the central organs of the State, but also to decentralised authorities that exercise "public functions", regardless of their autonomy vis-à-vis the central organs; likewise it applies to local and regional authorities.'[17] Although local government units have no standing before the Court, being regarded as 'decentralised authorities', the same cannot be said about public, state-owned companies. The Court adopted here an inclusive approach, widening the scope of legal entities which may file an application in Strasbourg.

One of the applicants in this case was the national radio broadcaster Radio France, a company incorporated under French law. In its decision the Court formulated important criteria allowing for the establishment of whether a state-owned company may lodge a complaint with the ECtHR. As the Court said,

> the category of 'governmental organisation' includes legal entities which participate in the exercise of governmental powers or run a public service under government control. In order to determine whether any given legal person other than a territorial authority falls within that category, account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its independence from the political authorities.[18]

Thus the independence of a state-owned company from political authorities was laid down as a main criterion for the assessment if the applicant can be regarded as a 'non-governmental organisation' within the meaning of Article 34 of the Convention. In its final conclusions in this case, the Court noted that

> although Radio France has been entrusted with public-service missions and depends to a considerable extent on the State for its financing, the legislature has devised a framework which is plainly designed to guarantee its editorial independ-

17 Decision of the ECtHR of 23 September 2003 on the case of case of *Radio France and Others v. France*, application no. 53984/00, § 26.

18 *Ibidem*.

> ence and its institutional autonomy […]. In this respect, there is little difference between Radio France and the companies operating 'private' radio stations, which are themselves also subject to various legal and regulatory constraints.[19]

As regards compatibility, the *ratione personae* of the complaint should be brought by an entrepreneur against the state on the territory of which his or her rights were violated. The alleged violation should be committed by a contracting state, or it should be in some way attributable to it. Moreover, the applicant has to show in the application that he or she was either directly or indirectly affected by the alleged violation of his or her rights.[20] The latter requirement is connected with the victim status of the applicant. Applications are usually brought by direct victims of the alleged violation, and applicants have to show that they were directly affected by the measure in question. As has been stated in Strasbourg case law, 'in order for applicants to be able to claim to be a victim, they must produce reasonable and convincing evidence of the likelihood that a violation affecting them personally will occur; mere suspicion or conjecture is insufficient in this respect".[21] The Convention does not provide the possibility of bringing applications *in abstracto*, for example to question some piece of national legislation as being in contradiction to the Convention. As the Court itself observed,

> in order to be able to lodge a petition in pursuance of Article 34, a person, non-governmental organisation or group of individuals must be able to claim 'to be the victim of a violation […] of the rights set forth in the Convention […]'. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure […] The Convention does not, therefore, envisage the bringing of an *actio popularis* for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention.[22]

Nevertheless, it is also possible to lodge a complaint with the Court if applicants are also able to prove their status as an indirect or potential victim. The status of 'indirect victims' is mostly connected with granting the status of victim to a person who is the relative of a direct victim who for some reason is unable to lodge the complaint in person, usually because he or she died or disappeared. As the Court observed, '[w]here the applicant has died after the application was lodged, the Court has accepted that the next of kin or heir may in principle pursue the application, provided that he

19 *Ibidem*.

20 ECtHR, Practical Guide…, *op. cit*., pp. 11 and 57.

21 Judgment of the ECtHR (Grand Chamber) of 17 July 2014 on the case of *Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania*, application no. 47848/08, § 101.

22 Judgment of the ECtHR (Grand Chamber) of 29 April 2008 on the case of *Burden v. the United Kingdom*, application no. 13378/05, § 33.

or she has sufficient interest on the case'.[23] The Court has recognised the standing of the victim's next of kin to submit an application where the victim has died or disappeared in circumstances allegedly being the responsibility of the state.[24]

The notion of 'indirect victim' has been developed in Strasbourg case law in cases concerning companies. The Court found that a person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party, even if he or she was a shareholder and/or director of a company which was party to the proceedings.[25] However, as regards cases brought by shareholders of a company, the Court has recognised that it is 'crucial to draw a distinction between complaints brought by shareholders about measures affecting their rights as shareholders and those about acts affecting companies, in which they hold shares […] In the former group, shareholders themselves may be considered victims within the meaning of Article 34 of the Convention.'[26] The Court's analysis concern here the rights and the situation of the company's shareholders and not those of the company. Therefore, in such cases the difference between the rights of the company and the rights of the shareholders can be said to be maintained . 'In the latter group the general principle is that shareholders of companies cannot be seen as victims, within the meaning of Article 34 of the Convention, of acts and measures affecting their companies.'[27]

The Court has recognised that this principle may be justifiably qualified in two kinds of situations: firstly, where the company and its shareholders are so closely identified with each other that it is artificial to distinguish between the two.[28] Thus 'disregarding of a company's legal personality will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators'.[29] Therefore shareholders need to produce 'weighty and convincing reasons' in order to demonstrate that it is 'practically or effectively impossible for the company to apply to the Convention institutions through the organs set up under its articles of association and that they should therefore be allowed to proceed with the complaint on the company's behalf'.[30] In an interesting case concerning secret surveillance authorisa-

23 *Centre for Legal Resources*…, *op. cit.*, § 97.
24 *Ibidem*, § 98.
25 Judgment of the Court (Grand Chamber) of 7 June 2012 on the case of *Centro Europa 7 S.R.L. and Di Stefano v. Italy*, application no. 38433/09, §§ 92–93.
26 ECtHR, Practical Guide…, *op. cit*., p. 14.
27 *Ibidem*.
28 Judgment of the Court (Grand Chamber) of 7 July 2020 on the case of *Albert and Others v. Hungary*, application no. 5294/14, § 122–124.
29 Judgment of the Court of 24 October 1995 on the case of *Agrotexim and Others v. Greece*, application no. 14807/89, § 66.
30 *Albert and Others*…, *op. cit.*, § 145.

tions not formally issued against the two complaining companies, the Court found that these companies can be regarded as victims within the meaning of Article 34 of the Convention.[31]

As has already been mentioned, the Convention does not allow complaints *in abstracto* alleging a violation of the Convention; however, in specific situations, the Court was inclined to accept that an applicant may be a potential victim, for example, when the applicant was not able to establish that the legislation he complained of had actually been applied to him on account of the secret nature of the measures it authorised,[32] or where a law punishing homosexual acts was likely to be applied to a certain category of the population to which the applicant belonged.[33]

The complaint must be compatible *ratione loci* with the Convention, which means that the alleged violation should have taken place within the jurisdiction of the respondent state or in territory effectively controlled by it.[34] The compatibility of the complaint *ratione materiae* with the Convention is also required. The applicant must rely on one of the rights protected under the Convention and the protocols. This will be discussed in the next section of this article.

In order to lodge a complaint with the ECtHR, an entrepreneur must first exhaust all available domestic remedies. This requirement is the direct consequence of the aforementioned principle of subsidiarity being based on the assumption that the domestic legal order will provide an effective remedy for violations of Convention rights.[35] As the Court observed:

> the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. The Court has accordingly recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the appli-

31 Judgment of the Court of 28 May 2019 on the case of *Liblik and Others v. Estonia*, application no. 173/15, § 112.

32 See, for example, the judgment of the ECtHR of 6 September 1978 on the case of *Klass and Others v. Germany*, application no. 5029/71.

33 See, for example, the judgment of the ECtHR of 22 October 1981 on the case of *Dudgeon v. the United Kingdom*, application no. 7525/76. For more detail, see ECtHR, Practical Guide…, *op. cit.*, pp. 15–16.

34 Judgment of the Court of 26 June 1992 on the case of *Drozd and Janousek v. France and Spain*, application no. 12747/87, §§ 84–90.

35 ECtHR, Practical Guide…, *op. cit.*, p. 27.

> cant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies.[36]

It is important to determine whether a domestic procedure offered an effective remedy within the meaning of Article 35, Section 1 of the Convention; the assessment of such effectiveness depends on a number of factors, including the applicant's complaint, the scope of the obligations of the state under that particular Convention provision, the available remedies in the respondent state and the specific circumstances of the case.[37] The complaint must be submitted in writing and include a clear explanation of the alleged violation of human rights. The ECtHR has a strict time limit to submit the complaint of four months from the date of the final domestic decision. The rationale of this time limit is connected with the need to maintain legal certainty and avoid uncertainty for cases being brought under the Convention for a long period of time.[38]

As has already been mentioned, the application may not be anonymous and must be duly identified in the application form. However, by a decision of the Court, the applicant's identity may not be disclosed to the public, in which case the applicant will be designated by his or her initials or simply by a letter.[39] The right of individual application may not be abused. According to the ECtHR's case law, this refers mainly to situations of providing misleading information, using offensive language, violation of the obligation to keep friendly settlement proceedings confidential or submitting applications which are manifestly vexatious or devoid of any real purpose.[40]

Even where an application is compatible with the Convention and all the formal admissibility conditions have been met, the Court may nevertheless declare it inadmissible for reasons relating to the examination on its merits. This is because of the requirement provided for in the Convention that a complaint may not be manifestly ill-founded. The majority of manifestly ill-founded applications are declared inadmissible *de plano* by a single judge or a three-judge committee. However, some complaints of this type are examined by a Chamber or even, in exceptional cases, by the Grand Chamber.

A complaint may be judged to be manifestly ill-founded in particular when the ECtHR was misconceived by applicants as being a fourth-instance court, that is, as was already mentioned, when the applicants expect the court to quash rulings given

36 Judgment of the Court (Grand Chamber) of 13 November 2007 on the case of *D.H. and Others v. the Czech Republic*, application no. 57325/00, § 116.

37 Judgment of the Court (Grand Chamber) of 19 December 2017 on the case of *Lopes de Sousa Fernandes v. Portugal*, application no. 56080/13, § 134.

38 ECtHR, Practical Guide…, *op. cit.*, p. 34.

39 *Ibidem*, p. 48.

40 *Ibidem*.

by national courts or to retry or re-examine cases in the same way as supreme courts do at the national level. Moreover, a complaint will be declared ill-founded where there has clearly or apparently been no violation, and in particular where no appearance of arbitrariness or unfairness on the part of national domestic authorities or no breach of the proportionality requirement has been found. The same will be found if a complaint was not supported by necessary factual evidence or legal arguments, i.e. an explanation why, in the opinion of the applicant, the Convention provisions have been breached.[41]

Moreover, Protocol 14 introduced the new admissibility criterion according to which the Court declares any individual application inadmissible if it considers that the applicant has not suffered a significant disadvantage, unless respect for human rights, as defined in the Convention and the protocols thereto, requires an examination of the application on its merits (Article 35, Section 3(b)). The criterion of 'significant disadvantage' refers to the required minimum level of severity to justify consideration of the complaint by the Court. For example, on the case of *Korolev v. Russia*, in which the applicant insisted on the payment of RUB 22.50 by the respondent authority,[42] the Court concluded that the applicant had not suffered a significant disadvantage as a result of the alleged violations of the Convention.[43] This criterion was introduced with the view of assisting the Court to deal with the ever-increasing caseload, enabling it to reject cases of 'minor' importance while concentrating on cases deserving an examination on merits.[44] However, as some authors have pointed out, the Court tends to apply a broad approach to the interpretation of non-pecuniary damage suffered by a business entity, 'including non-pecuniary damage caused to the legal entity itself and moral damage to the management of a legal entity – individuals.[45] Moreover, the Court is aware of the problems connected with the precise calculation of the pecuniary losses suffered by the applicant, a problem which often occurs in cases involving entrepreneurs.[46] For example, it is impossible to calculate precisely the value of property which no longer exists,[47] and it is difficult to calculate lost profits 'in circumstances where such profits could fluctuate owing to a variety of unpredictable factors'.[48]

41 For more details, see *ibidem*, pp. 75–76.
42 At present, approximately EUR 0.23.
43 Decision of the Court of 1 July 2010 on the case of *Korolev v. Russia*, application no. 2555/05.
44 ECtHR, Practical Guide…, *op. cit.*, p. 78.
45 L. Deshko, Application…, *op. cit.*, p. 99.
46 See the judgment of the Court of 23 January 2014 on the case of *East/West Alliance Limited v. Ukraine*, application no. 19336/04, § 250.
47 Judgment of the Court of 15 November 2011 on the case of *Hovhannisyan and Shiroyan v. Armenia*, application no. 5065/06, § 13.
48 Judgment of the Court of 24 February 2009 on the case of *Dacia S.R.L. v. Moldova*, application no. 3052/04, § 47.

If a complaint is found admissible, it is communicated to the government of the respondent state. An attempt is also made to settle the matter amicably. If no settlement is reached, the Court continues to examine the case. In accordance with Article 38 of the Convention, the Court examines the case together with the representatives of the parties and, if need be, undertakes an investigation. In accordance with Article 26 of the Convention, to consider cases brought before it, the Court sits either in a single-judge formation, in committees of three judges, in Chambers of seven judges or in a Grand Chamber of seventeen judges. Final judgments of the Court are binding upon the states who are parties to the Convention and, as Article 46, Section 1 reads, '[t]he High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties'. Moreover, the execution of final judgments of the Court was entrusted to the Committee of Ministers of the Council of Europe.

The implementation of ECtHR-based judgments requires, in the first place, taking measures of an individual nature. Recognising that there has been a violation of the ECHR, the Court may grant so-called just compensation. As was provided in Article 41 of the ECHR, 'if the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party'. The ECtHR's case law has confirmed that compensation for non-pecuniary damage can also be afforded to public companies. In the case of *Société Colas Est and Others*, the Court observed that 'as regards the rights secured to companies by the Convention, it should be pointed out that the Court has already recognised a company's right under Article 41 to compensation for non-pecuniary damage sustained as a result of a violation of Article 6 § 1 of the Convention'.[49] The Court may also decide that the mere finding of a violation constitutes sufficient just satisfaction for the applicant.

In some countries, individual measures may include resuming proceedings in the particular case in which the violation of the Convention was found. In accordance with Polish law, a judgment of the ECtHR may be the basis for reopening proceedings in a criminal case. According to the provision of Article 540(3) of the Code of Criminal Procedure, 'proceedings are resumed in favour of the accused, when such a need arises from the judgment of an international body operating under an international agreement ratified by the Republic of Poland'. In addition, in accordance with Article 272(3) of the Act of 30 August 2002 (Law on proceedings before administrative courts), it is possible to also request a resumption of proceedings in cases in which such a need results from the decision of an international body operating under an international agreement ratified by the Republic of Poland.

49 Judgment of the ECtHR of 16 April 2022 on the case of *Société Colas Est and Others v. France*, application no. 37971/97, § 41.

In the absence of an analogous provision in the Code of Civil Procedure, a controversy has appeared as to whether it is possible to resume proceedings in civil law cases as well. The issue was decided by the Supreme Court, which in a resolution of seven judges of 30 November 2010 stated that "The final judgment of the European Court of Human Rights finding the violation of the right to a fair hearing of the case by a tribunal , guaranteed in Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, drafted on 4 November 1950 in Rome (…), does not constitute grounds for resumption of civil proceedings".[50]

If individual measures prove to be insufficient, the state party concerned is required to also take general measures consisting, in particular, of the removal of the reasons for the violation of the Convention, e.g. by changing the legislation or practice in a given field, changing the interpretation of binding provisions of law, correcting the practice of state authorities or raising awareness of human rights standards following from ECHR practice among officials, etc.

2. Entrepreneurs' rights under the ECHR

As has already been mentioned, for a complaint to be compatible *ratione materiae* with the Convention, the applicant has to allege the violation of one of the rights protected under the ECHR or one of its protocols. Unlike the EU Charter of Fundamental Rights, however, the Convention does not provide any rights specifically for entrepreneurs and their businesses, such as the freedom to conduct a business provided for by the EU Charter. Firstly, it should be noted that rights protected under the ECHR and its protocols are civil and political rights; the notable exception is the right to education provided for in Protocol 1 to the Convention. Some rights protected by the Convention by their very nature do not have any particular significance in the context of running a business. This is particularly true in the case of the right to life, the prohibition of torture (Article 3 of the ECHR), freedom of thought, conscience and religion (Article 9 of the ECHR) or the right to marry (Article 12 of the ECHR). On the other hand, certain rights protected by the Convention can be said to be of significant importance in the case of persons running their business. This is particularly true in the case of the right to a fair trial (Article 6 of the ECHR) and the protection of property (Article 1 of the 1952 Protocol to the Convention).

Another feature of the system of the protection of rights set out under the ECHR is that due to the activist nature of the Strasbourg Court, certain rights which at first glance are not usually associated with the protection of business activities have acquired such significance thanks to the ECtHR's judgments. This is particularly true in the case of Article 8 of the Convention, providing for the right to respect for pri-

50 Resolution of the Supreme Court of 30.11.2010, III CZP 16/10.

vate and family life. In the case of *Niemietz v. Germany*, the applicant, Gottfried Niemietz, alleged that the search of his law office had given rise to a breach of Article 8 of the Convention. The Court agreed, and in finding a violation of Article 8 in this case in fact gave a broader meaning to the notion of 'home', including professional or business premises such as a lawyer's office.[51] As the Court noted in the case of *Société Colas Est*, '[b]uilding on its dynamic interpretation of the Convention, the Court considers that the time has come to hold that in certain circumstances the rights guaranteed by Article 8 of the Convention may be construed as including the right to respect for a company's registered office, branches or other business premises'.[52]

Moreover, Article 8 may also be applicable in the cases of entities, including public companies, running business activities in other matters, such as respect for correspondence. In the case of *Liblik and Others v. Estonia*, the Court observed that

> as regards private life, the Court has previously held that it may be open to doubt whether a legal entity can have a private life within the meaning of Article 8. However, it can be said that its mail and other communications are covered by the notion of 'correspondence', which applies equally to communications originating from private and business premises. The Court has previously accepted that, in the context of secret surveillance activities, legal entities are entitled to the protection afforded by Article 8, and can thus claim to be victims under that Article.[53]

Moreover, protection of business activities may also be sought under Article 10 of the Convention, providing for freedom of expression, which is also applicable to information of a commercial nature. Article 10 does not apply solely to certain types of information or ideas or forms of expression, particularly those of a political nature. It also includes artistic expression as well as and information of a commercial nature.[54]

Although the protection of commercial speech does not enjoy the same level of high protection as, for example, political speech, entrepreneurs may rely on Article 10 in certain cases concerning the refusal to grant a licence.[55] In the case of *Pryanishnikov v. Russia*, the European Court of Human Rights held that the Russian government violated a producer of erotic films' right to freedom of expression under Article 10 by denying him a film reproduction licence. The Court observed, among other things, that

51 Judgment of the ECtHR (Grand Chamber) of 16 December 1992 on the case of *Niemietz v. Germany*, application no. 13710/88, §§ 27–33.

52 *Société Colas Est*…, *op. cit.*, § 41.

53 *Liblik*…, *op. cit.*, § 110.

54 Judgment of the ECtHR of 20 November 1989 on the case of *Markt Intern Verlag Gmbh and Klaus Bermann v. Germany*, application no. 10572/83.

55 See for example M.H. Randall, Commercial Speech under the European Convention on Human Rights: Subordinate or Equal? 'Human Rights Law Review' 2006, vol. 6, no. 1, pp. 53–86.

> the refusal of a film reproduction licence made it impossible for the applicant to distribute any films, including the more than 1,500 films for which the competent authorities had issued distribution certificates after verifying that they were not pornographic, or indeed any other audiovisual products or audio-recordings on any types of medium. There is no evidence in the text of the domestic judgments that the domestic courts weighed the impact which the refusal of a film reproduction licence would have on the applicant's ability to distribute the films for which he had distribution certificates or on his freedom of expression in general. The domestic courts therefore failed to recognise that the present case involved a conflict between the right to freedom of expression and the need to protect public morals and the rights of others, and failed to perform a balancing exercise between them.[56]

As was already mentioned, Article 6 of the Convention protecting the right to a fair trial is of particular importance for all persons running their own businesses. The guarantees provided by Article 6 apply both in civil and in criminal proceedings. This Article is, however, also applicable to judicial review (court administrative) proceedings.[57] Certain proceedings are outside the scope of Article 6, such as summary injunction proceedings concerning customs duties or charges.[58] As the Court observed: 'pecuniary interests are clearly at stake in tax proceedings, but merely showing that a dispute is "pecuniary" in nature is not in itself sufficient to attract the applicability of Article 6 § 1 under its "civil" head'.[59]

On the other hand, proceedings which, in domestic law, come under 'public law' and whose result is decisive for private rights and obligations or the protection of 'pecuniary rights' are regarded as falling within the scope of Article 6, Section 1. As the Court observed on the case of *Bilgen v. Turkey*, the scope of the 'civil' concept in Article 6 is not limited by the immediate subject matter of the dispute.[60] Instead, the Court has developed a wider approach, according to which the 'civil' limb has covered cases which might not initially appear to concern a civil right but which may have direct and significant repercussions on a private pecuniary or non-pecuniary right belonging to an individual[61]. Through this approach, the civil limb of Article 6 has been applied to a variety of disputes which may have been classified in domestic law as public

56 Judgment of the ECtHR of 10 September 2019 on the case of *Pryanishnikov v. Russia*, application no. 5047/05, §§ 61–64.

57 L. Garlicki (ed.), Konwencja…, *op. cit.*, p. 253.

58 Decision of the ECtHR of 13 January 2005 on the case of *Emesa Sugar N.V. v. the Netherlands*, application no. 62023/00.

59 Judgment of the ECtHR of 12 July 2001 on the case of *Ferrazzini v. Italy*, application no. 44759/98, § 25.

60 Judgment of the ECtHR of 9 March 2021 on the case of *Bilgen v. Turkey*, application no. 1571/07, § 65.

61 European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trial (Civil Limb), Council of Europe 2022, p. 14, https://www.echr.coe.int/documents/guide_art_6_eng.pdf (20.03.2023).

law disputes and whose result is decisive for private rights and obligations or the protection of 'pecuniary rights'.[62] These include disciplinary proceedings concerning the right to practise a profession.[63] As was observed in the case of *Reczkowicz v. Poland*, '[i]t is the Court's well-established case law that disciplinary proceedings in which the right to continue to exercise a profession is at stake give rise to "contestations" (disputes) over civil rights within the meaning of Article 6 § 1'.[64] Moreover, Article 6 is applicable to proceedings connected with permission to sell land or concerning the withdrawal of the authorisation to run a private clinic, a building permission or a licence for serving alcoholic beverages.[65]

The issue of the application of Article 6 was also considered in the case of *Sine Tsaggarakis A.E.E. v. Greece*, in which a company which operated a cinema multiplex sought the annulment of permits granted to a competitor for the construction and use of a similar complex in a neighbouring district; they argued in particular that the urban plan reserved the area for housing development. The Court found Article 6 also applicable in this case, since the review of the lawfulness of the licences issued to the rival company was related to loss of clientele and clearly had a significant impact on the applicant's civil rights in the meaning of Article 6, Section 1, as it concerned the protection of their economic interests.[66]

An example of the application of Article 6 in proceedings concerning tax evasion could be the case of *Chambaz v. Switzerland*, in which the applicant, Yves Chambaz, was a Swiss national who had been the subject of several sets of proceedings for tax evasion, also involving a number of companies to which he was connected. Chambaz alleged a violation of his right not to incriminate himself under Article 6 and, under the same provision, also complained about the refusal to allow him to consult all the information in the federal tax authorities' possession. The Court observed that by

> fining Mr Chambaz for refusing to produce all the items requested, the authorities had put him under pressure to furnish documents which would have provided information on his income and assets for tax assessment purposes. By upholding the fines while an investigation was ongoing into alleged tax evasion concerning mat-

62 *Ibidem.*

63 Judgment of the ECtHR of 22 July 2021 on the case of *Reczkowicz v. Poland*, application no. 43447/19, §§ 183–185.

64 *Ibidem*, § 183.

65 Judgment of the ECtHR of 6 July 1971 on the case of *Ringeisen v. Austria*, application no. 2614/65, § 94; judgment of the ECtHR of 28 June 1978 on the case of *König v. Germany*, application no. 6232/73, §§ 92–96; judgment of the ECtHR of 23 September 1982 on the case of *Sporrong and Lönnroth v. Sweden*, application no. 7152/75, § 79; judgment of the ECtHR of 7 July 1989 on the case of *Tre Traktörer Aktiebolag v. Sweden*, application no. 10873/84, § 43.

66 Judgment of the ECtHR of 23 May 2019 on the case of *Sine Tsaggarakis A.E.E. v. Greece*, application no. 17257/13, §§ 38–43.

> ters linked to those in respect of which the applicant had exercised his right to remain silent, the Swiss courts had obliged him to incriminate himself.[67]

The Court also found that there was a breach of the principle of equality of arms, in that the taxpayer was not entitled to see all the documentation assembled by the tax authority, as the Swiss revenue authorities refused to disclose to him certain documents obtained from third parties unless he obtained consent from those third parties. It is noteworthy that the majority of the Court took a strict approach in this respect, taking the position that the only grounds on which a prosecution authority may refuse to supply documentation (whether helpful to the tax authorities or to the taxpayer) are those of protection of vital national interests or protection of the fundamental rights of third parties.

The extensive case law of the Court on Article 1 of Protocol 1, protecting property, can be of particular interest for and use to entrepreneurs. The ECtHR has consistently held that this provision applies, *inter alia*, to business assets, including shares in companies, intellectual property rights and goodwill. The limited framework of this study does not allow for a more comprehensive review of this case law. Therefore, by way of an example, some exemplary cases concerning tax issues and revocation of licences will be mentioned. An interesting example of the protection of business activities involving tax issues is the case of *Eko-Elda Avee v. Greece*, in which the applicant, a limited company specialising in petroleum products, complained of the tax authorities' refusal to pay it interest in compensation for the late payment of a tax credit in its favour. In its judgment finding a violation of Article 1 of Protocol 1 the Court stated, among other things, that

> the tax unduly paid was refunded on 12 November 1993, that is, five years and approximately five months after 24 June 1988, when the applicant company sought a refund of the sum that it had unduly paid from the Athens tax authorities dealing with limited companies. In the light of the foregoing, the Court considers that the authorities' refusal to pay late-payment interest for such a long period upset the fair balance that has to be struck between the general interest and the individual interest.[68]

The example of cases involving value added tax (VAT) issues connected with the failure of France to implement community law is offered by *S.A. Dangeville v. France*. The applicant was a firm of insurance brokers, whose commercial transactions were subject to VAT and who sought reimbursement of the amount it had paid in internal proceedings. The Court noted that the interference resulted from the legislature's failure to bring domestic law into line with a Community directive, such that the

67 Judgment of the ECtHR of 5 April 2012, on the case of *Chambaz v. Switzerland*, application no. 11663/04, §§ 50–68.

68 Judgment of the ECtHR of 9 March 2006 on the case of *Eko-Elda Avee v. Greece*, application no. 10162/02, § 31.

relevant administrative courts had to rule on the issue in question, and the applicant company could not be required to suffer the consequences of the difficulties that were encountered in assimilating Community law or of the divergences between the various national authorities. The Court ruled on the violation of Article 1 of Protocol 1 because the interference with the applicant company's right to the peaceful enjoyment of its 'possessions' was found to be disproportionate. It was the result of the 'negation of the applicant company's claim against the State and the absence of domestic procedures affording a sufficient remedy to ensure the protection of the applicant company's right to the peaceful enjoyment of its possessions'.[69]

In a series of cases, the Court found that the revocation of a licence to run a particular business activity amounts to a violation of Article 1 of Protocol 1. In the case brought by Bronisław Rosenzweig and a public company, Bonded Warehouses Ltd., it was alleged that the director of the local Duty Office's revocation of the permit for exporting merchandise via the Słubice border crossing violated the applicants' rights to the peaceful enjoyment of their property, protected under Article 1 of Protocol 1. In finding a violation of this right, the Court observed, among other things, the 'absence of any wrongdoing on the part of the applicants established by the domestic authorities' and that as 'the decisions concerning the licence were flawed for which no plausible reasons have been given by the respondent Government, the Court is of the view that it has not been shown that the authorities followed any genuine and consistent policy considerations when revoking and changing their decisions concerning the applicants' business operation'.[70]

As for taxation issues concerning entrepreneurs, an interesting case involving Article 4 (the right not to be tried or punished twice) of Protocol 7 is *Jóhannesson and Others v. Iceland*. The applicants complained that as a result of the imposition of tax surcharges and the subsequent criminal trial and conviction for aggravated tax offences, they had been tried and punished twice for the same offence. Their argument was that the two sets of proceedings had been based on identical facts.[71] The Court, finding a violation of Article 4 of Protocol 7, argued that 'the applicants suffered disproportionate prejudice as a result of having been tried and punished for the same or substantially the same conduct by different authorities in two different proceedings which lacked the required connection'.[72]

69 Judgment of the ECtHR of 16 April 2002 on the case of *S.A. Dangeville v. France*, application no. 36677/97, §§ 57 and 61.

70 Judgment of the ECtHR of 28 July 2005 on the case of *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, application no. 51728/99, §§ 62–64.

71 Judgment of the ECtHR of 18 August 2017 on the case of *Jóhannesson and Others v. Iceland*, application no. 22007/11, § 27.

72 *Ibidem*, § 56.

Conclusions

The analysis conducted in this study allows the confirmation of the hypothesis outlined in the introduction that although the ECHR is a relatively old international instrument and does not provide for any particular rights devoted to the running of a business by entrepreneurs, such as the freedom to conduct a business provided in Article 16 of the EU Charter, it nevertheless remains an important international instrument, giving entrepreneurs the international protection and enforcement of their rights in case they are violated at the national level. This is possible, first of all, due to the right of individual application, which may be lodged directly with the ECtHR as an international court. The right of individual complaint provides entrepreneurs with a recourse for seeking justice in cases where their human rights have been violated, even if there is no connection in a given case with EU law. This is an important feature of the system set up within the Council of Europe under the ECHR, as no measure comparable to an individual complaint was provided under the EU Charter. A judgment of the ECtHR finding a violation, apart from awarding just satisfaction, may also open the way to the renewal of proceedings at the national level, depending on the legal regulations in a particular country which is a party to the ECHR. Moreover, the obligation on state parties to apply general measures may result, among other things, in changing national legislation in favour of entrepreneurs.

Through the activist case law of the European Court of Human Rights, a number of rights protected under the ECHR and its protocols were interpreted broadly enough to cover the rights of persons running business activities. This extensive case law has made it possible for entrepreneurs to rely on a number of Convention rights, despite the fact that these rights, at least at first glance, are not connected with the running of a business. This refers not only to the right to a fair trial or the protection of property; these rights, extensively interpreted by the Strasbourg Court, offer entrepreneurs the protection of a number of their interests. However, rights which at first glance have nothing to do with the running of the business, such as the right to respect for private and family life protected under Article 8 of the Convention or the right to freedom of expression protected under Article 10, may also be applicable and invoked by entrepreneurs.

No less important are the various procedural aspects involved in the protection of entrepreneurs' rights under the ECHR, as mentioned in the above analysis. As was already mentioned, it is important for entrepreneurs to understand the process and requirements for submitting a complaint, and specific aspects connected with entrepreneurs or corporate subjects, in order to increase their chances of success in Strasbourg. In particular, the difficult stage of admissibility has to be particularly taken into account in order to avoid a complaint being declared inadmissible. An individual complaint under the ECHR remains important largely due to the extensive case

law of the ECtHR, yet is perhaps an often-underestimated enforcement tool as regards the protection of entrepreneurs' rights.

REFERENCES

Bajorek-Ziaja H., Skarga do Europejskiego Trybunału Praw Człowieka oraz skarga do Trybunału Sprawiedliwości Unii Europejskiej, Warsaw 2010.

Bodnar A., Ploszka A., Wpływ Europejskiej Konwencji Praw Człowieka na funkcjonowanie biznesu, Warsaw 2016.

Decision of the Court of 1 July 2010 on the case of *Korolev v. Russia*, application no. 2555/05.

Decision of the ECtHR of 13 January 2005 on the case of *Emesa Sugar N.V. v. the Netherlands*, application no. 62023/00.

Decision of the ECtHR of 23 September 2003 on the case of *Radio France and Others v. France*, application no. 53984/00.

Deshko L., Application of Legal Entities to the European Court of Human Rights: A Significant Disadvantage as the Condition of Admissibility, 'Croatian International Relations Review' 2018, vol. 24, no. 83.

European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights. Right to a Fair Trial (Civil Limb), Council of Europe 2022, p. 14, https://www.echr.coe.int/documents/guide_art_6_eng.pdf.

European Court of Human Rights, Practical Guide on Admissibility Criteria, https://www.echr.coe.int/documents/admissibility_guide_eng.pdf.

European Law Institute, Business and Human Rights: Access to Justice and Effective Remedies, Report of the European Law Institute 2022, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Business_and_Human_Rights.pdf.

Garlicki L., Wartości lokalne a orzecznictwo ponadnarodowe – 'kulturowy margines oceny' w orzecznictwie strasburskim? 'Europejski Przegląd Sądowy' 2008, no. 4.

Garlicki L. (ed.), Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, vol. I: Komentarz do artykułów 1–19, Warsaw 2011.

Gronowska B., Pozycja jednostki w systemie procedury kontrolnej Europejskiej Konwencji Praw Człowieka z 1950 r., (in:) Balcerzak M., Czeczko-Durlak A. (eds.), Księga Jubileuszowa Prof. dra hab. Tadeusza Jasudowicza, Toruń 2004.

Harris D., O'Boyle M., Bates E., Buckley C., Law of the European Convention on Human Rights, Oxford 2018.

Judgment of the ECtHR of 26 June 1992 on the case of *Drozd and Janousek v. France and Spain*, application no. 12747/87.

Judgment of the ECtHR of 24 October 1995 on the case of *Agrotexim and Others v. Greece*, application no. 14807/89.

Judgment of the ECtHR of 24 February 2009 on the case of *Dacia S.R.L. v. Moldova*, application no. 3052/04.

Judgment of the ECtHR of 15 November 2011 on the case of *Hovhannisyan and Shiroyan v. Armenia*, application no. 5065/06.

Judgment of the ECtHR of 23 January 2014 on the case of *East/West Alliance Limited v. Ukraine*, application no. 19336/04.

Judgment of the ECtHR of 28 May 2019 on the case of *Liblik and Others v. Estonia*, application no. 173/15.

Judgment of the ECtHR (Grand Chamber) of 13 November 2007 on the case of *D.H. and Others v. the Czech Republic*, application no. 57325/00.

Judgment of the ECtHR (Grand Chamber) of 7 June 2012 on the case of *Centro Europa 7 S.R.L. and Di Stefano v. Italy*, application no. 38433/09.

Judgment of the ECtHR (Grand Chamber) of 19 December 2017 on the case of *Lopes de Sousa Fernandes v. Portugal*, application no. 56080/13.

Judgment of the Court (Grand Chamber) of 7 July 2020 on the case of *Albert and Others v. Hungary*, application no. 5294/14.

Judgment of the ECtHR of 6 July 1971 on the case of *Ringeisen v. Austria*, application no. 2614/65.

Judgment of the ECtHR of 28 June 1978 on the case of *König v. Germany*, application no. 6232/73.

Judgment of ECtHR of 6 September 1978 on the case of *Klass and Others v. Germany*, application no. 5029/71.

Judgment of the ECtHR of 22 October 1981 on the case of *Dudgeon v. the United Kingdom*, application no. 7525/76.

Judgment of the ECtHR of 23 September 1982 on the case of *Sporrong and Lönnroth v. Sweden*, application no. 7152/75.

Judgment of the ECtHR of 7 July 1989 on the case of *Tre Traktörer Aktiebolag v. Sweden*, application no. 10873/84.

Judgment of the ECtHR of 20 November 1989 on the case of *Markt Intern Verlag Gmbh and Klaus Bermann v. Germany*, application no. 10572/83.

Judgment of the ECtHR of 21 January 1999 on the case of *García Ruiz v. Spain*, application no. 30544/96.

Judgment of the ECtHR of 12 July 2001 on the case of *Ferrazzini v. Italy*, application no. 44759/98.

Judgment of the ECtHR of 16 April 2002 on the case of *S.A. Dangeville v. France*, application no. 36677/97.

Judgment of the ECtHR of 28 July 2005 on the case of *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, application no. 51728/99.

Judgment of the ECtHR of 9 March 2006 on the case of *Eko-Elda Avee v. Greec*e, application no. 10162/02.

Judgment of the ECtHR of 5 April 2012 on the case of *Chambaz v. Switzerland*, application no. 11663/04.

Judgment of the ECtHR of 23 February 2017 on the case of *de Tommaso v. Italy*, application no. 43395/09.

Judgment of the ECtHR of 18 August 2017 on the case of *Jóhannesson and Others v. Iceland*, application no. 22007/11.

Judgment of the ECtHR of 23 May 2019 on the case of *Sine Tsaggarakis A.E.E. v. Greece*, application no. 17257/13.

Judgment of the ECtHR of 10 September 2019 on the case of *Pryanishnikov v. Russia*, application no. 5047/05.

Judgment of the ECtHR of 9 March 2021 on the case of *Bilgen v. Turkey*, application no. 1571/07.

Judgment of the ECtHR of 22 July 2021 on the case of *Reczkowicz v. Poland*, application no. 43447/19.

Judgment of the ECtHR of 16 April 2022 on the case of *Société Colas Est and Others v. France*, application no. 37971/97.

Judgment of the ECtHR (Grand Chamber) of 16 December 1992 on the case of *Niemietz v. Germany*, application no. 13710/88.

Judgment of the ECtHR (Grand Chamber) of 29 April 2008 on the case of *Burden v. the United Kingdom*, application no. 13378/05.

Judgment of the ECtHR (Grand Chamber) of 17 July 2014 on the case of *Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania*, application no. 47848/08.

Judgment of the ECtHR (Grand Chamber) of 15 March 2022 on the case of *Grzęda v. Poland*, application no. 43572.

Notes for Filling in the Application Form, https://www.echr.coe.int/Documents/Application_Notes_ENG.pdf.

O'Brien C.M., Business and Human Rights: A Handbook for Legal Practitioners, Council of Europe, Strasbourg, 2018.

Randall M.H., Commercial Speech under the European Convention on Human Rights: Subordinate or Equal? 'Human Rights Law Review' 2006, vol. 6, no. 1.

Resolution of the Supreme Court of 30.11.2010, III CZP 16/10.

United Nations Office of the High Commissioner, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, New York/Geneva 2011, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.