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The influence of CSR on the right to a fair remuneration

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*„Im Reiche der Zwecke hat alles entweder einen Preis, oder eine
Würde. Was einen Preis hat, an dessen Stelle kann auch etwas
anderes als Äquivalent gesetzt werden; was dagegen über allen
Preis erhaben ist, mithin kein Äquivalent verstattet, das hat eine
Würde.“*

(Immanuel Kant, Grundlegung zur Metaphysik der Sitten, 1781)

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Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ASEAN	Association of South East Asian Nations
ATCA	U.S. Alien Tort Claims Act 1789
BSR	Business for Social Responsibility
CECP	Committee Encouraging Corporate Philanthropy
CESCR	Committee on Economic, Social and Cultural Rights
CFR-EU	Charter of Fundamental Rights of the European Union
CoC	Code of Conduct
CoE	Council of Europe
CoP	Communication on Progress
CSR	Corporate Social Responsibility
EC	European Commission
ECB	European Central Bank
ECSR	European Committee of Social Rights
EICC	Electronic Industry Citizenship Coalition
ESC	European Social Charter
ETI	Ethical Trading Initiative
ETUC	European Trade Union Confederation
EU	European Union
EWCO	European Working Conditions Observatory
FLA	Fair Labour Association
GSCP	Global Social Compliance Programme
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTY	International Criminal Tribunal for Yugoslavia
ILC	International Labour Conference
ILO	International Labour Organization
IMF	International Monetary Fund
MNE	Multinational Enterprise
n.d.	no date available
NGO	Non-governmental Organisation
OECD	Office for Economic Co-Operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PPP/PPS	Purchase Power Parity/Purchase Power Standard
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNGC	United Nations Global Compact
U.S.	United States of America

Methodology

In order to assess the international legal basis, the relevant texts and decisions by the respective committees, scholastic opinions and practitioners' publications were reviewed by applying methods of legal interpretation. Contextual interpretation and textual analysis were used as main instruments of the legal assessment.

The second chapter resulted from an expert interview¹ with Daniel Vaughan-Whitehead, a specialist on wages at the ILO, concerning a report on minimum wages, during which he elaborated on the differences in the wage systems. In the course of this interview it was mentioned that the ILO currently applies the minimum wage system and promotes the living wage approach. Subsequently literature research was conducted mainly in the ILO library and the ILO working conditions law database, to establish the requirements, e.g. definition of employment, and the three different approaches of wage determination, also including the legal assessment.

For the chapter on CSR the main method was literature review. Using among others several ILO databases providing access to a wide range of journals and publications, the ILO library, the search engine of the Austrian Library Network (Österreichischer Bibliothekenverbund) and the library of the University of Vienna. The main terminology used for the search of available literature was wage, minimum wage, living conditions, corporate social responsibility and corporate human rights as well as combinations of these examples. As a result approx. 4000 pages of articles, books, and available studies have been reviewed. A high percentage thereof could not be included because of insufficient closeness to the topic in question. Many of them dealt with CSR in general or with a connection of CSR in relation to environmental issues. Very few dealt with social issues and even less with remuneration and employment. The ones available in this area were subsequently included in the thesis. Articles and other publications were chosen according to their relevance, date

¹ Bortz/Döring, 2003, p. 314.

of publication and line of argument. It was tried to present a mean of opinions neglecting obviously biased, whether positive or negative, publications.

The last chapter was intended to reflect the effects of a lack of dignity, witnessed through media reports from various situations all over the world. They either reflect a development over several years, maybe even decades, others are more a snapshot in time.

Introduction

A manager, who just returned from a seminar on motivation techniques, addresses an employee:

“From today on, you will be free to plan and supervise your work yourself. I am sure it will bring a rise in productivity.”

The employee asked: “Will I get more money?”

“No, of course not. Money is not a very good incentive and does not bring real satisfaction.”

“If the productivity really rises, will I then get more money?”

The manager replies: “Listen, you don’t seem to understand me. I want to motivate you. Take this book home with you and read it. You will learn what really motivates you.”

The employee leaves, but stops at the door to turn around and ask: “If I read the book, will I then get more money?”

On average one third of each day is spent at work, making it a big part of human life. For a long time now, it seems, people are diminished to represent just another resource in the production process. A person is reduced to the value he or she can add to the product, regardless of the existence that person represents.

The inherent human dignity is, among others, expressed through the human rights system but in everyday life, dignity often seems to be forgotten.

The reason for this thesis is a complex chain of causation, which has to be displayed in a highly simplified way. Otherwise it would exceed the limitation of this thesis.

Throughout the economic crises it became obvious that cost cutting and austerity measures could only partially solve the problems at hand. As news media reported for the last few years, billions were spent on bank bailouts while, according to data collected by Eurostat, social services expenditure increased

only between 0.1 and 4 per cent in the 28 member states of the European Union (EU) between 2008 and 2011. The costs of living were rising while the average income remained on the same level or decreased. It became increasingly difficult to support a decent living, which sometimes in human rights literature is called a life in dignity. This discrepancy paved the way for the conclusion that a remuneration, which expresses the inherent dignity of a person, should be sufficient to afford at least an adequate standard of living and still provide for additional income. This remaining income would usually be spent on luxury goods thereby increasing market turnover. The increase could lead to higher investment by corporations boosting the general economic output. A fair wage system would then again enable workers to participate in this higher turnover allowing for increased wages, restarting the circle and leading to an upwards spiral instead of a race to the bottom.

During the period of enlightenment philosophers occupied themselves with the thought of human dignity and how it can be justified and promoted. However the underlying concept of dignity is as unclear today as it was back then. It is often seen to be based in the bible thus representing Christian, equivalent to western values. Kant reflected about the relation of dignity and business and managed to separate the ties to the bible by interpreting dignity as a characteristic, clarifying that whatever has a value can be replaced by an equivalent but whatever is superior to value, has dignity, and therefore cannot be replaced.² His interpretation does not make any reference as to where human dignity could derive from as his explanation is based solely on the comparison of dignity and value as a means to an end. The philosophical concept is expressed in a number of concrete rights and freedoms by the human rights system.³ The Universal Declaration of Human Rights 1948 (UDHR) even literally includes in article 1 “All human beings are born free and equal in dignity and rights [...]”

² Kant, 1785, p. 434.

³ Wettstein, 2012, p. 741.

The right to gain one's living by work is an established right and the right to a fair remuneration clarifies that, wage paid for work should be sufficient to provide an adequate standard of living. The interaction of these rights is an essential expression of Kant's interpretation of human dignity. A person should earn enough to be able to afford a dignified living. Therefore it is relevant that the wage setting process incorporates human dignity. The chance to earn a living through work and this work being a decent work with just and favourable working conditions contributes to a dignified live and therefore is the starting point for human dignity in the business context.⁴ That link was also reflected in the Declaration of Philadelphia and subsequently accepted by the international community.⁵ If a person was merely seen as a worker who's sole purpose in life is to work, any remuneration would suffice. However if that is not the case and the person is seen to be a dignified being, it can no longer be justified to pay the absolute minimum or even less, to merely cut down on costs. By implementing this cost cutting strategy the inherent dignity of a person is taken away and replaced by a value. Thus leaving people to be exchangeable if they are not willing to work for a minimum income. Suppliers will certainly be able to find somebody who accept a minimum wage, simply because for many people it is the only way to survive. Therefore it is inevitable that this change is mandated from the top down. Under the current circumstances the people don't possess the power to change that attitude towards them.

Over the last decades the importance of human rights in the international system has increased. It is no longer solely a subject for states. It has also become important for companies and individuals to know the rights and responsibilities deriving from it.

The United Nations (UN) Business and Human Rights approach has put further pressure on companies to respect human rights in their conduct of business. Even though adherence is voluntary, many corporations included human rights

⁴ Moeckli et al., 2014, p. 256.

⁵ Drzewicki, 2001, p. 224.

provisions in their Corporate Social Responsibility (CSR) actions or acceded to international monitoring initiatives. Their main task is to monitor and evaluate their member's corporate behaviour concerning human rights.

In order to establish the connection between human dignity and CSR, this thesis first elaborates on the international and regional human rights frameworks. This also integrates the framework of the International Labour Organization (ILO), a specialised body of the UN, concerning the right to a fair remuneration as a part of the right to work. The second chapter looks at the various systems of remuneration and clarifies how these are an implementation of interpretations by the respective committees to a practical level. This chapter also provides some statistical data on the current levels of income in the EU member states. The first two chapters answer the following research question:

How is the international legal framework incorporated in the three depicted wage systems?

The third chapter then moves on to briefly presenting CSR in general and in further detail how CSR initiatives and corporate code of conducts include remuneration. In presenting existing literature it tries to establish proof that CSR actually impacts wage levels. The presented content of some CSR standards and codes of monitoring initiatives presents a reflection of the legal framework examined in chapter one. It answers the following research question:

Are wages considered in CSR strategies and if so, what are the consequences?

Concluding, the fourth chapter contains some examples of consequences of disrespect of human dignity today's world and possible results if the current system prevails.

This structure was chosen because it seemed relevant to first establish a common groundwork by clarifying the legal basis for the rights in question. As a second step it is possible to see how practitioners in international organisations or non-governmental organisations (NGOs) implement the legal basis in every day life. Therefore the first two chapters focus on the groundwork and as third step, the voluntary business approach is taken into consideration.

Overall, it supposes to provide a view from the normative, the supervisory and the practical side on the narrow topic of remuneration in CSR. The general explanations on each chapter are important in order to define the area of work because of the strong linked with other field of expertise. The aim of this thesis is to provide reasoning for the introduction of a pay system that provides workers with a level of income, which enables them to sustain a dignified existence. The reasons should be based on an evaluation of the existing human rights system

On a general remark it is important to note that, wage or salary usually means the actual payment received for work, whereas remuneration also considers social security payments and other benefits e.g. bonuses paid to a worker.⁶ However for the extent of this thesis the words are used synonymously except if stated otherwise because of the strong link of the right to a fair wage, the right to an adequate standard of living and the right to social security.

⁶ Saul/Kinley/Mowbray, 2014, p. 403f.

1. Legal Framework

The International Bill of Human Rights consists of three main documents. The UDHR, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In the first stages of drafting, the Drafting Committee decided to prepare two documents. A declaration to set forth the general principles and a Convention to include the more specified rights and limitations. Within one year the UDHR was drafted and adopted by the UN General Assembly. By that time, civil and political rights were still seen to be superior to economic, social and cultural rights. Therefore the eastern and western states, representing different ideological views, could not agree on one covenant, thus leading to the adoption of the two covenants.⁷ With the end of the Cold War the ideological disputes between East and West diminished. The equality, indivisibility and interdependence of all human rights became the common understanding and found expression in article 5 of the 1993 Vienna Declaration and Programme of Action.⁸

When it comes to international human rights, states have the obligation to respect, protect and fulfil. The state obligation to respect means that a state has to refrain from interference with human rights unless permitted by a respective derogation or limitation clause. For example the right to personal liberty can be limited by detention following a lawful conviction. The obligation to protect means the imperative of states to implement positive measures, protecting individuals against human rights violations by other private actors. This can be achieved through the implementation of national laws, bringing the international duty to a national level and enforcing sanctions. The obligation to fulfil means that states have to take the necessary steps in a legislative, administrative, judicial, political and whatever other area, in order to provide an environment

⁷ OHCHR, n.d, *Fact Sheet No. 2 - The International Bill of Human Rights*, at: <http://www.ohchr.org/EN/PublicationsResources/Pages/ArchivesFS.aspx> (consulted 8 June 2014) pp. 1f.

⁸ Nowak, 2012, p. 270.

where the full realisation of human rights is ensured to the greatest extent possible.⁹

1.1. International Framework

The introduction on the legal framework showed that the UDHR is one of the first international frameworks on human rights and up to today it retained its importance. Therefore the discussion on the international legal system will commence by presenting the relevant articles in the UDHR, then moves on to the two covenants and concludes with the respective ILO conventions.

Subsequently the regional frameworks are discussed in order to complete the legal basis.

1.1.1. Universal Declaration of Human Rights Article 23

Articles 23f UDHR cover the right to work, as well as the subsequent labour rights. The provisions include the freedom to choose an employment as well as the right to be self-employed. A clause for the prohibition of discrimination is set to ensure payment of equal wages for equal work. Important in this context is also the inclusion of just and favourable remuneration ensuring “an existence worthy of human dignity”¹⁰, in article 23 para. 3. Like most international instruments the UDHR lacks an interpretation of what it considers to be human dignity. The contextual interpretation allows for the conclusion that remuneration should ensure the survival of the family without constant anxiety for survival. If that cannot be secured through income it has to be supplemented by other means of social security. Thus leaving states in the duty to implement wage standards enabling everybody to support themselves and, in cases where this right is not safeguarded through wages, back it through public services.

Fassbender commented that the experience of the economic crisis between World War I and II was a detriment to democracy and facilitated the integration

⁹ Ibidem.

¹⁰ Gandhi, 2012, p. 12.

of the right to work and the respective labour rights in the UDHR.¹¹ Since the rights of the UDHR were included in the two Covenants, the detailed extent of the right to work is included in the chapter on article 6-8 of the ICESCR.

1.1.2. International Covenant on Economic, Social and Cultural Rights Articles 6-8

The right to work includes many different facets. It is not simply the one right but contains a number of labour related details. It entails classic freedoms, e.g. the freedom from slavery, modern rights approaches and some perspectives reflecting political commitments rather than strict legal obligations.¹²

The ICESCR deals with the right to work in the most comprehensive way whereas other treaties include mainly parts of it. The provisions contain the right to work and the rights in work in articles 6-8. Each one of these provisions deals with another aspect of the right to work. Nevertheless it is necessary to interpret them as one set because together they create a group of interlinked rights.¹³

The following chapters elaborate on the right to work mainly according to the interpretation by the Committee on Economic Social and Cultural Rights (CESCR) in its General Comment 18.

1.1.3. Right to Work Article 6

Content

Article 6 reads as follows:

“1. The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance

¹¹ Fassbender, 2009, p. 153.

¹² Supra note 5, p. 227.

¹³ CESCR, 2006, E/C.12/GC/18, para. 8.

and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”¹⁴

Interpretation

Para. 1 lays down the fundamental principle of the right to work. It is not to be understood as the right to have work. The states are under no obligation to provide a job for every citizen. However, it is the right to freely choose or accept employment including the right not to be forced into an employment, the equal access to job opportunities¹⁵ and the right not to be arbitrarily deprived of work.¹⁶ It also includes the obligation of states to adopt a national employment policy, in order to ensure a progressive expansion of job quantity and quality of employment opportunities. In other words, the state is not obliged to guarantee full employment but the national policy should be directed towards achieving this goal.¹⁷ Some of the obligations included in the right to work have an immediate effect e.g. the prohibition of slavery or non-discrimination regulations. Others are open to progressive realisation, like the above stated example to achieve full employment.¹⁸ That means that the state fulfilled its obligations under ICESCR even though the full realisation of the right is not yet reached. The state has the obligation to enable the individual to gain his or her living by work.

According to article 23 para. 3 UDHR this would be a “[...] remuneration ensuring for himself and his family an existence worthy of human dignity [...]”. This formulation leads to the conclusion that ‘work’ is supposed to include only paid work leaving a wide gap in the protection of those who conduct unpaid work like apprenticeships, professional internships or community work.¹⁹

¹⁴ Supra note 10, p. 50.

¹⁵ Supra note 13, para. 6.

¹⁶ Ibidem, para. 4.

¹⁷ Supra note 6, p. 280.

¹⁸ Ibidem.

¹⁹ Ibidem, p. 281.

Another aspect contained in para. 1 is the inclusion of wage-dependent workers as well as independent workers. Therefore the right to work is valid for employees as well as self-employed persons.²⁰

The right to work is not only an individual right but also a collective right.²¹ The obligation to safeguard this right contains among others, that the work available is 'decent work' which respects the fundamental principles of employment and the fundamental rights of the employee.²²

As a result, the aspects covered in para. 1 include:

- all individuals whether self-employed or in wage-paid work;
- fair chance and possibility to obtain employment;
- freedom from forced labour;
- access to a system of protection;
- fair and safe working conditions;
- respect for the fundamental rights of the worker.

The two state obligations contained in para. 2 are to implement measures benefiting the individual and supportive measures for the greater public. The first includes technical and vocational trainings while the second includes policies and techniques to achieve steady economic, social and cultural development. The overarching aim should be to achieve full and productive employment under conditions, which safeguard fundamental political and economic freedoms. The wording shows the importance of a combination of these two strategies. The societal development is inseparably linked to the personal development of everybody and only by providing training and guidance for the individual, development in society can be achieved.

²⁰ Supra note 13, para. 6.

²¹ Ibidem.

²² Ibidem, para. 7.

The obligation to respect concerning the right to work means that, the state has to implement the prohibition of forced labour, yet the state cannot implement measures that limit or restrict access to the labour market. It is the state's duty to ensure equal access to and opportunity in the labour market.²³

The state's obligation to protect includes the need for the states to make sure that privatisation and increased flexibility of labour markets does not undermine the rights of workers. Additionally it is necessary to implement legislation in order to ensure legal compliance of private actors.²⁴

The obligation to fulfil contains the duty of the state to implement legislation and the obligation to empower the groups, which are for themselves, unable to fully realise their right to work. This can for example be achieved through a suitable employment policy. Additionally the state must effectuate policies to further the economic development and therefore positively effect the labour market. It includes the need to facilitate employment agencies, technical and vocational training and assistance for individuals accessing the labour market. Also, information to raise the awareness of the right to work should be increased.²⁵

1.1.4. Labour Rights Article 7

Content

Article 7 reads as follows:

"The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration, which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to these enjoyed by men, with equal pay for equal work;

²³ Supra note 13, para. 23.

²⁴ Ibidem, para. 25.

²⁵ Ibidem, para. 26ff.

- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”²⁶

Interpretation

Article 7 regulates labour rights, providing more details for the individual concerning the right to work. It specifies the rights of every individual when he or she accepts employment. On the four pillars enumerated by article 7 the ILO issued a number of conventions, recommendations and codes of practices.²⁷ While some of them provide a general framework others deal with specific topics, branches of economic activity or specific risks.²⁸ Working time has always been a main issue for the ILO. This is proven by the fact that the very first ILO convention from 1919 dealt with the limitation of hours of work in industrial undertakings. However, some of these many instruments have been in place for a rather long time leaving them outdated and no longer applicable to the evolving needs of today's economy.²⁹ The ILO general survey 2005 'Hours of Work', proposed a number of additional elements, which should be taken into account in any new instrument concerning working time. Probably the most important considerations for today's economy is the increased flexibility of

²⁶ Supra note 10, p. 51.

²⁷ ILO, 2013b, *Normlex Database*, at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0> (consulted 28 October 2013).

²⁸ ILO, 2014, *Standards concerning safety and health at work*, at: <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang-en/index.htm> (consulted 27 October 2013).

²⁹ ILO, 2011, para. 36.

working time, notwithstanding the continued respect for a limitation of working hours.³⁰

In general, the rights in work have a broad scope and present a link from the right to work to other areas of life. For example the limitation of working hours and the right to rest and leisure is a link to the family rights but is also a connection to the right to health. The same can be said for the right to safe and healthy conditions of work.³¹ Nevertheless, a feature of article 7 is that everybody has the right to just and favourable conditions of work. It is important to notice because usually, with respect to protection of workers, vulnerable groups like workers in the informal sector, home workers or women tend to be less protected. However they have the right to enjoy satisfactory working conditions and additional attention should be directed to their protection.³² In the drafting procedure, article 7 was a compromise between eastern and western economic systems³³, thus expresses the most universally agreed principles and, in order to avoid replication of ILO convention it introduces regulations that aspire the aim of the UDHR while being specific enough to present a link to the even more detailed ILO mechanisms.³⁴

Right to an adequate remuneration lit. a

Article 7 lit. a, as quoted above, stipulates the right to a fair and equal remuneration providing at least for a decent living.

Where in the beginning article 7 set out to include everybody, lit. a specifically mentions workers. This limitation struck a long debate in the drafting process as to exactly which groups should be included by that wording. In the end a broad meaning was attributed, excluding only those who do not draw any kind of remuneration like volunteers.³⁵ This leaves the problem of the modern development where professional interns are often unpaid and thereby excluded

³⁰ ILC, 2005, para. 332.

³¹ Supra note 6, p. 393.

³² Ibidem, p. 394.

³³ Siegel, 2002, p. 23.

³⁴ Supra note 6, pp. 394f.

³⁵ Ibidem, p. 399f.

from the protection of article 7, leaving young professionals with no means to earn their living.

The equality of remuneration incorporates the prohibition of discrimination of any kind but especially the equal treatment of women when it comes to wages. Concerning this aspect the ILO general survey 2012 included that, in the minimum wage setting mechanism it is important that typical 'female' skills are not overlooked or undervalued since this is an inherent discrimination of women.³⁶ The provisions impose that equal payments have to be made for work of equal value. This does not take into account that women often work in jobs less physically demanding or seemingly less dangerous than those occupied by men and therefore automatically receiving lower wages.

The second part sets the requirement for the remuneration to provide a decent living for the worker and his family. The general comment no. 18 does not make any reference as to what a decent standard of living should mean. It only refers to everybody having access to decent work, meaning that the employment respects the fundamental rights of workers with respect to conditions of work, safety and remuneration. Nevertheless article 11 clarifies that the parties to the ICESCR "[...] recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."³⁷ This is a separate provision determining the elements of a dignified life, but it also serves as basis of interpretation of article 7 concerning a decent living standard. The ILO repeatedly mentions the necessities of food, housing, clothing, education and recreation. Therefore the needs cover the basic survival needs as well as opportunities in live and the chance to improve living conditions.³⁸ The general comments nos. 4 and 12 provide clarifications on article 11 covering adequate housing and food. The CESCR expresses the opinion that "[...] the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's

³⁶ ILO, 2012, para. 706.

³⁷ Supra note 10, p. 52.

³⁸ Supra note 6, p. 409.

head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.”³⁹ Subsequently the CESCR clarifies that this interpretation is in accordance with the fundamental principle of human dignity upon which the covenant is premised. In the context of remuneration the statement of the Committee on affordability of household commodities states, “[...] personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels.”⁴⁰

Concerning the right to food and its accessibility the Committee clarifies that “[...] economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.”⁴¹ The fact sheet no 16 of the CESCR states “[...] wages must be equitable and just in order to be considered fair.”⁴²

When taking into account the reference to the facilitation of a decent living in article 7 ICESCR and considering article 11, it can be concluded that wages should at least provide for sufficient nutrition including clean water, clothing, housing and discretionary income to cover additional costs like medical care, education and cultural participation.

The dual approach displayed in lit. a, intends to reflect two different concepts. Whereas one could think of fair wage and decent living aiming for the same goal they were actually intended to represent two different goals. The need to afford a decent living is supposed to provide the means to finance a minimum standard of living for the worker and his family. The fair wages on the other

³⁹ CESCR, 1992, E/1992/23, para. 7.

⁴⁰ Ibidem, para. 8(c).

⁴¹ CESCR, 1999, E/C.12/1999/5, para. 13.

⁴² CESCR, 1991a, p. 8.

hand should take into consideration a greater concept, also respecting greater distributive, economic needs and qualitative standards. The wage should be fair for the employee and the employer.⁴³ Yet these considerations cannot allow for discrimination, wages below the level necessary to ensure existence or endanger vulnerable groups.⁴⁴

It is also relevant to note this dual system because in a number of observations⁴⁵ the CESCR emphasised the decent living aspect whereas it tended to neglect the above described fair wage aspect.⁴⁶

1.1.5. Right to form trade unions Article 8

Content

Article 8 reads as follows:

“1. The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organisations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

⁴³ Ibidem, 405f.

⁴⁴ Supra note 6, p. 409.

⁴⁵ among others, CESCR, 2001, E/C.12/1/Add.60, para. 17; CESCR, 2002, E/C.12/1/Add.78, para. 34; CESCR, 2010, E/C.12/AFG/CO/24, para. 23; CESCR, 2004, E/C.12/1/Add.105, para. 39.

⁴⁶ Supra note 6, p. 406f.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.”⁴⁷

Interpretation

Article 8 provides the basis for the collective side of the right to work.⁴⁸ The general comment no. 18 of the CESCR also mentions that, “[...] collective bargaining is a tool of fundamental importance in the formulation of employment policies.”⁴⁹

It provides the possibility for the workers to form trade unions and thereby defend their rights in case of violations. It is also one form of the freedom of association where the ILO has implemented a number of conventions and recommendations.⁵⁰

The freedom of association is the way for workers to ensure their economic and social status.⁵¹ It is enshrined among others, in the ILO constitution.

Nevertheless article 8 contains more than the freedom of association, it also includes the prohibition of discrimination on the grounds of membership in an industrial council and the possibility to publicly claim and defend rights. There is still the reservation that the right can be legally restricted if that restriction is necessary in a democratic society, in the interests of national security, public order or for the protection of the rights and freedoms of others. However, any

⁴⁷ Supra note 10, p. 51.

⁴⁸ Supra note 13, para. 2.

⁴⁹ Ibidem, para. 39.

⁵⁰ Supra note 27.

⁵¹ Human Rights Education and Associates, 2007, *Freedom of Assembly and Association*, at: http://www.hrea.org/index.php?doc_id=406 (consulted 27 October 2013).

restriction exceeding this scope constitutes a violation of the freedom of association.

In comparison to articles 6 and 7, article 8 is not open to progressive realisation and the rights derived from it are directly applicable as the word 'ensure' in para. 1 indicates.⁵² A reason for this distinction could be that, even though the right to organise may not be as essential for survival as the right to food, water or remuneration, unions influence the national labour standards. They are often responsible to lead collective bargaining and labour campaigns in order to secure better working conditions. Therefore they are a crucial element to enable workers and facilitate the protection of workers rights.

The main state obligation addressed by this article is the obligation to respect by means of ensuring that there is no legislation that could hinder the exertion of the right. That means for example that the state should not implement legislation, requiring prior state authorisation for the establishment or approval of the union's constitution.⁵³ The obligation to protect means that the state has to prevent any interference from a third party, e.g. if an individual is laid off because of the membership in a trade union, there have to be legal means to provide remedy for the unjustified deprivation of employment. The obligation to fulfil includes the implementation of legislation allowing for the right to be exercised, which in this case means to allow the founding and operation of trade unions.⁵⁴

However with respect to the ILO Freedom of association convention it is considered that the rights of article 8 are valid for employers as well as workers associations. Therefore both sides have the right to seek representation for the promotion of their interests.⁵⁵

⁵² Supra note 6, p. 495.

⁵³ Ibidem, p. 508.

⁵⁴ OHCHR, 2013, *International Human Rights law*, at: <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx> (consulted) 27 October 2013.

⁵⁵ Supra note 6, p. 496f.

The chapter has shown that the right to work even though it seems to be specified merely in article 6 ICESCR contains a lot more than just the right of everybody to gain his/her living by work.

The interaction of the three articles provides for the full scope of realisation providing the possibility to have work and to choose this work freely, according to the scope of personal development, to have a decent work where nobody should be deprived of a minimum amount of standards, as well as the possibility to defend ones rights in case of violation.

1.1.6. International Covenant on Civil and Political Rights Article 22

The ICCPR⁵⁶ deals with another set of rights than the ICESCR therefore concerning the right to work and labour rights, it includes the prohibition of slavery and forced labour in article 8 and the freedom of association in article 22. This includes the freedom to form and join trade unions, which are the respective authorities to represent the interests of their members, and thus influence remuneration. Therefore article 22 has an indirect connection to the right to a fair remuneration, since trade unions represent their members in a multitude of topics. The freedom of association includes the right to join trade unions and it also covers industrial councils, which sometimes have a more direct impact ensuring the rights of employees. Without the freedom of association, the payment of adequate wages could not be ensured.

In order to facilitate the payment of fair wages it is vital to facilitate good workers representation on a local, national and international basis. The details of the right to form and join trade unions have already been discussed in the previous chapter and therefore shall not be repeated in such great extent.

1.1.7. ILO conventions on wages (C. 26,94,95,99,131,173)

The unique tripartite structure of the ILO enables it, to negotiate solutions commonly accepted by governments, employer organisations and employee

⁵⁶ Supra note 10, p. 33-49.

representatives. The ILO conventions⁵⁷ nos. 26, 94, 95, 99, 131 and 173 deal with wages, mainly the minimum wage-fixing machinery, labour clauses, protection of wages and the protection of workers claims in case of insolvency. These conventions are supplemented by 6 recommendations concerning the same topics. Yet there are a number of other recommendations indirectly touching upon the topic like recommendations nos. 001, 088, 091, 117, 143, 163, 165, 182 and 184. Even though these instruments deal with the topic of wages in general, they do not consider the issue of fair or adequate remuneration.

Since income is crucial for the workers, the ILO established several conventions dealing with different aspects of remuneration. The conventions 26, 99 and 131 are dealing with the topic of minimum wage fixing. They include regulations stating that, before the minimum wage fixing machinery enters into force, the representatives of workers and employers must be consulted concerning the mechanism and the envisaged wage level. C131 article 3 and R135 article 3 stipulate that the minimum wage should be set at a level that considers:

- The needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
- Economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Recommendation 135 proposes in article 6 a variety of ways for states to set the minimum wage. They include among others statute, decision of competent councils, tribunals or legally enforceable collective agreements. These provisions of C131 and R135 are crucial for several reasons identified in the 'Global Risks 2014 Report' of the World Economic Forum. The increase in youth unemployment is one of the major risks for the coming generation. This

⁵⁷ ILO key documents, among them Conventions and Recommendations, are available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:61:0::NO:61::>

generation needs to sustain their own living, pay off the debts collected through higher education and support an ageing population whereas unemployment rates are at an historic high among young people.⁵⁸ The economic downturn in developed countries over the last years and the pressure to secure their living with decreasing income, are additional factors that need to be considered when setting minimum wages.

The C95 is the protection of wages convention. It largely deals with provisions on how, where and when wages should be paid, the prohibition of wage deductions and regulations to ensure payment of wages. This convention is a part of the fair wage approach developed by Vaughan-Whitehead. The Convention covers the conditions included in the first aspect of a fair wage, which would be the regular and formal payment of a full wage.⁵⁹

In order to ensure a safe and healthy environment for civil servants of member states, the C94 introduces labour standards for officials. Article 2 explicitly deals with the subject of wages insofar as the conditions and level of wages are not allowed to be less favourable for workers employed by public authorities than for work of the same character in the trade or industry concerned. Especially since workers in a public labour contract might not be covered by workers representation. The conditions therefore have to equal the conditions established by a collective agreement, arbitration award, national laws or regulations. Article 5 also includes the introduction of adequate sanctions in order to enable workers to claim their rights.

Concerning the workers claims, the ILO issued a convention dealing with the case of insolvency of the employer. The C173 stipulates that workers claims arising out of the employment relationship should be covered by means of privilege. That means that workers' demands are to be paid before other creditors are paid. If that is not possible, because the employer's assets are too low to pay off the workers claims, a guarantee institution should cover the amount payable to the employees. Through this provision, the convention

⁵⁸ World Economic Forum, 2014, p. 33f.

⁵⁹ Vaughan-Whitehead, 2010, p. 67.

ensures that in the case of insolvency, workers are not to be omitted which, so far, is often the case. Since the entry into force in 1995, only 21 countries have ratified and enforced it, still leaving workers in need of alternative protection in cases of insolvency.⁶⁰

In order to monitor the implementation of the conventions the ILO Committee of Experts biannually investigates the implementation of the ILO core conventions in the member states. The implementation of all other conventions is assessed every five years. According to the results it issues observations or direct requests to the states. The observations are published in the annual report of the International Labour Conference (ILC). In the 2013 report, the Committee of Experts stressed that the minimum wage in Bolivia was increased but, due to rising commodity costs, it is insufficient to allow “[...] low-paid workers to cover their subsistence needs in terms of essential consumer goods, housing, health, clothing, or hygiene.”⁶¹ Another issue was found in Burundi, where the minimum wage has not been adjusted since the 1980s leaving the C26 unapplied.⁶²

Similar findings are noted for other countries, e.g. Ecuador, Greece or Turkey. The Committee of Experts finds a non-application of the C95 with regards to an untimely manner of payment of wages in 17 countries.⁶³

In the 2014 general survey on minimum wage systems the Committee concluded that the system of minimum wages has various aspects, providing difficulties in the implementation. Among others, they found that the definition of wage, and the included elements, is controversial especially when it comes to remuneration in kind. Another problematic element is the exclusion of vulnerable groups of workers e.g. young workers or domestic workers.⁶⁴

The ILO identified the following elements of a minimum wage:

- Lowest level of remuneration permitted in law or fact;
- The wage has the force of law;

⁶⁰ Supra note 27.

⁶¹ ILC, 2013, p. 673.

⁶² Ibidem, p. 675.

⁶³ Ibidem, pp. 673-706.

⁶⁴ ILO, 2014a, para. 349.

- It is enforceable under threat of penal or other appropriate sanctions.

Therefore it is irrelevant if the wage is set statutory or by collective agreement.⁶⁵

The ILO regularly mentions the concept of a minimum living wage. That is the minimum wage that cannot be abated and is supposed to enable workers and their families to meet their basic needs. The standard of living is in line with the ICESCR and should respect the right to receive remuneration that enables a decent and dignified life. Therefore a wage that is considered to be sufficient should cover the cost of the vital necessities of food, clothing, housing, education and recreation. However it should also consider the level of economic and cultural development of the country.⁶⁶

1.2. Regional Frameworks on the Right to a fair wage

The UN, as global organisation with the most member states compared to other international organisations, is the highest authority when it comes to international regulations. However there are several regional unions representing their member states. Since their operating range is limited to a specific region it enables them to issue a more specific legal framework for the respective region. Most regional frameworks either provide a more detailed implementation of the UN framework or they rely on the regulation issued by the UN. Either way since the regional instruments have a relevant influence in the respective regions they are examined in this chapter.

1.2.1. Council of Europe – European Social Charter

The Council of Europe (CoE) is another major association of sovereign states. Its purview is more limited than that of the UN since it has merely 47 member states in comparison to the 193 member states of the UN.

⁶⁵ ILO, 1992, para. 31.

⁶⁶ Ibidem, para. 35.

In 1961 the CoE issued the European Social Charter (ESC), which was dealing mainly with the topics of:

- Right to Work;
- Labour standards;
- Standard of living;
- Vocational training;
- Social security;
- Family.

These main topics were included in Part I of the Charter in order to emphasise their importance. However the situation concerning social rights changed gravely over time, giving the CoE a reason to amend the European Social Charter. The Revised European Social Charter was issued in 1996 adopting the same structure as the Charter of 1961.

Part I enumerates the rights which should be considered by the member states when entering obligations or establishing national and international policies. At large the topics stayed the same but were complemented by some other issues. Among them are:

- Special protection for children and young persons;
- Protection of pregnant workers;
- Prohibition of Discrimination on any grounds;
- Protection of claims in case of insolvency of the employer;
- Balance of work and family life.

Part II accordingly provides detailed regulations concerning the principles contained in Part I. In both Charters, article 4 is the respective provision when it comes to wages. It reads as follows:

“With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

- to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

- to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
- to recognise the right of men and women workers to equal pay for work of equal value;
- to recognise the right of all workers to a reasonable period of notice for termination of employment;
- to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.”⁶⁷

This provision, as most other international regulations, refers to the achievement of an adequate standard of living. In clarification of the extent of a decent standard of living the European Committee on Social Rights (ECSR) in its 2010 conclusion on the Netherlands pointed out that “[...] it goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.”⁶⁸ In the conclusion on Slovakia in 2007 the ECSR established that socio-economic status of the worker has to be taken into account and therefore, the needs covered by minimum wage are evolving according to the rise in status.⁶⁹

The main problem of the European Social Charter as well as the Revised European Social Charter is that states have to declare, which articles they consider themselves bound by. That means that the signatory states can choose what provisions they want to apply. The rest of the Charter is not applicable and the state cannot be held accountable. Additionally states can only be held accountable for violations under the Charter if they also signed the

⁶⁷ Supra note 10, p. 336.

⁶⁸ CESR, 2010, p. 10.

⁶⁹ CESR, 2007, p. 521.

Additional Protocol of 1988 introducing a collective complaints procedure.

These considerations lead to the conclusion that the European Social Charter has a quite elaborated regulatory system, which however can only partially be implemented because of the Charter's inherent structural weaknesses.

The information derived from the evaluation shows that the ECSR finds any wage that falls below 60 % of the national average wage to be unfair and is not considered an adequate remuneration. This threshold was established after the ECSR concluded that a 68 % threshold would not be conducive to the promotion of equal opportunities for women in the labour market. The earning pattern displays that more women enter the labour market and therefore the 60 % mark reflects the increase in families where both parents provide an income. The Committee expects that a wage amounting to 60 % of the average net wage will provide the worker with a decent standard of living, irrespective of the fact if he has a family or not. A second reason was to accommodate the lower wage levels, greater diversity and new demography represented by an increased submission of Eastern European countries to the Charter.⁷⁰

Nevertheless, irrespective of the percentage fixed by an evaluation, a wage must provide a decent standard of living in order to be considered a fair wage, which means it must be above the poverty line of the given country.⁷¹ The Committee also concluded that if the lowest wage falls below 60 % of the average net wage in a country the situation could still be in conformity with the charter, if the country provides information as to why this wage is still sufficient to provide a decent standard of living. Nevertheless if the lowest wage falls below 50 % the situation always has to lead to a negative conclusion of the Committee.⁷² The decent standard of living applied by the Committee must include the social, economic and cultural needs of workers and their families in relation to the stage of development of society.⁷³ In order to assess the

⁷⁰ Samuel, 2002, p. 77.

⁷¹ Ibidem.

⁷² Ibidem, p. 79.

⁷³ Ibidem, p. 74.

implementation of the ESC the ECSR evaluates the measures taken by the member states with respect to the ESC.

The following table provides the level of minimum wage on the reference date of 31 March 2014, in the current 28 EU member states and contrasts it with the latest evaluation of the ECSR.

Table 1: National minimum wages in the EU 28 and respective evaluation of the ECSR

Country	National minimum wage ⁷⁴	Evaluation by the ECSR concerning fair remuneration ⁷⁵
Austria	EUR 1,453	Austria does not provide sufficient information on the minimum wage therefore a conclusion will be adopted in December 2014.
Belgium	EUR 1,472	An increased remuneration for overtime work is not ensured in Belgium.
Bulgaria	LEV 290 (approx. EUR 148 per month)	Bulgaria did not commit to article 4 para. 1 and thereby excludes the provision of a decent remuneration. Additionally a fair remuneration for young persons is not guaranteed.
Croatia	Kunas 2,814 (approx. EUR 376 per month)	Apprentices do not have the right to adequate allowances. The right to compensated public holidays is not guaranteed. However Croatia has not committed to article 4 excluding the guarantees for a fair remuneration.
Cyprus	No national MW applies.	Cyprus did not accept article 4 except para. 5, thus rendering the obligations to pay a fair remuneration non-applicable.
Czech Republic	CZK 8,000 (approx. EUR 315)	The ECSR does not comment on the wage situation in the Czech Republic since conclusions concerning article 4 will only be accepted in December 2014.
Denmark	DKK 18,593 (approx. EUR 2,492)	The conclusion established that Denmark does not provide for increased payment of overtime.
Estonia	EUR 290	A conclusion on the conformity with a fair wage will be accepted in December 2014.
Finland	EUR 1,391	The ECSR found a violation concerning the increased remuneration for overtime work.
France	EUR 1,398	Workers subjected to a system of annual workdays suffer from abnormally high working hours, which are not adequately remunerated.

⁷⁴ ILO, 2013c, pp. 65-76.

⁷⁵ ECSR, 2014, *Country Factsheets* at: http://www.coe.int/t/dghl/monitoring/socialcharter/ecsr/ecsrdefault_en.asp (consulted 26 March 2014).

Germany	EUR 2,286	The lowest wage paid in Germany is found to be unfair. The ECSR found the lowest wage in 2006 to be only 48 % of the average net wage.
Greece	No national MW applies.	The situation could not be properly assessed therefore a conclusion will be adopted in December 2014.
Hungary	HUF 93,000 (approx. EUR 302)	Hungary has not accepted the provision of article 4 thereby excluding the application of fair wage regulations.
Ireland	EUR 1,798	The lowest paid wage in Ireland falls below 60 % of the average net wage and that the minimum net wage is manifestly inadequate.
Italy	EUR 1,206	The ECSR concluded that the minimum wage could not ensure a decent standard of living and therefore Italy is found in violation of article 4.
Latvia	No national MW applies.	Latvia has not accepted the provision of article 4 para. 1 containing the right to a fair remuneration concerning the other regulations of article 4 a conclusion will be adopted in December 2014.
Lithuania	LTL 800 (approx. EUR 231)	The minimum wage in 2008 provided only for 40 % of the net average income therefore falling under the poverty line, set at 60 % of the net average income, concluding that the minimum wage is not in conformity with the charter and manifestly unfair.
Luxemburg	EUR 2,216	Luxemburg was found in violation to provide increased remuneration for overtime work, weekend work and night work.
Malta	EUR 705	Malta did not provide sufficient information therefore a conclusion concerning fair remuneration will be adopted in December 2014.
The Netherlands	EUR 1,456	The ECSR found the Netherlands in violation of article 4 because the minimum wage provided for young workers ages 18-22 covers only approx. 47 % of the average net income and is therefore manifestly unfair.
Poland	No national MW applies.	Poland has not accepted article 4 para. 1 however it is found to violate adequate compensation for overtime work in the form of surrogate time off.

Portugal	EUR 485	The minimum wage in Portugal is found to be at 45 % of the average net wage and therefore too low to provide a decent standard of living. Portugal therefore violates the provisions of article 4.
Romania	LEI 670 (approx. EUR 150)	The information provided by Romania was not sufficient on the minimum wage requirements. The ECSR therefore observed that the current minimum wage covers only 42 % of the net average wage thus being too low and manifestly unfair.
Slovakia	EUR 327	The ECSR concluded that the minimum wage covers only 41 % of the average wage and is therefore manifestly unfair.
Slovenia	EUR 763	Slovenia so far did not provide sufficient information on the minimum wage requirements and a conclusion will be adopted by December 2014.
Spain	EUR 747	Relying on information of the OECD the ECSR found that the minimum wage in Spain is at 45 % of the average wage therefore Spain violates article 4.
Sweden	SEK 17,517 (approx. EUR 1,985)	A conclusion on the provisions of article 4 will be adopted in December 2014.
United Kingdom	GBP 1,286 (approx. EUR 1,549)	The UK has been found in non-conformity to provide paid public holidays.

It shows that, when it comes to remuneration, none of the member states fully lives up to their self-assumed obligations.

However, four states did not, fully or partially, submit to article 4 and therefore cannot be found in violation of the right to a fair remuneration. For seven states, the conclusion will be adopted in December 2014 thus the ECSR has not commented on the current status of implementation.

1.2.2. European Union – Treaty on the Functioning on the European Union

In 2000 the EU has drawn up the Charter of Fundamental Rights of the European Union (CFR-EU). It includes most internationally established rights, whereas it formulates some of them in a way to fit the freedoms granted through the Union. This is the case e.g. for the freedom of movement when it includes the right to work complemented by the freedom of movement of workers within the EU. The CFR-EU however does not include any provision dealing with remuneration.

Remuneration was included in the European Community Charter of the fundamental social rights of workers 1989. Article 5 of the Charter establishes that all employment shall be fairly remunerated ensuring workers a decent standard of living.⁷⁶ However the Charter was never intended to give rise to direct and justiciable rights but was supposed to reflect general principles, requiring further supranational or national legislative implementation.⁷⁷ Hunt interprets the CFR-EU to include an “idiosyncratic pick and mix”⁷⁸ from other international instruments dealing with the rights in work with the ESC being the main instrument that influenced the orientation of the CFR-EU. Article 31 includes that the working conditions should respect human dignity and with regard to article 34, which lays down that social security, should provide a decent existence for all those who lack the resources. In order to implement the Charter, the 1990 working programme of the European Commission (EC) included measures like the creation of the employment observatory or the improvement of the system for international exchange of vacancies.⁷⁹ Taking a closer look at the Community Charter’s working programme it is evident that this was the basis for the employment and social policy, which is included in the Treaty on the functioning of the European Union (TFEU) in Titles IX and X

⁷⁶ Supra note 10, p. 353.

⁷⁷ Hunt, 2003, p. 53.

⁷⁸ Ibidem.

⁷⁹ European Communities, 1990, The Community Charter of Fundamental Social Rights for Workers, at: <http://aei.pitt.edu/4629/1/4629.pdf> (consulted 14 April 2014), p. 4.

Title IX - Employment

This title deals with the basic provisions for the implementation of employment policies. The achievement of a high level of employment is the main objective and shall be taken into account in the formulation and implementation of Union policies. The provision also includes that the EC and the Council shall annually consider the employment situation in the EU and, on this basis, draw up a joint report containing the adopted conclusions. In order to do so, the member states need to provide an annual report on the employment policies that resulted of the previous year's joint report. In order to facilitate coordination between the member states on the respective policies and on the achieved progress concerning employment, the Council established the European Employment Committee, which has an advisory function. Its main tasks are monitoring of the employment policies, formulation of opinions and contribution in the preparation of the joint annual employment report.⁸⁰ So far, this process, better known as the European Employment Strategy, had a positive impact on the convergence of the member states policies in the field of employment policies.⁸¹

Title X – Social Policy

This title aims at promoting employment, and to improve and harmonise living and working conditions within the EU member states. It establishes the dialogue between management and workforce, in order to achieve long lasting and high employment within the EU territory. Article 152 TFEU stipulates that the European Social Partners are recognised to occupy a special role in the social dialogue, which shall be facilitated with respect to their autonomy. Member states are encouraged to cooperate with the social partners when it comes to working conditions, collective bargaining and employment. Article 157 no. 2

⁸⁰ EU, 2012, *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/TXT&from=EN> (consulted 25 June 2014) and EC, 2014, *Working Conditions*, at: <http://ec.europa.eu/social/main.jsp?catId=706&langId=en> (consulted 11 January 2014).

⁸¹ Eurofund, 2010, *European Employment Strategy*, at: <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/europeanemploymentstrategy.htm> (consulted 18 February 2014).

TFEU provides clarification that, for the purpose of the TFEU “[...] ‘pay’ means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly in respect of his employment, from his employer.”⁸² This formulation refers to national minimum wages, which is an issue of national legislation. If the states are members of the EU and also the UN, they should also adhere to the UN treaties in this case, the above-mentioned ILO conventions. So far only 52 countries have ratified the C131 dealing with minimum wage fixing in general and out of those, only 8 countries are also members of the EU.

EU minimum wage coordination

The minimum wages within Europe vary greatly. That must also have been the reason why the European Working Conditions Observatory (EWCO) compiled information on the working poor within the EU. Even though the concept of the working poor was initially a phenomenon that started in the United States of America (U.S.) it is also known in the EU. The study revealed that 8 % of the employed population in the EU earns below 60 % of the national median income which is the definition of in-work poverty. The EU thus adopts the limitation applied by the ECSR in its evaluation of the ESC. Additionally, responding to the EWCO questionnaire, each member state provided their views on the available information and data concerning working poor, which was subsequently published in 2010.⁸³

The collection of data on this topic goes in line with the repeated discussion in EU institutions about the introduction of a coordinated minimum wage. So far it can only be a discussion, since the EU has no competency to set or regulate wage bargaining. According to Art 153 para. 5 TFEU, wage bargaining is a

⁸² EU, 2012, *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/TXT&from=EN> (consulted 25 June 2014) and EU, 2013, *Glossary*, at: http://europa.eu/legislation_summaries/glossary/social_partners_en.htm (consulted 18 February 2014).

⁸³ Eurofound, 2010a, *Working poor in Europe*, at: <http://www.eurofound.europa.eu/ewco/studies/tn0910026s/index.htm> (consulted 20 February 2014).

competency of the member states and explicitly excluded from EU authority. Nevertheless already in 2006 two high-ranking EU officials talked about the issue of introducing a common minimum wage, reflecting the long-lasting debate.⁸⁴ Following the adoption of the Charter of Fundamental Social Rights for Workers in 1989 the European Parliament and the EC encouraged members to implement regulations ensuring the right to an equitable wage as mentioned in the Charter. In the context of the economic crisis, the debate of a general minimum wage resurfaced because of the increase in social dumping and the downward trend in wages.⁸⁵ The European Trade Union Confederation (ETUC) was concerned about this development and in 2010 warned about the impact of the crisis on the employees who seem to carry all the costs. They also consider the policy of cutting wages and reducing employment security as a step towards a decrease in working conditions, which would counteract the efforts made so far. Instead they call for the EU to focus on economic governance, coordination and joint expansion. The member states should not tear each other down through social dumping, a reduction of labour standards and low wage policies but they should work together on counteracting the effects of the crisis.⁸⁶ In 2012 the European Council has declared itself ready to enhance the role of the social partners in the new economic governance and the ETUC saw the need to strengthen the influence of the European Trade Unions in the European Semester.

A series of research on some of the EU member states conducted by the ILO supports the view of the ETUC that, through austerity measures, the system of collective bargaining has been weakened and systematically decentralised.⁸⁷ As the ILO confirmed in 2012, work inequality has increased through the crisis and austerity measures worsen the impact of the crisis on workers. Especially

⁸⁴ Schulten/Watt, 2007, p. 1.

⁸⁵ Fernández-Macías/Vacas-Soriano, 2013, pp. 10f.

⁸⁶ ETUC, 2010, *European Governance needs to promote stimulus and fair wages, not austerity and wage cuts.*, at: <http://www.etuc.org/documents/european-governance-needs-promote-stimulus-and-fair-wages-not-austerity-and-wage-cuts#.UwYUIPlW> (consulted 20 February 2014).

⁸⁷ ETUC, 2013, *The ETUC Coordination of Collective Bargaining and Wages in the EU Economic Governance* at: <http://www.etuc.org/documents/etuc-coordination-collective-bargaining-and-wages-eu-economic-governance#.UxQ2M1z8EU5> (consulted 3 March 2014), p. 2.

workers in short-term contracts, young people, women and low-skilled workers have experienced a deterioration of labour standards and a rise in unemployment.⁸⁸

Since the EU has no competency to regulate the wage bargaining mechanisms, the ETUC decided on a resolution, including three specific activities in order to support wage bargaining:

- A new ETUC coordination of collective bargaining and wages within the framework of EU economic governance;
- A position on the current economic governance and EU Semester process and their consequences for wage setting mechanisms and collective bargaining;
- A toolkit to support the ETUC and its affiliates when facing such processes to improve their internal method of coordination, as well as to implement training activities for collective bargaining and wage negotiations.⁸⁹

1.2.3. African Union – African Charter on Human and People’s Rights (Banjul Charter)

The predecessor of the African Union, the Organization of African Unity, adopted the Banjul Charter in 1981.

The African Charter contains in article 15 that every individual has the right to work under equitable and satisfactory conditions and receive equal pay for equal work.⁹⁰ This however only regulates the prohibiting of wage discrimination on any grounds. Yet this regulation does not impose clear requirements for the payment of remuneration. In 2004 the Pretoria Declaration on Economic, Social and Cultural Rights in Africa supplemented the Banjul Charter. The members of the African Commission on Human and People’s Rights (ACHPR) drafted the non-binding Pretoria Declaration in order to clarify the content of the economic, social and cultural rights contained in the Banjul Charter. The ACHPR adopted

⁸⁸ ILO, 2012a.

⁸⁹ Supra note 87, p. 2.

⁹⁰ Supra note 10, p. 396.

the Declaration in December 2004 during the 36th ordinary Session,⁹¹ suggesting that these are the standards applied by the ACHPR when assessing the periodic state reports. In article 6 it contains the provision, which complements the original article 15 containing the right to work. Article 6 lit. a mentions the access to 'gainful work' which is subsequently explained by lit. d to include a fair remuneration and a minimum living wage. Article 11 lit. a para. xii calls upon the state parties to "[...] develop mechanisms to hold non-state actors especially multi-national corporations and businesses accountable for violations [...] concerning low wages".⁹²

So far some member states have lived up to their obligation to report to the ACHPR concerning minimum wage but the Commission did not yet have the chance to conclude on adverse minimum wage legislation. Concerning the adequate standard of living some of the states reports are more detailed on the right to food, shelter, water and clothing, leading to the conclusion that these constitute essential elements in the application of the Charter and its supplementing legal instruments. Article 10 of the Pretoria Declaration also lays down that the respect for inherent human dignity, implies the recognition of the right to shelter, the right to basic nutrition and the right to social security, confirming the above stated conclusion.

In the 'Principles and Guidelines on the implementation of economic, social and cultural rights in the Banjul Charter' the ACHPR clarifies that the national plans, policies and systems for the implementation of the Charter should ensure equitable and satisfactory conditions of work, including fair remuneration.⁹³

The ACHPR also states that "[...] everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity [...]"⁹⁴ thus being in line with article 23 UDHR as well as article 7 ICESCR. Therefore the ACHPR relies on the interpretation of these two documents concerning the implementation of a fair remuneration. Nevertheless

⁹¹ Seminar on Social, Economic and Cultural Rights in the African Charter, 2005, p. 1.

⁹² ACHPR, 2004.

⁹³ ACHPR, 2010, p. 22.

⁹⁴ ACHPR, 2000, para. 135.

it is important to emphasise given to economic, social and cultural rights as the ACHPR proclaimed them to be an essential element of human rights in Africa.⁹⁵

1.2.4. Organization of American States – American Convention on Human Rights (Pact of San José)

In 1948, the same year as the UDHR was adopted, the Organization of American States (OAS) adopted the American Declaration of the Rights and Duties of Man, which is the first international human rights instrument of a general nature. In article 14 it contains the following provision on the right to work “[...] every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit. Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.”⁹⁶

It still needs to be taken into account that, also in 1948, the OAS adopted the Inter-American Charter of Social Guarantees. This document deals extensively with the rights and securities of workers and also includes detailed provisions on wages. It includes in article 8 that a minimum wage should cover “[...] normal home needs, material, moral and cultural, [...] the cost of living, the worker’s relative aptitude ...”⁹⁷ Furthermore article 11 specifies that “workers have the right to a fair share in the profits of the enterprises in which they work [...]”⁹⁸ It is striking that this old and detailed document, which would seem qualified to build the foundation for regulating labour issues in the member states of the OAS, is completely vanished and replaced by a much later and lesser standard introduced by the Pact of San José and the ICESCR.

The Pact of San José 1969 is an extensive human rights instruments. It contains a number of rights that the other instruments do not consider. For

⁹⁵ Evans/Murray, 2008, p. 30.

⁹⁶ Inter-American Commission on Human Rights, 1948, American Declaration of the Rights and Duties of Men, at: <http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm> (consulted 8 July 2014).

⁹⁷ Lawson, 1996, p. 788.

⁹⁸ Ibidem.

example the right to a name or the right to a nationality, displaying a distinct set of rights and freedoms. However it also displays the lack of importance of other rights, which is why the right to work is completely missing. There is no provision concerning an adequate standard of living or any mentioning of remuneration at all. Not even the prohibition of discrimination in the context of work or equal pay for equal work.

In order to approach this deficiency, the Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador) was adopted in 1988. It contains among others the right to work in article 6, including the “[...] opportunity to secure the means for living a dignified and decent existence [...]”⁹⁹. The Inter-American Court of Human Rights (IACHR) decided in the case of *Yakye Axa Indigenous Community versus Paraguay* that a “[...] lack of full and effective enjoyment of such basic rights as the right to health, the right to food and the right to education [...] does not allow the Community and its members to enjoy decent living conditions.”¹⁰⁰ In light of this judgement it can be concluded, that in order to establish a decent living, a wage must be sufficient to provide for nutrition, health and education. The judges refer to decent living conditions just as article 6 refers to a decent existence. Despite the divergent wording the meaning of these formulations is the same and supposes to secure a dignified life for the peoples. The advisory opinion OC-5/85 of the IACHR concludes “[...] if in the same situation both the American Convention and another international treaty are applicable, the rule most favourable to the individual must prevail. Considering that the Convention itself establishes that its provisions should not have a restrictive effect on the enjoyment of the rights guaranteed in other international instruments [...]”¹⁰¹ Complementing the opinion of the IACHR Judge Pedro Nikken declared that he deems it correct

⁹⁹ OAS, 1988, Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights “Protocol of San Salvador” at: <http://www.oas.org/juridico/english/treaties/a-52.html> (consulted 25 June 2014).

¹⁰⁰ Inter-American Court of Human Rights, 2005, *Yakye Axa Indigenous Community v. Paraguay*, at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf (consulted 14 April 2014) para. 158 (e).

¹⁰¹ IACHR, 1985, para. 52.

that the more detailed international treaty should prevail over the less detailed one for the interpretation of the right.¹⁰² Therefore the obligation arising from the American Declaration and the American Convention should be interpreted in the light of the ICESCR.¹⁰³

1.2.5. Association of South East Asian Nations – ASEAN Human Rights Declaration

The ASEAN Declaration includes civil and political rights as well as economic, social and cultural rights. It refers to the UDHR, nevertheless enumerates which rights shall be especially regarded within the ASEAN states.

Among them is the right to work, including the free choice of employment and the recognition of just and favourable conditions of work in article 27 para. 1. However as in most of the other instruments, there is no reference to wage, minimum wage or even the payment of fair wages. In 2011, civil society groups organised a hearing in order to assess the corporate impact in the ASEAN region. This meeting led to a report, which also puts forward an interpretation of the right to work. It states that labour rights recognise the right to work as a means of obtaining livelihood, which includes just, safe and healthy working conditions, protection from unemployment and protection to demand fair wages and equal pay.¹⁰⁴

The ASEAN declaration includes a detailed clarification of the contents of the right to an adequate standard of living.

Article 28 includes an exemplary content of the adequate standard of living:

- “a. The right to adequate and affordable food, freedom from hunger and access to safe and nutritious food;
- b. The right to clothing;
- c. The right to adequate and affordable housing;

¹⁰² Ibidem, Declaration of Judge Nikken, para. 5.

¹⁰³ Human Rights Resource Center, 2000, *The Inter-American System for the protection of human rights and ESC Rights*, at: http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module30.htm#_edn39 (consulted 10 June 2014), p. 1.

¹⁰⁴ Middleton/Pritchard, 2013, p. 47.

- d. The right to medical care and necessary social services;
- e. The right to safe drinking water and sanitation;
- f. The right to a safe, clean and sustainable environment.”¹⁰⁵

The 2011 report and the assessment of cases by the Forum-ASIA shows that fair remuneration is an essential part of the ASEAN Declaration even though it is not explicitly mentioned in article 27. Yet the establishment of just, decent and favourable conditions of work together with the call for assistance schemes for the unemployed, shows the relevance of a fair remuneration for the maintenance of a dignified life. Therefore adequate remuneration is part of the ASEAN system and should enable workers to afford a decent and dignified life. The embedding of the right to work and the right to an adequate standard of living presents the same pattern as in other international human rights instruments.

Concluding the legal assessment of the international and regional frameworks it was depicted that even though the instruments differ concerning content, extent and formulation of rights they still present similarities. They all, one way or another, include the right to work with a reference to the right to an adequate standard of living. Even though only few establish the connection that a fair wage should provide for this dignified life, the decisions and interpretations by the respective committees or courts clarify that nobody should be deprived of the minimum necessities of housing, food, water, clothing and at best some additional income.

¹⁰⁵ ASEAN, 2012, *ASEAN Human Rights Declaration*, at: <http://www.asean.org/news/asean-statement-communiqués/item/asean-human-rights-declaration> (consulted 25 June 2014).

2. Remuneration

2.1. Terminology

In order to elaborate on the implications of the legal frameworks for the practical implementation and to unify the working terms, this chapter explains the established concepts of remuneration

2.1.1. Employment

Since the payment of a wage or salary is usually conditional to an employment situation, it is relevant to define the essential elements of such circumstances. The definitions for employees and workers can vary greatly but in the EU they are widely similar. Some definitions, like e.g. in the Czech Republic or Ireland, refer to the age of the employee, whereas most of the definitions abstain from including any age reference.

The typical elements of the definition are:

- The employee is a natural person;
- Performance of a service;
- Remuneration for the performed service.

Some definitions are more detailed than others, including additional elements like the requirement of an employment contract or the dependency on the employer's authority. Yet these three elements are usually included in the characterisation.¹⁰⁶ Nevertheless this definition leaves a gap in the employment landscape. The above-mentioned elements are typically found in a 'standard' form of employment however there are many forms of 'non-standard' employment. That includes workers, which are not directly employed but are employed by a sub-contractor or through private employment agencies. It also includes short-term contracts, part-time workers, home workers, domestic

¹⁰⁶ ILO, 2013a, *Working conditions law database*, at: http://www.ilo.org/dyn/travail/travmain.sectionReport1?p_lang=en&p_structure=1&p_sc_id=4&p_countries=REG4&p_start=1&p_increment=10 (consulted 25 October 2013).

workers or professional interns. Usually employees of public agencies or international institutions also work on a non-standard basis.¹⁰⁷

The distinction is important, as employees in a standard employment are the ones profiting the most from regulations concerning conditions of work. The frameworks tend to have less influence for the non-standard employees even though they are typically the most vulnerable persons.¹⁰⁸

2.1.2. Minimum wage fixing

Minimum wage fixing is the method used in each state in order to set the minimum wage at a applicable level. These procedures differ from nation to nation and therefore cannot exhaustively be dealt with in the given setting. However the main aspects need to be included in order to provide a conclusive picture.

There are five different methods concerning the procedure of minimum wage fixing and the actors involved in the process:

- Government decision;
- Separate consultation of the social partners by the government;
- Government consultation of a specialised committee;
- Tripartite committee;
- Collective bargaining without government intervention.¹⁰⁹

The prevailing methods could then either be that the actors in question consult the wage statistic and set the minimum wage at the lowest wage rate, or that the minimum wage is set to cover the workers' basic needs.¹¹⁰ It is obvious that both methods have strengths and weaknesses, which can be partially counterbalanced when using a combination of the two methods.

¹⁰⁷ ILC.101/VI, para. 87.

¹⁰⁸ Ibidem, para. 90.

¹⁰⁹ Eyraud/Saget, 2005, p. 15.

¹¹⁰ Ibidem, p. 24.

In 1958 the ILC found it important to make a statement on the level of minimum wages. According to that, the minimum remuneration should pay attention to the worker's normal needs, while the quality of labour should not affect the right to a minimum wage because it is supposed to be a "[...] guaranteed remuneration for duly performed work."¹¹¹ Therefore when it comes to wages dependent on piece rates every worker should, under normal circumstances, be able to earn enough money to maintain an adequate standard of living.

2.1.3. Collective bargaining

Historically, trade unions did not always enjoy the status they have now. In the beginning they were considered to be illegal and the process of decriminalisation took quite some time.¹¹² Nowadays, as mentioned above, the right to form and join trade unions is an essential element of the right to work. Collective bargaining is one method of trade unions to negotiate terms of the employer-employee relationship. Among others the negotiations usually include, working conditions, working time, wages and benefits. ILO convention 154 article 2 defines collective bargaining as "[...] all negotiations between employers or their organisations and workers or their organisations in order to determine working conditions, relations between employers and employees as well as the relations between their corresponding organisations." The right to bargain collectively is included in various regulations concerning the freedom of association and in international documents like the Declaration of Philadelphia, ILO conventions no. 87 and 98 as well as recommendations no. 94 and 113. Wage bargaining can be conducted on national, regional, sectoral, intersectoral, occupational or company level.¹¹³ However there is no heterogeneous method throughout Europe, since the system of collective bargaining developed independently through history. The only thing that stands out is that,

¹¹¹ ILC, 1985, p.121 para 92.

¹¹² Business Dictionary, 2013, *History of collective bargaining*, at: <http://www.businessdictionary.com/article/393/collective-bargaining/#rpctoken=560248954&forcesecure=1> (consulted 29 October 2013).

¹¹³ Du Caju/Gautier/Momferatou/Ward-Warmedinger, 2008, p. 15.

government participation in negotiations is more frequent for non-market services than in other sectors.¹¹⁴ Even though most countries in Europe have some kind of collective bargaining mechanism, 17 of these countries have a statutory minimum wage, which is set by the state. In the northern countries it seems more common to set the minimum wage through collective bargaining instead of using statutory minimum wage.¹¹⁵

2.1.4. Minimum wage

The most frequent definition of minimum wage states that the minimum wage is the lowest amount legally payable to a worker, for a distinct period of time.¹¹⁶

Some definitions refer to a national legislation in order to specify the minimum amount or to further distinguish the employees in question. That distinction can include e.g. unskilled workers or the time for which this minimum amount is applicable.¹¹⁷

In the 28 EU member states only six member states do not have a minimum wage. In these countries the wages are determined by collective agreements with the social partners, on a company level or through individual contract.¹¹⁸

The minimum wage should cover the costs for the basic needs, which could be interpreted with reference to Maslow's hierarchy of needs where he also defines the lowest category as basic or physical needs.

In the 168th session of the ILO Governing Body held in 1967 the experts developed the definition that "[... minimum] wage represents the lowest level of remuneration permitted, in law or fact, whatever the method of remuneration or the qualification of the worker [...] the wage, which in each country has the force of law and which is enforceable under threat of penal or other appropriate

¹¹⁴ Ibidem, p. 16.

¹¹⁵ Ibidem p. 19.

¹¹⁶ Wage Indicator 2013, *Minimum wages around the world*, at: <http://www.wageindicator.org/main/salary/minimum-wage> (consulted 25 October 2013).

¹¹⁷ Supra note 106.

¹¹⁸ Eurostat, 2013, *"Minimum wage statistics" - Statistics Explained (2013/10/5)* at: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Minimum_wage_statistics (consulted 15 December 2013).

sanctions. Minimum wages fixed by collective agreements made binding by public authorities are included in this definition."¹¹⁹ The essence of this statement being that the minimum wage is the lowest amount legally payable for work irrespective of the worker's needs. It has to be kept in mind that a minimum wage system alone cannot be sufficient to combat poverty and guarantee an adequate standard of living. It needs to be embedded in a comprehensive policy system aiming to promote a better life for many people.¹²⁰

Concluding from the legal assessment in Chapter one it can be said, that the original concept of minimum wage related to the lowest amount payable by law. That being irrespective of the needs of the worker and his family, the adequate standard of living or the chance to improve the living conditions. Up to today, the minimum wage establishes the least legally payable amount to a worker. The process of minimum wage setting is a complex and diversified one, depending on national needs, requirements, political system and other variables. In light of these differences no single statement can be given as to the requirements of the minimum wage except for the elements that should be considered, according to the ILO minimum wage fixing convention. Over time, the concept changed since it became evident that this approach was no longer effective in a globalised world. A change in the working environment led to a change in the perception of the workers needs, which subsequently led to the development and promotion of the living wage approach. Still the minimum wage approach is the prevailing concept, which is the reason that the ILO promotes the living wage but still urge states to implement the minimum wage. Since the minimum wage fixing convention could strike a balance between the minimum and the living wage approach it would be a vital tool for the development towards the widespread implementation of the living wage or even the fair wage approach.

¹¹⁹ Supra note 65, para. 31.

¹²⁰ Supra note 65, para. 33.

2.1.5. Living wage

As concluded in the meeting of experts of the ILO Governing Body in 1967, the living wage approach was seen to be inherent to the minimum wage.¹²¹

The ILO general survey 1992 on minimum wages refers to the definition of 1967 and adds that the minimum wage implies the concept of a minimum living wage. It should “[...] improve the material situation of workers and guarantee them a basic minimum standard of living which is compatible with human dignity or is sufficient to cover the basic needs of workers.”¹²² The experts also clarified that they should include the vital necessities of food, clothing, housing, education and recreation of the worker nevertheless taking into account the economic and cultural development of each country.¹²³

However, when taking into account the recent progress, that a minimum wage is considered to be the lowest amount payable by law,¹²⁴ it seems that the development takes a different direction than the one envisaged in the 1960s. The initial definition would nowadays reflect the living wage whereas the minimum wage has been reduced to the requirement of covering the costs of basic needs.

The Labour behind the label campaign, suggest that the living wage should cover the basic needs, cater for dependents and include a small amount for savings or discretionary income. They also promote a broader application of the living wage approach.¹²⁵ In article 23 para. 3, the UDHR states “[...] everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity supplemented, if necessary, by other means of social protection.” The ILO convention no. 131 article 3 clarifies the elements that should be taken into account when setting a minimum wage. They include the cost of living and the needs of workers and

¹²¹ Ibidem.

¹²² Supra note 65, para. 33.

¹²³ Ibidem, para. 35.

¹²⁴ Supra note 64, para. 68.

¹²⁵ Labour behind the label, 2007, *In search of a living wage*, at: <http://www.labourbehindthelabel.org/component/content/article/77-rights/205-in-search-of-a-living-wage> (consulted 25 October 2013).

their families. The criteria mentioned in the convention have then been included in the recommendation 135, which has been adopted by the ILC in the same session as the convention. Up to this day, only 52 countries have ratified the convention, leaving 141 countries falling short of these minimum standards.¹²⁶ Concerning the normative content it was shown that the ECSR concludes, that a minimum wage below 60 % of the average net wage is manifestly unfair. At this level it cannot be assumed to pay for a decent standard of living for the worker. The other international human rights instruments, instead of setting a fixed percentage, conclude that the wage has to be sufficient to pay for vital needs like food, housing and clothing, some include education and cultural participation or discretionary income. In the assessment, the ECSR takes into account the needs of workers, the standard of living and additional income. According to the explained development of the minimum wage these criteria would nowadays present the living wage approach instead of the minimum wage. If assessed the minimum wage would have to consider the legal minimum level in accordance with the minimum wage fixing convention. Therefore it can be said that the ECSR refers to the minimum wage but actually assesses the living wage. As the ILO in 1967 acknowledged in the 'minimum living wage' the concepts should be synonymous, however they are still diverging. In reality even the living wage often does not cover the actual costs of living of a worker. According to the ECSR's limit and the criteria of the other human rights instruments the following can be concluded: a (minimum) living wage, which supposes to pay for workers vital needs, enables the worker to support a family, provides enough money to pay for cultural participation and facilitates the improvement of living conditions is manifestly unfair if it is less than 60 % of the national average net wage. However the two approaches can no longer be completely separated. They have become an intertwined system, which is increasingly difficult to distinguish. Also as a result of the ILO convention, which integrates some elements of the living wage into the

¹²⁶ Supra note 27.

minimum wage. Thus it would make sense, when establishing the elements, to refer to it as minimum living wage, including elements of both approaches.

2.1.6. Fair wage

Despite the established approach, Daniel Vaughan-Whitehead, stresses the importance of the additional elements of remuneration, with respect to the final amount of the wage. Income has far more facets than is obvious on the first look and therefore he developed the fair wage system. So far, neither the ILO nor the states accept it be feasible in practice but it seems to be the most holistic approach, taking into account the level of wages and complementing wage policies. The living wage still leaves room for development in order to fulfil the “[...] aim of promoting a better life for the masses of people.”¹²⁷ The first two concepts focus on the level of wages, taking into account the necessities that should be covered by a wage. The more recent fair wage approach also considers aspects, which the ILO Committee of Experts on the Application of Conventions and Recommendations found to be insufficiently considered in some states. The prevailing problems being among others, the timely and full payment of wages, the prohibition of wage deductions or the payment in legal tender.

Thus the fair wage concept consists of 12 factors:

- Payment of wages;
- Living wage;
- Minimum wage;
- Prevailing wage;
- Payment of working time;
- Pay systems;
- Communication and social dialogue;
- Wage discrimination/wage disparity;
- Real wages;

¹²⁷ Supra note 65, para. 33.

- Wage share;
- Wage costs;
- Work intensity, technology and increase in skills.¹²⁸

These elements, if assessed regularly, can help determine whether a company's wage policy can be improved in order to achieve payment of a fair wage or if it can already be considered to be a fair wage.¹²⁹ In order to check a company's policy the Fair Labor Association offers a self-assessment tool for their members, using the 12 factors of the fair wage approach, to facilitate the policies concerning wage and the development of a fair wage.¹³⁰ This proposal could be a way to move forward in the future to secure a dignified life for workers and their families and still keep the economic needs of employers in mind.

2.1.7. De-facto wage

When talking about wage levels, the subject of varying price levels in different countries seems to be inevitable. It is rather obvious that there is no comparison of the price levels e.g. between Norway and Bangladesh, however the Purchase Power Parity (PPP) allows for a comparison. The PPP is a system of equalising the purchasing power of different wages, in order to facilitate a comparison by eliminating the differences in price levels. It thus provides a means of calculation of income, allowing for international comparison of remuneration and comparison of the actual purchasing power of remuneration. Additionally it is possible to compare countries with different currencies, as well as countries with the same currency but different price levels like the countries of the Euro area. The PPP is established by calculating the amount that has to be spent for a basket of goods in different countries by using a common currency, thereby eliminating the exchange rates.¹³¹

¹²⁸ Supra note 59, p. 67.

¹²⁹ Ibidem p. 87.

¹³⁰ FLA, 2007, *Self-assessment portal*, at: <http://ap.fairlabor.org/en/questionnaires/scat-fair-wage/en/tutorials/pcpsusers-outline> (consulted 28 October 2013).

¹³¹ Eurostat-OECD, 2012, paras. 5-7.

The benefit of PPP is that international comparison is less biased than the comparison through exchange rates.¹³² Also, PPP is less volatile to economic growth rates than market-based rates because they can only be used effectively for internationally traded goods.¹³³ Facilitation of an international and impartial comparison of wage levels is essential, in order to clarify the actual remuneration. The different minimum wage requirements seem to render it impossible to set an internationally applicable minimum level for remuneration. Nevertheless national minimum levels have to take into consideration the actual level of living costs where the PPP is an effective method of the international comparison.

2.2. Effect of wage bargaining system on remuneration

2.2.1. Wage bargaining apparatus

In 2008 the European Central Bank (ECB) published an overview over the wage bargaining techniques in the then, 23 EU member states. Since the system of wage bargaining has an enormous influence on the wage level and on the actual output for the individual worker, it is important to take a closer look on their conclusion and the outcome for the minimum wage. The authors separated the EU member states in three categories according to their system of wage bargaining.

- The ones with a strong national minimum wage bargaining mechanism – mainly regulated system;
- Those with mainly sectoral level bargaining – sector regulation system;
- Countries with company level agreements – decentralised system.¹³⁴

Within the three main categories of minimum wage setting another five forms can be distinguished according to the amount of state-influence.

These forms are:

¹³² Callen, 2012.

¹³³ Supra note 131, paras. 15-18.

¹³⁴ Supra note 113, p. 5.

- State-imposed indexation – an increase in the statutory minimum wage is automatic as soon as the index changes;
- State-imposed minimum wage and other government involvement – minimum wage can be set through legislation or national collective agreements with some kind of nation-wide government participation e.g. through tripartite agreements;
- Inter-associational coordination – unions and employer’s representatives agree on common aims for the next wage increase negotiations;
- Intra-associational coordination – unions and employer’s representatives take the lead in coordination which usually occurs when the prime associations encompass most bargaining units;
- Pattern bargaining – takes place when one, usually sectoral bargaining unit starts negotiations which are then followed by other sectors orienting their negotiations at the outcome of the leader.¹³⁵

After examining data and existing literature, Hayter and Weinberg concluded in 2011 that there is a clear connection between the centralisation of wage bargaining and wage inequality. They pointed out that where the degree of centralisation is high, the wage inequality seems to be significantly lower than in the ones with decentralised wage bargaining.¹³⁶ They point out that centralisation is not the only factor influencing wage inequality. The effect of a decline in union membership and therefore in collective agreement coverage, can be counteracted through public support of collective bargaining, leading to a lower income inequality.¹³⁷

Another positive aspect of higher union coverage is that, usually the collective bargaining system increases the wage floor for low wage earners. It also shows that there can be an additional decrease in wage inequality if the unions are encompassing and well coordinated among themselves.

¹³⁵ Supra note 113, pp. 17-24.

¹³⁶ Hayter/Weinberg, 2011, p. 138.

¹³⁷ Ibidem.

Considering the fair wage approach, where wage disparity is one factor to be taken into account when trying to achieve a fair wage for the employees, this decrease poses another complication. Wage should be a reflection of the individual effort and skills while considering the overall profit, growth and enterprise sales.¹³⁸

Concerning the social dialogue in Europe, the EC released a Memo in 2013. Based on data by the ECB, they concluded that the level of collectively-agreed wages in the euro area was relatively stable during the 2000s, yet real wages decreased between 2009 and 2011 because of the exceeding inflation rates. The EC emphasised that, even though the average wage was relatively stable and the nominal wage increase was around 2.5 % the national increases varied between 23 and 41 %. The data collected by the ECB however also shows that the real wage growth stayed below the productivity growth.¹³⁹ This fact emphasises a problem of the remuneration systems in relation to a fair wage. As Vaughan-Whitehead includes in the 6th dimension of the fair wage approach, remuneration should be mirroring individual and collective performance¹⁴⁰. Yet the data clearly shows that these figures are diverging. With regard to this fact it has to be kept in mind that a fair remuneration, or at least a wage that reflects the effort made by the individual, increases job satisfaction thus leading to an upwards spiral and a positive trend in overall economic output. Another issue that has to be kept in mind is that if the real wages decrease, so does the purchase power. As a result it can happen that a minimum wage that was sufficient to provide an adequate standard of living or has been set just above the poverty line, in reality slips beneath this line and no longer provides a decent living leaving the worker exposed to the risk of poverty.

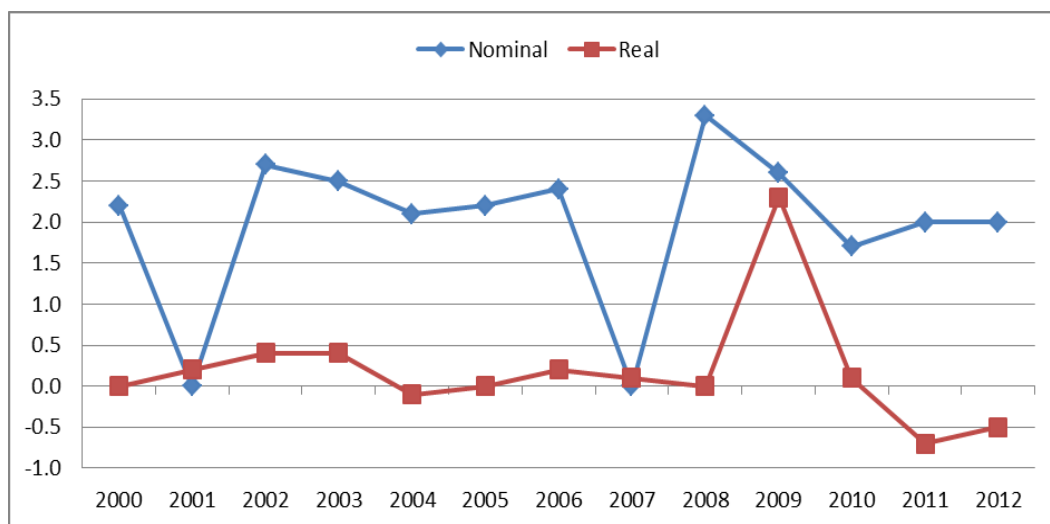
¹³⁸ Supra note 59, p. 67.

¹³⁹ EC, 2013, *MEMO/13/325 - Industrial relations: social dialogue under strain in Europe says new report – frequently asked questions*, at: http://europa.eu/rapid/press-release_MEMO-13-325_de.htm (consulted 18 February 2014), pp. 6f.

¹⁴⁰ Supra note 59, p. 67.

The table displays the above-referred ECB data, on which the EC based its 2013 memo. It shows the change in nominal and real wages from 2000-2012.

Table 2: ECB indicator of negotiated wages for the Euro area, 2000-2012 (annual percentage change) Source: EC, Note: real wages are adjusted by the Harmonised Consumer Price Index



2.2.2. Wage statistics

As shown in the fair wage approach, wage is not only the figure at the bottom of the paycheck. Wage is influenced by many factors and is itself influential on life. Wage and social security are closely linked which is the reason that, in the EU, wage policy is a matter of social security instead of employment. In order to provide an overview of the recent income data, the table below displays the average monthly minimum wage for the years 2009-2014 in Europe and the U.S., calculated according to the Purchase Power Standard (PPS) Euro, by Eurostat. The PPS is an artificial currency by Eurostat, to express the amount of money that has to be spent in the EU 25 to purchase equal goods. It applies the principles of the PPP, yet it exchanged some variables and therefore is termed PPS.

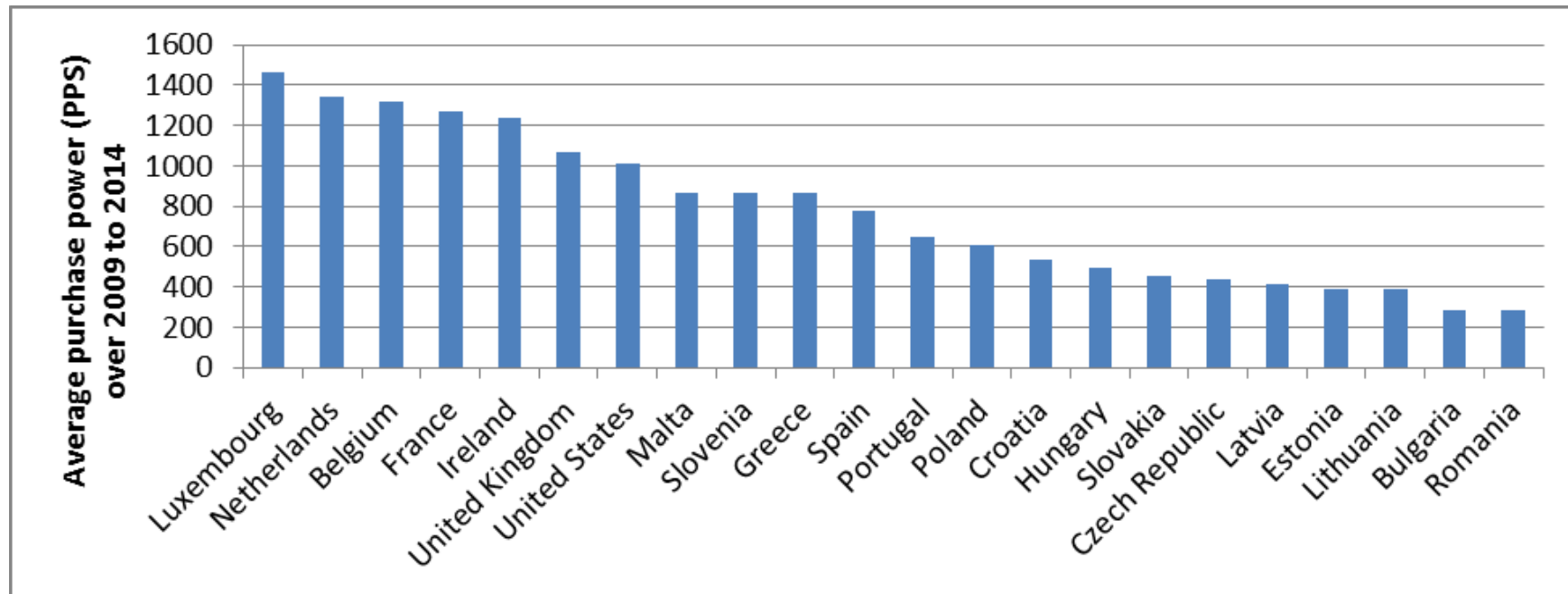
The table shows the minimum wage as far as data is available and a statutory minimum wages is applicable. However, at the time of the survey, 10 countries had no statutory minimum wage system. These are:

- Austria;
- Cyprus;
- Denmark;
- Finland;
- Germany;
- Iceland;
- Italy;
- Norway;
- Sweden;
- Switzerland.

The data leads to the conclusion that the average minimum wage on an equalised level is the highest in Luxembourg while it is the lowest in Romania with only 18.5 % of the amount of Luxembourg. Since the value is already adjusted according to PPS it displays the difference in the de-facto wage for the effected workers.

These equalised numbers provide an indicator as to the amount, available to minimum wage earners in order to provide a decent standard of living for themselves. That still leaves a Rumanian citizen with less than 1/5th of the standard a person from Luxembourg has at their disposal.

Table 3: Average minimum wage, PPS in Euros. Source: Eurostat (2014) and OECD (2007)

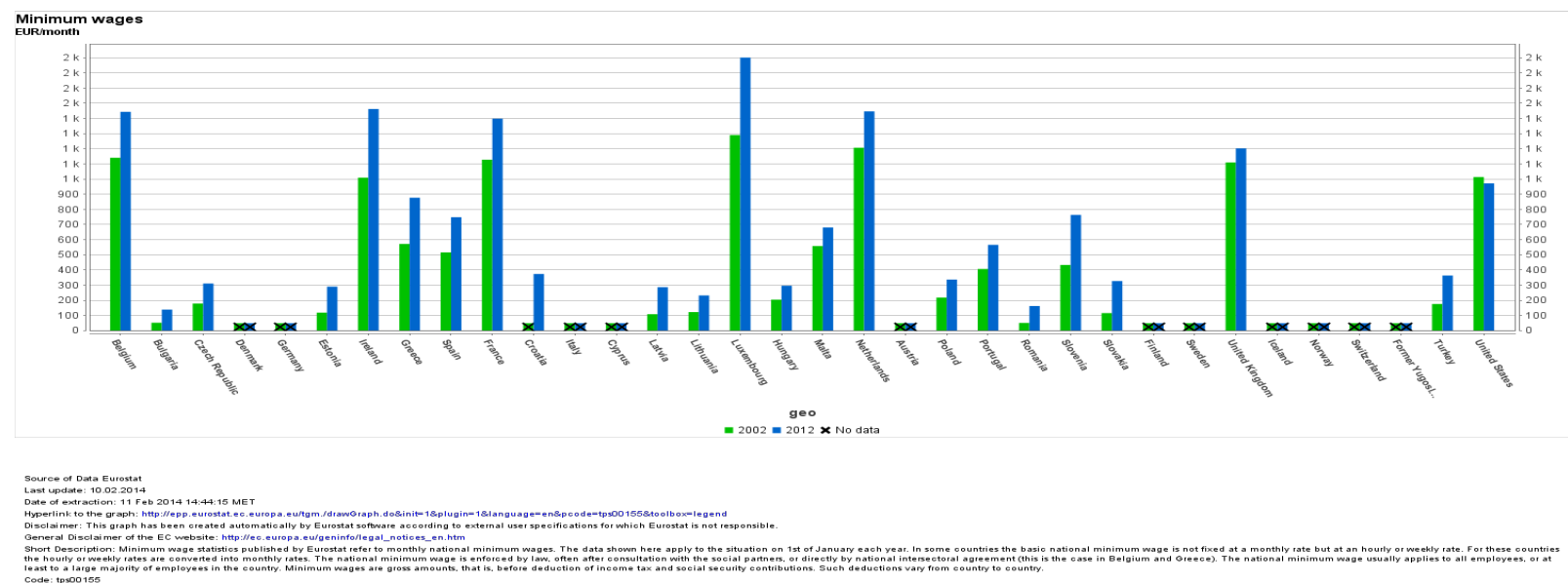


The next table provides an overview on the increase in minimum wage comparing the years 2002 and 2012 in Europe and the U.S., for states with a statutory minimum wage system.

It shows that in some low-income countries like Bulgaria, Cyprus, Estonia, Latvia, Lithuania, Romania, Slovenia, Slovakia and Turkey, the minimum wage increase was around 100 % whereas the increase in countries with an already higher level of minimum wage was not as significant. Despite the minimum wage increase, 24.8 % of the EU population has been at risk of poverty or social exclusion in 2012. 10 % of the EU population suffered from severe material deprivation, which means e.g.

that they could not afford sufficient heating or were unable to pay their bills.¹⁴¹ This level is clearly not in conformity with the right to a fair remuneration.

Table 4: Increase in Minimum wages between 2002 and 2012 in the EU and US. Source: Eurostat (2014)



¹⁴¹ Eurostat, 2013a, *In 2012, a quarter of the population was at risk of poverty or social exclusion*, at: http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-05122013-AP/EN/3-05122013-AP-EN.PDF (consulted 16 April 2014), p. 1.

The first two chapters provided an overview on the legal setting of the right to a fair remuneration and how the right has been included into the practical forms of implementation by associations of states and international organisations, representing and binding their member states to adhere to certain standards. Since states are no longer the only actor in the field of economic regulation, the next chapter will focus with the economic side of remuneration and the corporate impact, mainly through CSR programmes.

3. Corporate Social Responsibility

The issue of business and human rights has gained importance over the last few decades. Since corporations are no longer limited to a domestic market, national legislation, it seems, has become insufficient to regulate the adverse impacts of businesses. International law so far is still primarily addressed to states as the representative party on the international level. After all, states do have legislative and regulatory powers that corporations do not have. That approach however is not taking into account the augmented impact of multinational enterprises (MNEs).¹⁴²

In an attempt to close this regulatory gap, the UN initiated the process to develop and implement an international framework on the accountability of corporations for adverse human rights impacts, the Business and Human Rights programme.

3.1. United Nations Business and Human Rights

The discussion about corporate human rights compliance is not a new one. The debate evolved on different issues but mainly on the responsibilities of businesses towards human rights and the corporate impact on society. Businesses are a major source of investment, job creation and a driver concerning economy and the forthcoming of state and society. This accumulation of power bears the risk of the business sector gaining too much influence. Thus, it needs a set framework to function efficiently while doing no harm to society or economy.¹⁴³

¹⁴² Koebele, 2009, p. 196.

¹⁴³ HRC, 2008a, A/HRC/8/5, para. 2.

3.1.1. The Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights

One of the first steps in the development of an internationally consolidated framework for business and human rights was made in 2003 when the UN Sub-Commission on the Promotion and Protection of Human Rights approved the 'Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights'. The UN Commission on human rights subsequently considered and rejected the Norms in 2004. The text of the Norms intended, to implement universally recognised obligations of business enterprises with regard to their influence on human rights.

The Preamble of the norms enumerated the international provisions with substantial reference to businesses. It further included, that not only the business enterprises but also their officers as well as persons working for them need "[...] to respect generally recognised responsibilities and norms contained in United Nations treaties and other international instruments [...]".¹⁴⁴ It referred to the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the ILO Declaration on Fundamental Principles and Rights at, the Guidelines for MNEs of the Office for Economic Co-Operation and Development (OECD) as well as the UN Global Compact (UNGC).

After referencing the existing mechanisms, the Norms tried to find a basis through which MNEs could be the duty bearer of international human rights. One approach was to confine the number of rights to the ones exerting reciprocal effects with businesses, like non-discrimination rights, rights of workers and rights of consumers.

However, the business community strongly opposed the norms because they would have imposed a direct obligation on businesses under human rights law. The Norms included the rights with the highest potential of corporate interference, yet they disregarded other rights, which are less volatile to corporate manipulation, but still linked to the business context. This distinction

¹⁴⁴ Commission on Human Rights, 2003, E/CN.4/Sub.2/2003/12/Rev.2, p. 1.

and the opposition of the corporate community were reasons for the rejection of the Norms by the Commission on human rights. Additionally the entanglement between states' obligations and corporate responsibilities would have made it almost impossible to distinguish implications and competencies in practice. The state would still have been the primary duty bearer but MNEs would also have had a secondary obligation within their sphere of influence. Even though limited to certain rights, it would have been an extension of their responsibility under international law.¹⁴⁵

3.1.2. The Protect, Respect and Remedy Framework

In 2005, in order to continue the establishment of a framework for business and human rights, John Ruggie was appointed Special Representative on business and human rights. After an initial assessment of the achievements by the Norms,¹⁴⁶ he started working on the Protect, Respect and Remedy framework. The first mandate set out to “‘identify and clarify’ existing standards [...] best practices [...] and the role of states in regulating businesses in relation to human rights”¹⁴⁷ which resulted in the ‘Protect, Respect and Remedy Framework’. After the adoption of the Framework in 2008 the mandate was extended for another three years in order to “[...] provide views and concrete and practical recommendations [...]”¹⁴⁸ on the subject.

The framework is built on three main pillars:

- The state obligation to protect;
- The corporate responsibility to respect;
- The greater access to effective remedy.¹⁴⁹

¹⁴⁵ HRC, 2010, p. 1.

¹⁴⁶ Ruggie, 2013, p. 48f.

¹⁴⁷ Ibidem, p. XVIII.

¹⁴⁸ HRC, 2008, para. 4(a).

¹⁴⁹ Ruggie, 2009, p. 1.

The state obligation to protect

In accordance with the human rights obligations to respect, protect and fulfil, the Ruggie Framework relies on the state obligation to protect human rights from interference by corporate actors. The state has to implement effective legislation to prevent the violation of rights by private actors. In the course of setting the national legal framework, the state should include the respective international obligations. Often states opt for the direct applicability of international law, this practice however can lead to uncertainty with regards to the extent of the obligations by private actors.¹⁵⁰ According to the 2008 report of the special representative, the concept of corporate culture is an important part of the state obligation. States have the capacity to pressure companies to implement corporate culture and, within this setting, respect human rights. The state obligation can also be used to determine the civil and criminal liability of the company in case of violations.¹⁵¹ Another aspect is the possibility of states to draft and implement a coherent policy on the international level, providing a useful tool in dealing with MNEs. If the home and the host state have a common or at least similar policy concerning adverse human rights impacts, the jeopardy to a country's development is diminished.¹⁵² Other facets are the exchange of best practice examples, the achievement of policy coherence and the support for private compliance policies for the acceptance of human rights by corporations.¹⁵³

Bearing in mind all these factors it is important to note that, a majority of human rights violations related to business activities occur in conflict zones. Corporate activities in these areas need additional attention as the human rights system cannot function properly due to the lack of rule of law.¹⁵⁴ It seems that a major problem with the states' obligation is not the lack of a suitable legal system but the enforcement.

¹⁵⁰ De Schutter, 2014, pp. 198-201.

¹⁵¹ Supra note 143, paras. 30f.

¹⁵² Ibidem, para. 35-38.

¹⁵³ Ibidem, para. 43-46.

¹⁵⁴ Ibidem, para. 47.

The corporate responsibility to respect

The corporate responsibility to respect exists independently from the state obligation to protect. It constitutes a baseline for MNEs, which exceeds the 'do no harm' principle in favour of taking positive steps, to ensure that corporate policies comply with human rights. However, the responsibility is mainly moulded by social opinion and not so much by legal requirements, even though failure to comply can lead to legal procedures.¹⁵⁵ In this context, legal liability is derived from the substantial definitions of complicity, according to the respective national legal systems.¹⁵⁶ Irrespective of possible criminal liability, companies are advised to abstain from any participation in violations, since the condemnation by society, can have an even greater impact than a legal punishment.

Olivier de Schutter uses the comparison of the modern day corporations to the medieval church made by Adolf A. Berle and Gardiner C. Means in 1923. He applies it on the modern corporation with regards to economic, social and cultural rights and discusses why and how corporations should be the duty bearers of specific human rights obligations.¹⁵⁷ The accumulation of power by corporations, allows for more than just to refrain from doing harm. In some cases the frontier between action and omission dissolves and cannot easily be established. That is exactly the case when it comes to remuneration. The employer has to set the income on a fair level to provide for an adequate standard of living, instead of adhering to a legal minimum wage, knowing that it is insufficient to cover the workers needs. By setting a wage at this level, the employer omits to violate national laws but still does not really live up to international responsibilities. The due-diligence assessment, when corporations have to take into account the human rights impact of their own activities, clarifies that the responsibility to respect is more than the duty to do no harm. It should contribute to positive human rights outcomes.¹⁵⁸

¹⁵⁵ Ibidem, para. 54f.

¹⁵⁶ Ibidem, paras. 73-78.

¹⁵⁷ Supra note 150, p. 194.

¹⁵⁸ Ibidem, p. 201f.

Access to remedies

No matter if it is a legal system or voluntary initiative, there is no use in implementing a rule without a mechanism to investigate, punish and redress abuses. Irrespective of the basis for the system, state-based or private-based, it needs to provide effective access to remedies. When it comes to monitoring, both the state system and the non-state system, have benefits and disadvantages. Some of them can respectively be counter-balanced by the other system. Therefore the combination could develop one successful system of redress for the victims of human rights violations.¹⁵⁹ As a minimum, every redress mechanism should include the following principles:

- Legitimacy;
- Accessibility;
- Predictability;
- Equitability;
- Rights-compatibility;
- Transparency.¹⁶⁰

Critique on the Framework and possible way forward

The Protect, Respect, Remedy Framework has been accepted by the international community, however not all actors were satisfied with the approach. Albin-Lackey wrote in a publication for Human Rights Watch, that one of the major problems was that corporations could not be held accountable if they decided not to implement the framework or if they would publicly accept it, yet do not implement it in practice.¹⁶¹ He also argues that the most feasible way forward would be, if states would engage in a human rights oversight over MNEs incorporated within their jurisdiction.

¹⁵⁹ Bredgaard, 2004, p. 388f.

¹⁶⁰ Supra note 143, para. 92.

¹⁶¹ Albin-Lackey, 2013, *Without Rules A Failed Approach to Corporate Accountability*, at: <http://www.batesmithlaw.com/1/post/2013/02/hrw-vs-ruggie-how-valid-is-the-criticism-of-the-ungps.html> (consulted 28 May 2014), p. 4.

De Schutter underlined, that when it comes to the positive responsibility of corporations with respect to human rights, the Norms actually proposed a viable approach, which, at the time of discussion, contained some legal insecurities and was thus opposed by the business community and some governments. International human rights courts and national courts decided in several cases that if a corporation provides public services, it could have an obligation to protect human rights, as a representative of the state.¹⁶² Since the adoption of the Ruggie framework, discussions and criticism about the framework did not diminish but increased. Some appreciate the principles but comment that one approach does not fit all and that the implementation is the most difficult part.¹⁶³ However, in this matter the framework itself does not provide any guidance.¹⁶⁴ Knox emphasised that the legal status of the framework was relevant, as the adoption implied bindingness even though it is merely soft law. The duty bearers' attitude towards more regulatory and remedial mechanisms can change through the impression of obligation and liability.¹⁶⁵ As long as there is no international treaty establishing direct corporate duties, it remains the obligation of the state to transform the frameworks into national laws. Lately the call for such a binding treaty on the subject of business and human rights is getting louder. During the session of the Human Rights Council (HRC) in September 2013, Ecuador read a statement that was supported by 85 states, calling for the establishment of an international treaty entailing binding obligations for MNEs with respect to human rights. It was followed by a workshop in March 2014, discussing the opportunities of such legally binding norms. Also the HRC was called to discuss the establishment of a binding instrument while the process of implementation of the Ruggie Framework is enforced. In the end, the combination of these two processes should lead to an effective international system to prevent and remediate corporate human rights

¹⁶² Supra note 150, pp. 204-208.

¹⁶³ Haines/Macdonald/Balaton-Chrimes, 2012, p. 108.

¹⁶⁴ Frankental, 2014, *A Business and Human Rights Treaty? We shouldn't be afraid to frighten the horses*, at: <http://ihrb.org/commentary/guest/business-and-human-rights-treaty-we-shouldnt-be-afraid.html> (consulted 19 June 2014).

¹⁶⁵ Knox, 2012, p. 62.

abuses.¹⁶⁶ The report of the working group on the issue of human rights and transnational corporations also stated “[...] despite the significant efforts made to implement the Guiding Principles, key challenges remain, including [...] reaching scale in implementation, building trust between stakeholders and overcoming barriers to effective remedy. There is a growing gap between the pace of implementation and the expectations of civil society and affected stakeholders.”¹⁶⁷ Furthermore it stressed that the complex challenges of business and human rights require constant attention and a mix of regulation and policy approaches as well as incentives for businesses to participate.¹⁶⁸ Deva specifies that significant and specified consequences, swiftly following a violation of human rights, could provide sufficient incentive for corporations, to abstain from violating human rights.¹⁶⁹ While the discussion is an essential step into a more regulated future, the process towards the adoption and implementation of such a treaty could take decades. Therefore it is relevant that, until this process is completed, the Ruggie Framework continues to be promoted despite the flaws and lack of enforceability.¹⁷⁰

Even though international legal standards are not primarily addressed to enterprises, they result in a sense of obligation directed to companies, in order to stay in business and avoid negative reputation. It is important to point out that even though CSR is said to go beyond national legislation, it is still the states’ obligation to set legal standards and provide for a minimum level of observance. If the states neglect this obligation there is a risk of private regulations replacing formal law, which could in the long run endanger the rule of law. Since MNEs are so far not primary subjects of international human rights law, they need to be subjected to national laws. This way of holding overseas affiliates responsible for their actions is of “dubious legality”¹⁷¹ as Zerk refers to

¹⁶⁶ CIDSE, 2014, p. 2.

¹⁶⁷ HRC, 2014, A/HRC/26/25, para. 91.

¹⁶⁸ Ibidem, para. 93.

¹⁶⁹ Deva, 2012, p. 49.

¹⁷⁰ Ibidem, para. 86.

¹⁷¹ Zerk, 2006, pp. 140f.

it. Another way would be to hold the mother company responsible in the home state, to force them into ensuring compliance by their partners. In case of non-compliance the MNE could be held responsible of conspiracy.¹⁷²

Lately the U.S. Alien Tort Claims Act 1789 (ATCA) has been the focus of controversial discussion and rulings in the area of holding corporations responsible for human rights violations. Cases like *Doe v. Unocal*, *Kiobel v. Royal Dutch Petroleum Co. (Shell)* or *Doe v. Exxon Mobile Corp.* have been dealing with the application of international law in U.S. courts. In *Kiobel* the U.S. Supreme Court declared that ATCA does not provide sufficient reasons to accept extraterritoriality, since the law of nations can be violated abroad or on U.S. soil. Additionally the historical development shows that, at the time of enactment of ATCA, there were only three recognised violations of the law of nations, namely violation of safe conducts, infringement of the rights of ambassadors, and piracy.¹⁷³ This implies that the current attempt of interpreting ATCA, to create a friendly forum for violations of international law in the U.S. courts, was not the original purpose. This explains why the courts are even more reluctant to apply ATCA with the wide scope it is currently being attributed. Thus the court contended in *Kiobel* that the arguments favouring extraterritoriality did not suffice to interfere with the sovereignty of another state.¹⁷⁴

This ruling, is one more proof that sovereignty is still a predominant factor in today's international relations, therefore states' judiciaries seem reluctant to interfere with that principle.

As shown, an international framework directly engaging MNEs, could bring the advantage that the business society is no longer just voluntarily part of the international human rights development but could be held accountable for their actions. It would however be essential to establish a court or tribunal equipped with the authority to issue binding rulings, enforcing corporate human rights

¹⁷² Ibidem.

¹⁷³ U.S. Supreme Court, 2012, Case No. 10-1491, p. 2.

¹⁷⁴ Ibidem, p. 3.

standards. Another challenge would be the content and extent of such binding standards. As pointed out before, remuneration is an essential means for a dignified life, yet in most human rights instruments it seems to occupy an inferior role. The risk of a binding framework could be the predefinition of a rather low threshold of obligations, in order to sustain business viability. As a result, corporations could adhere to these minimum limits to avoid infringement. This would bear the risk of slowing down national developments of effective remediation mechanisms, if they would evolve at all. Establishing yet another hard-to-access and time consuming international tribunal might not always be the most desirable solution.¹⁷⁵

3.2. The concept ‘Corporate Social Responsibility’

This chapter will briefly explain the historic development of CSR and how it interacts with other areas of law.

3.2.1. CSR in general

Even though the concept of CSR is not new, its relevance grew over the last few decades. The term was coined in 1953 and has since developed into being understood as a broad responsibility of companies, to include stakeholders interests in their conduct of business. Only during the 1960's the definition was extended to include the element to exceed legal requirements.¹⁷⁶

The EC defined CSR in 2009 as "[...] a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis [...]"¹⁷⁷. This definition was changed in 2011 to be "[...] the responsibility of enterprises for their impacts on society [...]"¹⁷⁸. In 2006, the Subcommittee on Multinational Enterprises of the ILO's Governing Body, adopted the proposed definition:

¹⁷⁵ Muchlinski, 2013.

¹⁷⁶ Corporate watch, 2006, p. 6.

¹⁷⁷ EC, 2009, p.1.

¹⁷⁸ EC, 2011, p. 6.

“Corporate Social Responsibility is a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other participants. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law.”¹⁷⁹

The essential elements of all these definitions are:

- Voluntariness;
- Integrated part of the company’s management;
- Systematic implementation.

Another essential element, though not part of the definition, is the visibility of the efforts to the public. Out of this necessity several initiatives were established, with the aim of institutionalising, harmonising and publicising company’s efforts in this area.

Put in the most simplistic form, CSR is a reference to the relationships within a company and its interaction with the rest of society.¹⁸⁰

The content of CSR initiatives depends on the level and type of the programme. International instruments like the UNGC or the Guiding Principles of the OECD usually refer to ILO standards. Company initiatives usually deviate from these standards insofar, as they are more tailored to the needs of the enterprise or the needs of this type of business in case of a sectoral initiative.¹⁸¹ The regulations, which are implemented on a higher than company level, are usually negotiated between various partners whereas the company’s Code of Conduct (CoC) typically is an authoritative instrument.¹⁸² It can reflect international agreements, needs of the area of business, can take into account market incentives and publicity problems which may have occurred in previous conduct of business.

¹⁷⁹ ILO, 2010, GB.295/MNE/2/1, para.1.

¹⁸⁰ Dorssemont, 2004, p. 364.

¹⁸¹ Miraglio/Hunter/Lucci/Pinoargote, 2007, p. 31.

¹⁸² Ibidem, p. 35.

Thomas Bredgaard identified four different types of CSR:

- The first one describes the relationship between business and society, focusing among others on the local community, developing countries or human rights;
- The second, focusing on the relationships within business, concerning labour market, employment strategies and human resources development;
- The third type deals with the cooperation of business and government where the government takes a more active role in trying to improve the business's influence on societal and national development;
- The fourth type is similar to the third but instead of focusing on the big picture it focuses on labour market responsibilities, nevertheless government and social partners participate actively in development and implementation.¹⁸³

In his categorisation, human rights are seen as one concept without any further distinction of rights since his approach is reflecting an economical point of view. From a human rights based approach, further distinction of human rights to be integrated in each category would be essential since human rights are associated to every one of the established types.

CSR distinguishes between internal and external aspects. Therefore everything referring to the area outside the company itself is the external aspect e.g. relationship with governments or shareholders but also concerning substantial aspects like the observance of non-binding standards or 'external human rights' like e.g. the prohibition of torture. Whereas everything connected to the sphere within the company constitutes an internal aspect, including relationship to employees or the implementation of labour standards. This would also include 'internal human rights' like the rights in work or the freedom of association.¹⁸⁴

Due to the degree of visibility the internal aspects of CSR receive less attention than the external aspects. Highly visible areas tend to get more room in CSR than the less obvious aspects like wages or employee turnover. Yet these

¹⁸³ Supra note 159, pp.374f.

¹⁸⁴ Ibidem, p. 368.

aspects are not to be neglected as they substantively influence the working environment.

Bredgaard said that the impression could appear that CSR is “[...] a monologue on the part of large companies reflecting upon their social responsibilities.”¹⁸⁵ In order to avoid this impression, a number of international associations have formed to ensure the effectiveness of CSR initiatives of their members.

Nevertheless one of the aspects being criticised is the voluntariness of CSR. The major argument is that it cannot be completely voluntary since nobody would implement it in that case. Another part is the extent of the voluntariness, scrutinising if only the means of implementation are voluntary or if the implementation in itself is voluntary.¹⁸⁶

In 2012, India adopted the new ‘Companies Bill’¹⁸⁷ obliging corporations to set CSR initiatives. The discussion prior to the legislation’s enactment was substantial and raised a considerable amount of criticism concerning the mandatory implementation, the lack of definition of CSR and the facilitation of ‘green washing’¹⁸⁸. Despite the criticism the ‘Companies Bill 2012’ was eventually enacted, obliging corporations, fulfilling certain criteria, to spend 2 % of their three-year average profit on CSR.¹⁸⁹ Thus India was the first country to

¹⁸⁵ Ibidem p. 368.

¹⁸⁶ Ibidem pp. 365f.

¹⁸⁷ Indian Ministry of Corporate Affairs, 2012, *Bill No. 121-C* at: http://www.mca.gov.in/Ministry/pdf/The_Companies_Bill_2012.pdf (consulted 14 September 2013).

¹⁸⁸ Green-washing is defined as “disinformation disseminated by an organisation so as to present an environmentally responsible public image”. When no environmental aspect is included it is referred to as white-washing which is then “a deliberate attempt to conceal unpleasant or incriminating facts about a person or organisation in order to protect their reputation”. In connection with the UNGC the term blue-washing has been coined suggesting that the UN – therefore the reference to the UN colour blue – is involved in the process of concealing facts, Oxford dictionary, 2013, “*green washing*” at: <http://www.oxforddictionaries.com/definition/english/greenwash> and “*white washing*” at: <http://www.oxforddictionaries.com/definition/english/whitewash> (both consulted 10 December 2013).

¹⁸⁹ Karnani, 2013, *Mandatory CSR in India: A Bad Proposal*, at: http://www.ssireview.org/blog/entry/mandatory_csr_in_india_a_bad_proposal (consulted 13 November 2013).

legally implement the obligation of business enterprises to spend part of their profit on philanthropic purposes.¹⁹⁰

3.2.2. CSR vantage points

One aspect included in the definition of CSR is that it goes beyond the legal obligations. This means that, as a minimum, companies are obliged to adhere to legal requirements but even more, they should go beyond the minimum standards required by these laws. Keeping that in mind, focus has to be directed to the fact that international law is directed to bind the states. MNEs can be subjected to international rules if these are accepted as *ius cogens*. So far, this is the case for some principles like e.g. the prohibition of torture¹⁹¹ slavery or genocide.¹⁹² In *Sosa v. Alvarez-Machain*, the U.S. Supreme Court does not accept the principle of arbitrary detention based on the UDHR and the ICCPR as a principle of customary international law, let alone *ius cogens*, even though it is accepted practice by many states.¹⁹³ If such an undisputed principle is not recognised then even less is a disputed one like the responsibility of corporations.

Dahm, Delbrück and Wolfrum like many other scholars, discuss MNEs and their status in international law and they concluded, that even though some authorities accept MNEs as partial subjects of international law, this is so far not the predominant opinion.¹⁹⁴ Even though mechanisms have developed to hold individuals directly accountable for violation of certain rules defining international crimes, namely the jurisdiction of the International Criminal Court, this is not yet the case for corporate actors with regards to human rights law.¹⁹⁵

¹⁹⁰ Dhawan, 2013, *Companies Bill 2012: How can India Inc make CSR a game-changer?*, at: http://articles.economictimes.indiatimes.com/2013-09-05/news/41803586_1_csr-corporate-social-responsibility-india-inc (consulted 13 November 2013).

¹⁹¹ ICTY, 1998, *Prosecutor v Anto Furundzija* Case no. IT-95-17/1-T, at: <http://www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf> (consulted 16 April 2014), IT-95-17/1-T, para. 156.

¹⁹² Bianchi, 2008, p. 495.

¹⁹³ U.S. Supreme Court, 2004, p. 27.

¹⁹⁴ Dahm/Delbrück/Wolfrum, 2002, pp. 243-258.

¹⁹⁵ Supra note 150, p. 196.

It can be said, that even though MNEs play a vital role in international relations, economy and politics, they are not yet seen as primary subjects of international law, nevertheless they may have some international responsibilities as the Ruggie Framework concluded, especially when it comes to the application of internationally recognised human rights.

However, this is not the only interaction between CSR and law. Many CSR instruments include legal standards or reporting mechanisms. Legal instruments may be used as guidelines when designing CoCs.¹⁹⁶ Taking a closer look at the international legal system, it is evident that the state is the duty bearer of the obligations set therein. The state ratifies international conventions, joins organisations and has to implement legislation according to the commitments resulting from international treaties. Nevertheless, stakeholders tend to view business enterprises as the duty bearer instead of the states.¹⁹⁷ CSR may create the impression of an ethical standard, binding companies, in order to legitimise their operations. These social norms put pressure on companies because investors, consumers and buyers perceive it as a binding standard and may sanction those who do not adhere to it.¹⁹⁸ Additionally it is in the company's interest to gain a higher amount of flexibility in the labour market by recognising a new form of regulation, which is not solely state-imposed but leaves the enterprises in a rather decisive role when it comes to the elaboration of norms.¹⁹⁹

Corporations have a huge sphere of influence in their home state and their host state. It includes employees, families of employees, clients, residents and also people with no obvious connection and the interaction with people offers room for voluntary activism. It is in this area where the company has the potential to exceed legislative measures e.g. by offering vocational training places, implementing additional measures to increase health and safety at work,

¹⁹⁶ Buhmann, 2006, p. 189.

¹⁹⁷ Ibidem.

¹⁹⁸ Ibidem, pp. 191f.

¹⁹⁹ Sobczak, 2004, p. 404.

exceeding health care, better working conditions or wages than competitors as well as products of good quality and value for the customers.²⁰⁰ Especially when a company is the main employer in an area, it has the chance to influence the working environment in a sustainable way and improve living conditions for the whole community.

In the year 2000 the Council on Economic Priorities Accreditation Agency has created the 'SA 8000' standard for social accountability leading to a survey by the Environmental Resources Management on the reports of the top 100 companies in the United Kingdom (UK) discovering that 79 of these companies published some kind of information on their social performance.

The most frequently reported issues were:

- Community;
- Health & safety;
- Employment;
- Training & education;
- Charitable donations;
- Ethics;
- Supply chain;
- Human rights;
- Socially responsible investment;
- Child labour.²⁰¹

A positive cooperation between the corporation and the society is relevant because, as explained above, the society tends to punish a business venture if it does not live up to the expectations.

The economic influence of a company and their CSR program is not just the financial output the company produces. It includes every direct and indirect economic impact on the surrounding community. The direct economic impact is

²⁰⁰ Uddin/Riad/Kazi, 2008, p.206.

²⁰¹ International Institute for Sustainable Development, 2013, *Social Indicators*, at: http://www.iisd.org/business/issues/sr_si.aspx (consulted 5 November 2013).

whatever the company itself creates on financial input to the society, e.g. via spending, taxes or the distribution of financial support to the community. The indirect economic impacts are those with secondary effects in relation to the company, e.g. increased spending of employees or raised investment in the area because of the increased appeal pursued by the enterprise. Establishment contribute to their surrounding through various means, among others through the creation of job opportunities, payment of taxes or the attraction of other related businesses. The so-called multiplier effect causes that every single one of these characteristics has a positive influence on other areas, whereby the whole economic situation of a region can be improved.

With this circle of influence, it is even clearer why the abstention from potentially destructive behaviour is so important. Yet even more important is, to provide a fair distribution of benefits to every individual participating in the achievement of corporate profits. These elements are necessary features, which should be clearly laid out and included in every CSR strategy instead of merely referring to the financial accountability of the company.²⁰²

The cooperation between private and public provision of goods can be another economic factor. The provision of public goods by a private contractor can reduce the burden on the public sector, probably leading to an improvement of the quality of goods catered by the public and private sector.²⁰³

Martinuzzi et al. provided a conclusive list in 2010 containing frequent CSR topics as comprised by the most commonly applied CSR guides. The authors separated the contents into four categories being:

- Economic topics;
- Environmental topics;
- Social topics;
- Global topics.

²⁰² Supra note 200, pp. 204f.

²⁰³ Kitzmueller/Shimshack, 2012, p. 55.

Each of these topics comprising a number of sub-issues which were found among others in the OECD Guidelines, UNGC, ISO 26000 and ILO Declarations.²⁰⁴

The European Sustainable Development Network linked this categorisation to the new CSR communication of the EC. Their changed understanding of CSR, which includes some newly emerged topics in comparison with the already established ones like environment, seems to be based on Martinuzzi.²⁰⁵

With regards to the following table it must be noted that Martinuzzi speaks from an economic and not a human rights background. Therefore in his table the respect for human rights is only one aspect of the bigger picture even though it can be separated into many sub-issues and is embedded in every part of his categorisation. He even separated the freedom of association and included it in the social topics. The whole issue of the right to work, labour rights, social welfare, adequate standard of living and many more are social topics even though he only emphasised one example. The same applies for the other categories.

²⁰⁴ Martinuzzi et al., 2010, p. 6.

²⁰⁵ Supra note 86.

Table 5: List of generic CSR topics. Source: Martinuzzi, et al. 2010

CSR – Economic topics: • Pursue sound corporate governance practices • Ensure transparency through economic, social & environmental reporting • Engage in fair competition • Foster innovation • Combat bribery & corruption • Employ Socially Responsible Investment • Protect intellectual property rights • Offer safe and high-quality products/services • Foster sustainable consumption & production • Implement sound risk management systems	CSR – Environmental topics • Support the protection of air and water, land biodiversity • Minimise the amount of toxic substances, emissions, sewage and waste • Conserve natural resources, apply renewable energy & avoid the usage of raw materials • Engage in climate protection • Boost innovation for improvement in efficiency • Consider the whole product life-cycle, facilitate reusability & recyclability of products
CSR – Social topics • Engage in fair and efficient Human Resource Management • Guarantee safety, occupational health & security • Respect freedom of association • Abandon discrimination & encourage diversity • Respect consumer interests	CSR – Global topics • Raise stakeholders' awareness for social & environmental topics • Practice sound stakeholder management • Facilitate sustainable supply chains • Respect 'Human Rights' • Engage in poverty reduction • Participate in the development of public policies

3.3. Role of the state in CSR

Nowadays there are a number of international frameworks and texts on the concept of CSR, so far there is no international obligation on companies to implement a particular strategy in their businesses, nor can a duty to do so be imposed onto corporations. When taking a closer look on this discourse, it becomes quite clear that it is not possible to reflect on it without considering the level of freedom of press in a society and also the degree of concern of the population towards economic responsibility. In an environment of highly informed consumers, it is hardly possible for a company to abstain from implementing any form of CSR without drawing negative attention and publicity. This provides for a certain degree of moral obligation to implement CSR in the company's profile.

Due to the fact, that states are the primary respondents of international law, the actions taken by international organisations, to establish frameworks or guidelines, remain non-binding instruments for MNEs and other business enterprises. This stresses the importance of effective state legislation when it comes to the implementation of international obligations. Without national legislation, binding corporations and imposing legal obligations to respect or implement international standards, every step taken by companies will remain a voluntary one.²⁰⁶ Even though there is no international obligation, and in some states the monitoring mechanisms are ineffective, there are other non-legal incentives for companies to implement a CSR strategy and to internally apply a monitoring procedure. Among them, and possibly the most important, is the reputation of the company with consumers and investors. In societies with a high level of freedom of press there is an increased attention towards corporate social behaviour. This pressures MNEs to comply with the expectations rising from the society in which they are located. The risk of a bad reputation is one factor that makes corporations act in an ethically responsible way. Another

²⁰⁶ Supra note 145, para. 55.

reason could be the desire of MNEs to be a trendsetter. This would have to be coupled with a high feeling of responsibility from the side of the board of leadership or the CEO and their perception of morality. Resulting from Rousseau's social contract another driver might be the desire for legitimacy of the corporate behaviour within society.²⁰⁷ The 2006 report of Corporate Watch includes employee satisfaction as another motivator for CSR. The people who cherish efforts of a company and invest in it are also the ones who want to work for a responsible enterprise.²⁰⁸

3.4. Labelling, reporting and monitoring initiatives

With the increased pressure on MNEs the establishment of CoCs rose to an unprecedented level. Despite this expansion, the implementation still remained on a lower level, consequently leading to attention and action by the civil society and other actors. They reacted to the need for streamlining in certification and monitoring of the countless initiatives. The initiatives usually target the improvement of CSR implementation through some kind of reward and they promote a positive perception by clients and consumers, as a reaction on the improvement. Keeping in mind that corporations assume these obligations voluntarily, the labelling, reporting and monitoring initiatives need to provide public recognition for the efforts made by the companies. In case of non-observation of the standards, they need to be able to publicly shame an unwilling corporation to actually live up to the commitment. Especially in the area of social topics, where an employer has a broader range of means to exceed legal requirements, positive measures are noteworthy and should be rewarded by the public.

²⁰⁷ Supra note 196, p. 191.

²⁰⁸ Corporate Watch, 2006, p. 5.

Among the most prestigious programs are the Global Social Compliance Programme (GSCP), the Committee Encouraging Corporate Philanthropy (CECP), Business for Social Responsibility (BSR), Verité and the UNGC. When taking a closer look at a few standards of reference, used by labelling initiatives, it becomes clear that they vary greatly in terms of complexity. Since corporate adoption of a CSR mechanism is not obligatory, the labelling initiatives are a vital means to motivate corporations into adopting and implementing the standards. The label recognition and thus the positive impression is transferred onto the corporation, resulting in higher revenues. In the case of contraventions, the public may be convinced of the corporations good will and attempts to comply with the adopted standard as well as legal requirements. The initiatives can be distinguished in two categories. On the one hand, the ones that first issue a code of conduct and then the corporations decide to adopt the code and join the initiative and on the other hand the ones that usually developed by a conglomerate of corporations, which aim to unify and improve the existing CoCS implemented by the corporations. There is no evaluation as to which method is preferable or achieves better results, they are just two different ways of establishing a code. Since there should not be an evaluation the below listed initiatives are not divided according to their system of code development.

The table below provides a short overview of the provisions concerning remuneration and related topics in the standards developed by Social Accountability International (SA8000), the Fair Labour Association (FLA), the Ethical Trading Initiative (ETI)²⁰⁹ and the GSCP. These four standards represent a sample of the variety of existing initiatives. They exemplify how the human rights standards have been transformed into codes while retaining a clear image of the legal requirements. They have been chosen because they represent other standards with contentual similarities, yet they are well known, frequently used and recognised among professionals.

²⁰⁹ Standing, 2007, p. 15.

Table 6: Comparison of the requirement codes of 4 initiatives

	SA8000 (SA, 2008)	FLA (FLA, 2011)	ETI (ETI, 2012)	GSCP (GSCP, 2010)
Freedom of association	The code includes the freedom of association and the right of workers to freely join an organisation of their choosing. Wherever law restricts this right, companies should allow their worker to freely elect their own representation.	Employers should respect the freedom of association. Where the right is restricted alternative legal means shall not be restricted.	The freedom of association and the right of workers to freely join an organisation of their choosing should be respected. Wherever law restricts the right, companies should allow their worker to freely elect their own representation.	The Code includes the freedom of association of workers to freely form and join trade unions and be not subjected to discrimination on the basis of membership.
Collective bargaining	Companies should not interfere with collective bargaining process.	Collective bargaining should be recognised.	The employer adopts an open attitude towards collective bargaining.	Collective bargaining is recognised without prior permission of the employer.
Remuneration	Payment of a living wage, which meets at least a legal or industrial minimum, covering the basic needs and provides some discretionary income. It should be possible to earn the set standard by working a normal workweek.	Remuneration for a normal workweek shall meet the workers basic needs and provide some discretionary income. The minimum wage or appropriate prevailing wage shall be respected.	Wages paid for a standard workweek should meet the legal or industry standard, cover at a minimum the basic needs and provide for some discretionary income.	Wages must exceed the legal minimum or industry standard, they shall meet basic needs and provide some discretionary income for workers and their families.
Working hours	Normal working hours shall be set by national law, nevertheless they should not exceed 48 hours per week excluding overtime.	Normal working hours shall be set by national law, nevertheless they should not exceed 48 hours per week, and overtime should not exceed 12 hours per week.	Normal working hours should comply with national laws but not exceed 48 hours per week and 12 hours of overtime per week.	Normal working hours shall not exceed 48 hours per week and workers should not be required to work overtime on a regular basis.
Payment of	Overtime work should be paid	Overtime work should be	Overtime work should be	Suppliers shall always

overtime	on a premium rate, which is to be set by national law. Where no national provision is in place it should equal prevailing industry standards.	compensated at a premium rate.	compensated at a premium rate.	compensate all workers for all overtime at a premium rate, as required by law and, where applicable, by contractual agreement.
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The FLA standard is a good example that the standards are evolving and living instruments. The first published CoC was a rather basic 1-page document including a few minimum concerns. It was supplemented in 2011 and the enhancement now includes provisions to increase the level of protection and harmonisation with other instruments.²¹⁰ These initiatives aim at streamlining various efforts in order to ease the pressure on suppliers who are often confronted with different CoCs. Usually suppliers produce for more than one purchaser with each one of them having their own CoC. They can be contradictory, putting the supplier in a difficult situation and increasing the risk of fraud.²¹¹ There is an enhanced need to simplify and unify the various obligations of corporations concerning their responsibilities. That is also where the above-mentioned monitoring and compliance activities are relevant.

Not all of them provide their own standards but some of them help companies to implement or monitor the individual or international standards.

The next part presents some well know labelling, reporting and monitoring initiatives, which assist their members to voluntarily live up to international standards.

²¹⁰ FLA, 2011, *FLA workplace Code of Conduct*, at: <http://www.fairlabor.org/labor-standards> (consulted 27 November 2013).

²¹¹ GSCP, 2012, *About the GSCP*, at: <http://www.gscpnet.com/about-the-gscp/about-the-gscp.html> (consulted 15 November 2013).

3.4.1. Global Social Compliance Programme

The GSCP is a coalition of 39 global buying companies aiming to unify the approaches and thus being able to focus on tackling the root causes of non-compliance with different CoCs. It was launched in 2006 as a collaboration to improve the sustainability of their supply chain. It is one of the initiatives, which does not provide for another set of principles but tries to consolidate the existing standards of the participating companies, shares best-practice examples and provides a platform for exchange. It aims at further improving existing measures, in order to increase the level of compliance as well as raising working standards. Nevertheless they have a Reference Code, which can be seen as a working platform from which to move forward. The GSCP has established 6 operating principles for its members:

- Non-competitiveness i.e. it should not be used as a marketing advantage;
- Upgrade of existing systems;
- No lowering of existing standards;
- Open source i.e. everybody is allowed to use the tools developed;
- Transparency;
- Top level involvement.²¹²

In the Reference Code the GSCP refers to the fundamental ILO Conventions as well as the conventions relating to labour standards and stresses the importance of compliance with regional and national labour laws. It includes the freedom of association and collective bargaining, provides some regulations on wages and labour contracts as well as working hours and payment of overtime.²¹³

3.4.2. Committee Encouraging Corporate Philanthropy

The CECP addresses senior executives of leading corporations, with the aim of achieving progress on societal challenges and driving business performance at

²¹² GSCP, 2012a, *About the GSCP*, at: <http://www.gscpnet.com/about-the-gscp/about-the-gscp.html> (consulted 15 November 2013).

²¹³ Supra note 211.

the same time. They provide exchange on best practice examples, networking opportunities, benchmarking tools and research concerning their common goal. As indicated by the name of the Committee, they focus their work on the benefits of corporate giving and also publish an annual report on the corporate contributions. This is one initiative, which has no set of principles but merely enumerates actions distinguishing a dedicated CEO from his non-dedicated counterparts.²¹⁴

3.4.3. Business for Social Responsibility

BSR has more than 250 members from different fields of business. Their main working pillars are consulting services, special programs for different industrial sectors, working groups and partnership development. Whereas in each of the pillars they offer a variety of means to improve the business's responsibility standards. Their human rights strategy is based on the UN Guiding Principles on Business and Human Rights and the International Bill of Human Rights. BSR aims at implementing strategies that respect human rights and guarantee business success. However the enumerated membership benefits seem to be somewhat biased as they are supposed to:

- Minimise the likelihood of litigation, shareholder resolutions, and activist campaigns threatening the license to operate;
- Reduce costs associated with worker overtime, turnover, and ill health;
- Support local communities;
- Strengthen brand reputation.²¹⁵

3.4.4. Verité

Verité is a U.S.-based organisation with the goal of illuminating problems, identifying solutions, implementing changes and documenting outcomes. In their work they focus on the most serious problems, which are child labour,

²¹⁴ CECF, 2013, *About CECF*, at: <http://cecp.co/about-cecp.html> (consulted 15 November 2013).

²¹⁵ BSR, 2013, *Human Rights Strategy and Implementation*, at: <http://www.bsr.org/en/our-work/consulting-services/human-rights-assessment-strategy> (consulted 15 November 2013).

slavery, systemic discrimination against women, dangerous working conditions and unpaid work. They provide a services range of assessment, training, research and consulting. Verité works from a distant location in the U.S. but is complemented by local staff in the Asian region in order to provide first-hand information. Like the previous mentioned initiatives, they do not provide a new set of standards but work with the situation on the ground, try to improve whatever conditions they find through their interviews and tailor their business solution to the company under review.²¹⁶

3.4.5. United Nations Global Compact

The UNGC is undoubtedly one of the best-known compliance initiatives worldwide. They implemented 10 guiding principles among them the 4 principles concerning labour standards according to the ILO Declaration on Fundamental Principles and Rights at Work. Nevertheless these principles do not include specific provisions concerning working conditions nor regulations on wages. The UNGC has more than 10.000 participants, which are obliged to submit an annual Communication on Progress (CoP) outlining the changes since the last submission.

Business members compel themselves to:

- Make the Global Compact and its principles an integral part of business strategy, day-to-day operations and organisational culture;
- Incorporate the Global Compact and its principles in the decision-making processes of the highest-level governance body;
- Contribute to broad development objectives (including the Millennium Development Goals) through core business activities, advocacy, philanthropy and partnerships;
- Communicate publicly the ways in which it implements the principles and supports broader development objectives – also known as the CoP;

²¹⁶ Verité, 2013, *What we do*, at: <http://www.verite.org/> (consulted 15 November 2013).

- Advance the Global Compact and the case for responsible business practices through advocacy and active outreach to peers, partners, clients, consumers and the public at large.²¹⁷

Additionally they are obliged to pay an annual financial contribution corresponding to their revenue. Even though the commitment taken by the participants is wide-ranging the UNGC does not have monitoring, enforcing or measuring functions. Its task is the streamlining of the 10 principles as well as the precipitation of related actions with the support of the UN.²¹⁸ Due to the allegations of “bluewashing”²¹⁹ the UNGC executed a wave of exclusions of non-communicating members in 2006. The exclusion meant that a member, that has not submitted a CoP in more than two consecutive years, is delisted. This was part of the general strategic drive towards elevating the integrity and accountability of the initiative. The status as active member can be regained by submitting a CoP. When a company is listed as ‘inactive’ it is no longer permitted to use the UNGC logo and is also prohibited to participate in any UNGC events.²²⁰ This is the only consequence the non-compliance with the formal requirements of the membership has. Furthermore, if a company is listed as inactive, the UNGC recognises that the failure to communicate does not necessarily mean that the corporation is not implementing the 10 principles.²²¹

The presented mechanisms have one thing in common, even though they are well established and content wise highly elaborated, they remain voluntary initiatives and it is up to the corporations to join or not. For some enterprises it might just be easier to work with their own measures and establish some kind of internal reporting procedure, than having an outside obligation to report and to

²¹⁷ UNGC, 2013, *Business Participation*, at:

http://www.unglobalcompact.org/HowToParticipate/Business_Participation/index.html (consulted 18 November 2013).

²¹⁸ Supra note 209, p. 4.

²¹⁹ Supra note 188.

²²⁰ UNGC, 2006, *335 Companies Inactive as Part of Quality Drive*, at:

http://www.unglobalcompact.org/NewsAndEvents/news_archives/2006_10_02.html (consulted 15 November 2013).

²²¹ Ibidem.

keep a certain set of principles. That might also be the advantage of the reporting and labelling initiatives that do not offer a set of rules but just try to streamline and improve the existing policies. That lack of liability makes clear how important effective state policy and regulation is. This is also true as many CoCs or private policies refer to national laws as the basis for implementation. This is especially true for the area of wages, where usually the codes refer to the national minimum wage or industrial standard. In this case how should the corporation observe the code and the law if no such law is in effect?

3.5. Labour Inspection v. Private Policies

Comparing the broad scope of application of private initiatives to public labour inspection, the notion could arise that labour inspection is an outdated and superfluous system. This chapter will therefore provide a brief comparison of the reasons why public labour inspection is just as important as private initiatives. Again, a main factor is the state obligation to implement the international commitments through the national legal system and to ensure the adherence of private parties as part of the state obligation to protect.

Since one of the main critiques of the CSR system is the voluntary character of the CoCs, numerous publications deal with the discourse of private or public initiatives.

Still, being a voluntary system is not the only problem of CSR. Some argue it also lacks legitimacy because it provides rules that are not imposed by the state, while others interpret it as another form of “colonialism”²²² in order to promote western principles and implement them all over the world. Yet, where the state conducts business in the form of a private enterprise, it can be a role model by integrating principles of responsible conduct of business into its daily business, thus leading the way for other corporations to follow in the path of

²²² Supra note 171, p. 10.

responsibility.²²³ Due to the fact that private initiatives have gained a more important role in CSR, the ILO conducted a meeting of experts in order to discuss the effects and possibilities for cooperation between private initiatives and labour inspection.

Labour inspection is clearly accepted to be a state obligation, ensuring compliance with the national laws and international standards concerning rights at work and labour laws. Private initiatives monitor compliance with a selected set of standards, which has been chosen by the organisation itself.²²⁴

In the 309th session of the ILO Governing Body the Committee on Employment and Social Policy stated “[...] such initiatives can be complementary to public inspection and may help to bring about improvements in working conditions. However, there is a risk that private inspection initiatives could undermine the public function, create enclaves of good practices with few linkages to the rest of the economy and divert attention and resources from other sectors that do not necessarily produce for export.”²²⁵ An important feature of labour inspection is that it is first and foremost independent and impartial. It also has special liberties attributed to it by the ILO C81. Among others the labour inspectors can enter freely, carry out examinations, interrogate employer or staff and take samples, whereas these elements cannot be attributed to private initiatives.²²⁶ Where private policies operate on the principle of voluntariness, punishment for violation of the invoked principles can present a disincentive for further involvement.²²⁷ Another facet is that if a corporation hires an auditor, whether internal or external, the level of independence is doubtful because the auditor is paid by the company he is supposed to evaluate. Locke recently commented: “[...] what started in hope ended in disappointment. While I continue to think

²²³ SECO, 2009, *CSR concept paper of SECO*, at: <http://www.seco.admin.ch/themen/00645/04008/index.html?lang=en> (consulted 30 October 2013), p. 5.

²²⁴ ILO, 2013, *Labour inspection and private compliance initiatives: trends and issues*, at: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/meetingdocument/wcms_230798.pdf (consulted 12 June 2014), pp. 4-10.

²²⁵ ILO, 2010, p. 9.

²²⁶ EPSU, 2012, p. 12.

²²⁷ Supra note 224, pp. 22f.

that companies have a large responsibility for ensuring good labor standards, I also have a renewed appreciation for the older idea that ensuring fair treatment for workers, including real rights of association, is a public responsibility.”²²⁸ One possible way of cooperation between labour inspection and private initiatives would be that, results of the private initiative investigations are not kept confidential but that they are brought to the attention of the labour inspectors. Subsequently the inspectors can act according to the information, either by giving advice or imposing sanctions. This approach would also tackle the problem of limited resources of the labour inspectorates by gaining additional information through external sources.²²⁹ Of course, in order to make this approach viable, private initiatives and labour inspection would need to operate on a common set of principles. That would require corporations to adhere to a given set of standards instead of choosing which principles they want to implement. As the background paper for the ILO meeting of experts stressed, private initiatives could improve compliance with public standards and help to develop an environment that recognises, supports and promotes the rule of law. CSR and private initiatives are defined to be voluntary measures exceeding the legal requirements. So if they only support the compliance with legal requirements, they prove that the law itself does not provide sufficient pressure for corporations to adhere to the legal minimum requirements, even though this should be self-evident for every natural or legal person living under the rule of law. Despite the need of compliance, MNEs seem to possess sufficient influence and power to exempt themselves from legislation, calling for increased action and pressure by the civil society and international community, to promote observance of national laws and improvement of circumstances through CSR.

²²⁸ Locke, 2013, *Can Global Brands Create Just Supply Chains?*, at: <http://bostonreview.net/forum/can-global-brands-create-just-supply-chains-richard-locke> (consulted 12 December 2013).

²²⁹ Supra note 224, pp. 45f.

Zerk pointed out that the traditional form of regulation is no longer prevailing.²³⁰ States have moved from command and control towards a more open, regulatory system. Stakeholders of all kinds are now invited to comment, participate and influence the regulatory process. Looking at NGOs, associations or the increase in civic participation, be it through associations or through open revolt and demonstrations, the classic forms of governance are no longer effective. So far, the system of giving tax incentives or removing tax disincentives in order to make corporations adhere to minimum legal standards, seems to be the only successful model.²³¹ It also seems that naming and shaming, as done by NGOs, can still achieve corporate adherence to higher standards, than the ones requested by law. It still proves that corporations needing external pressure in order to live up to legal or voluntary standards.

Visser found the initial concept of CSR wanting and therefore designed the CSR 2.0, focusing on a new way of integrating responsibility in everyday company politics. It should be a systematic approach instead of implementing incoherent philanthropic policies in order to maintain the façade.²³² So far, however, it does not seem as if corporations are interested in implementing such a CSR 2.0 to improve their corporate citizenship. Therefore it would be the task of the state to implement rules, binding companies to a set of standards and even more importantly, to monitor the adherence to those rules.

3.6. National CSR policies of the 28 EU member states

The EC published the new CSR strategy for Europe in 2011. It dates from 2011-2014 and emphasises some other aspects than the 2006 CSR strategy. One of the goals is, that every member state drafts and of course implements, their own national CSR strategy by mid-2012. These strategies should refer to internationally recognised CSR principles and Guidelines e.g. the UNGC. The

²³⁰ Supra note 171, p. 36.

²³¹ Ibidem, p. 38.

²³² Visser, 2011, pp. 144-149.

strategy should consider the issues raised in the communication and should be drafted in cooperation with enterprises and other stakeholders.²³³

With respect to this new communication on CSR, the European Sustainable Development Network enlists six different forms of governance, found in national CSR initiatives in their quarterly report of 2011.²³⁴

- Horizontal integration;
- Vertical integration;
- Participation in Development;
- Stakeholder Management;
- Indicators and Monitoring Mechanisms;
- Evaluation Mechanisms.

The authors conclude that the horizontal and vertical integration of the strategies means, that the policies are integrated into a bigger picture of measures, with the aim of strengthening CSR and to coordinate the actions with other fields of implementation.

The following table provides a dense overview over the national CSR policies of the 28 EU member states that resulted from the EC's CSR strategy.

²³³ Supra note 178, p. 13.

²³⁴ ESDN, 2012, *Focus CSR: The New Communication of the EU Commission on CSR and National CSR Strategies and Action Plans*, at: http://www.sd-network.eu/?k=quarterly%20reports&report_id=23#qr32 (consulted 18 February 2014), p. 43.

Table 7: Overview of national CSR policies in the EU 28.

Country	Wages in national CSR policies²³⁵	Supplementary information²³⁶
Austria	The framework for 'Economic success through social responsibility' includes the payment of fair and comprehensible wages for permanent and temporary workers.	In 2002 the CSR Austria Initiative Austrian was established through cooperation by the Industry Federation, the Federal Ministry for Economic Affairs and Labour and the Chamber of Commerce. The joint Sustainability Strategy aims at integrating the economic, social and environmental spheres in corporate activities.
Belgium	There is no state policy in order to facilitate payment of a minimum wage. The 2011 Barometer of Social Responsibility states that 30 % of the responding companies have remuneration systems, incorporating social criteria.	In 2002 the Belgian Parliament approved a law introducing a voluntary social label to companies, whose chain of production respects the eight fundamental ILO conventions
Bulgaria	Bulgaria implemented national minimum wage legislation. The CSR wage effort is to raise the awareness of social standards amongst the participants of the National Round Table for Labour Standards, the community and political institutions.	In 2004 the National Round Table for Labour Standards Introduction held its first session with participants from state institutions, social partners and businesses.
Croatia	As there is not yet a general acceptance of CSR in Croatia the focus lays on establishing a supportive environment without focusing on details, let alone wages.	At the moment the environment for CSR in Croatia is not very friendly which is why the EC is Co-funding a CSR project in Croatia in order to establish a CSR platform, conduct CSR education and establish a case study database.

²³⁵ EC, 2007; CSR Europe, 2010; Reporting CSR, 2014.

²³⁶ EC, 2007; CSR Europe, 2010.

Cyprus	The concept of CSR is widely proliferated within Cyprus; nevertheless the focus is not directed towards wage policies.	The Labour Advisory Body is a forum of dialogue between the government, the employers' federations and the trade unions on labour rights and social issues.
Czech Republic	The government's support is represented by the strategy of National Quality Policy for 2011-2015 however the Czech CSR system is focused on environmental issues rather than on social policies. Therefore there are so far no wage requirements.	The National Programme for the Labelling of Environmentally Friendly Products is supposed to support the development, production, sale and use of environmentally friendly products. Corporate CSR policies are changing, therefore many corporations integrate it in their daily business.
Denmark	The focus concerning social issues of the Danish government lies on fighting social exclusion and developing a more inclusive labour market. The Human Rights Compliance Assessment of the Danish Institute of Human Rights is updated annually and includes 10 indicators to assess if companies pay a living wage.	The Social Index may also be an element of a company's report about social commitment. If a company reaches a score above 60, certified by an independent auditor, it obtains the right to use the 'S' label (for social responsibility) for three years.
Estonia	One of the goals of the Estonian national strategy on sustainable development is growth and welfare, which is defined as the satisfaction of the material, social and cultural needs of individuals, accompanied by opportunities for individual self-realisation and for realising one's aspirations and goals. There is however no reference to wages to achieve that goal.	The sustainable development strategy is part of the conception for the long-term development of the Estonian state and society conceptualised until the year 2030.
Finland	The topic of wages is not mentioned as specific topic in the very extensive CSR framework, Finland has implemented since 2004. However the Finnish legislation concerning labour standards is quite	The Finnish branch of the International Chamber of Commerce arranges regular meeting to discuss topics of international business codes and practices. The last meetings concerned the work of OECD, ISO, the

	extensive.	United Nations and the Global Reporting Initiative.
France	The law on new economic regulations obliges companies listed on the stock exchange, to issue a report by the board on a number of issues. Among them is the issue of wages and their evolution.	In 2010 the Inter-Ministerial Committee for Sustainable Development adopted the national sustainable development strategy 2010-2013. It includes 9 strategic issues among them the fight against poverty in the world. There is however no inclusion of wage.
Germany	The German government supports CSR initiatives on a broad basis. The range varies from the cooperation in a CoC or Private Partnership Programmes to financial support for the implementation of CSR programmes. Nevertheless there is no focus on wages.	One problem for the German CSR field is the wide engagement of the government in many fields, which leaves the means for voluntary overarching activities rather small. The governmentally established multi-stakeholder forum adopted a recommendation for a national action plan on CSR in 2010. Until today CSR initiatives remain a voluntary tool of companies.
Greece	The Greek government applies CSR strategies internally, which means implementing it as an employer. Nevertheless it also supports private sector efforts, thereby focusing on initiatives by the social partners. The implementation of a CSR label focusing on employees' rights in general is planned. So far there is no information on the inclusion of wages as a criterion.	The Ministry of Employment and Social Protection applies the following principles in its CSR efforts: • attracting and retaining more people in the labour market, increasing the labour offer and modernisation of social protection methods; • improvement of work adaptation; • increased investment in human capital with the improvement of education and skills.
Hungary	The Family-friendly employer price of the Hungarian government includes one aspect for part-time workers combined with wage incentives. Additionally there is the 'Best workplace survey and price' which also takes wages and benefits into consideration.	One of the government's targets for the CSR social policy is, raising the employment standards with regard to hiring norms, working conditions, wages and benefits, health and safety and training. Additionally, the Hungarian national policy reflects the EU CSR

	The Economic and Social Council developed recommendations on CSR for the government in 2007 referring to the need of payment of fair wages. The recommendations have so far not been adopted.	policy aiming at promoting the implementation of the economic, social and environmental dimensions of sustainable development and economic and financial rules promoting CSR.
Ireland	Concerning wages the national policy only requires contractors in public procurement to regard employment regulation orders and registered employment agreements as well as minimum wage legislation.	Ireland supports CSR as a voluntary initiative and stresses the importance of it as such. The national action plan is mainly focused on environmental issues.
Italy	The CSR-SC project is supposed to replace the currently active labelling initiatives. Nevertheless the project does not refer to Italian wage policies. In march 2013, the Italian Ministry of Labour and Social Policy presented its National Action Plan on CSR to the EC. It refers to wages only so far as the OECD guidelines include decent wages.	In 2002 the Ministry of labour and social affairs started a CSR social commitment project, which aims at streamlining CSR policies within the various stakeholders.
Latvia	The national CSR policy is only in place since Latvia joined the EU and therefore the development of strategies is still in progress. So far there seems to be no emphasise on wage development through CSR policy.	Latvia is participating in various international and EU programmes to strengthen the national CSR policy. So far the most pressing social issue seems to be gender equality.
Lithuania	The situation concerning the CSR policies is similar to the one in Latvia and the programmes are still developing. Through the implementation of a 'Methodology for the Evaluation of Jobs and Functions', the transparency on the wage bargaining process is expected to rise thus having a positive influence on the wage level.	Lithuania is taking part in a diverse number of international CSR fora, organising seminars, and developing strategies with international partners.

Luxemburg	The National Plan for Sustainable development focuses on • the number of companies that participate in CSR activities; • which CSR initiatives they already participate in; • which initiatives have to be developed for the future. Therefore the overall perspective concerning wages is left to the minimum wage legislation.	One of the first steps of Luxembourg was the adoption of the Charter on Sustainable Development as a reaction to the EC Green paper on CSR in 2003. Subsequently numerous education initiatives like seminars or summer universities took place.
Malta	In Malta CSR only became an issue in 2004 when Malta joined the EU. The main consideration in the national CSR policy therefore is directed towards other issues than wages. Employees are concerned only as they are to be included in the decision making process of companies.	The Maltese Ministry of Investment, Industry and IT works to implement 5 key principles in all public entities. They include considerations concerning: • People with disabilities; • Employees and their families; • NGOs; • Environment; • Needs of minorities.
The Netherlands	The Government refers to the OECD guidelines and thereby includes the wage policy of the guidelines into their framework of CSR. Thus including the provision that companies should provide the best wage level and working conditions within the framework of government policies. The 'Government's vision on CSR' also mentions support for CSR through measures like the low-wage allowance. There is however no explanation available as to how this allowance is implemented.	The Dutch government stresses the voluntariness of all CSR initiatives; nevertheless they encourage all companies to implement CSR into their business, as they see it to be one of the core obligations of a corporation. The government strongly relies on the OECD Guidelines.
Poland	From 2007 Poland participated in the project by the UNDP to accelerate CSR development. The polish	The main objective of the polish CSR strategy seems to be directed towards environmental issues, including

	social policy concerning CSR is mainly directed towards training and life-long learning as well as the employment of disabled people and administering the effects on the employer. Employers are obliged to adhere to the Labour Code but working conditions are generally included in the CSR debate.	e.g. the Green Labels campaign which is directed to consumers in order to inform them about the various labels in Poland and try to convince consumers to pay more attention to labels. Since 2009 the Government established 4 working groups focusing on responsible investment sustainable consumption, education and promotion of CSR
Portugal	The emphasis of the Portuguese CSR strategies is directed towards the re-integration of employees in the labour market and conduct of additional training. It also aims at integrating persons with disabilities in the labour market and trying to increase the number of indefinite-term contracts.	The Portuguese CSR strategy is a responsibility of the Ministry of Labour and Social Solidarity and the Ministry of Economy and Innovation trying to mainstream the national policies of the revised Lisbon Strategy. The 'GRACE' association has been pioneering work concerning CSR since 2000.
Romania	The conference on CSR, held in Romania in 2006 included the relations to the employees as one major topic; however there is no focus on wages in the national CSR policy which is still being developed, partly under the ILO Better Work programme.	The topic has rather recently been included in the national policy plan there is still a broad variety of subjects which are in development and corporations invest more in CSR as they are increasingly aware of the benefits it can have on their reputation.
Slovakia	Since the CSR development is still rather young it is not very surprising that the focus is directed towards other issues than wages as they are anyways dealt with in the national minimum wage legislation.	Slovakia is in the process of developing a CSR policies on national level and on company level as the overall economic situation of the country is changing. It also participates in the UNDP programme to develop CSR in the new EU member states.
Slovenia	Slovenia has a complex and inclusive CSR policy including a broad variety of labour issues. Thereby the focus is on the respect of working standards and labour rights but again there is a lack of specific	In 2005 the government established a working group on CSR and adopted the 'Slovenia Development Strategy'. Additionally in 2010 the Network for Social

	references to wages.	Responsibility was founded as a meeting point of companies and other organisations whose common purpose is to promote social responsibility.
Spain	The Spanish CSR initiatives led to the adoption of the law 43/2006 to increase stability of employment and the quality of jobs. The law was agreed on by the social partners and then implemented by the government. It nevertheless does not include provisions on the national wage policy.	The Spanish government has implemented a number of programmes in order to promote CSR in different areas of economy as well as a label for equality of men and women. In 2009 the National CSR Council was established holding a variety of responsibilities but also serving as multi-stakeholder forum.
Sweden	Based on the OECD Guidelines and the UNGC principles, the Swedish Trade Council has formulated ethical guidelines taking into account labour standards, but there is no special policy on wages.	The Swedish government strongly supports the UNGC, the OECD Guidelines as well as the Global Reporting Initiative. The Swedish Consumer Agency tries to raise awareness of consumers. The government participates in a great variety of initiatives and programmes to promote CSR.
United Kingdom	Even though the UK CSR policy is extensive and includes numerous topics, it lacks a specific approach on wages.	In 2000 the first minister for CSR was appointed in the government and, in 2005 as part of the UK Presidency of the Council, the government organised a major conference on CSR. In 2010 'The Big Society' project was launched aiming to devolve responsibility from the government to local communities and empowering people to actively participate.

The table provides some insight concerning the implementation of the EU member states. Most of them already implemented some kind of national CSR policy. Some are still in the process of developing programmes. Yet, when taking a closer look it becomes quite clear that, no matter how long national policies have been in place or how long the country has been a member state of the EU, the contents are diverse.

Some countries focus on ecological awareness and try to implement regulations protecting the environment. Others balance these efforts with measures concerning social issues. When it comes to labour standards, almost all countries simply include international obligations into national labour laws by means of reference, not considering that the international obligations are not detailed enough to be implemented on that level, therefore could lead to legal insecurities and costly court proceedings, while leaving room for human rights violations. In order to fully comply with the obligation to protect, it would be necessary to take the relevant steps and translate international duties into a working system that respects and complements the national needs and the existing legal system.

Summarising the information provided above, the trendsetters, Austria, Denmark, France, Hungary and The Netherlands, consider wages in their national CSR strategies. The majority of the member states implemented some kind of national CSR strategy however focusing on other issues. The most common topics are:

- Environment;
- Social inclusion;
- Responsible Investment;
- Sustainable growth.

Finally there are three countries, Croatia, Lithuania and Romania, which have not yet implemented a CSR policy or are currently in the process of preparing one in order to live up to their responsibility towards the EU. Considering some other recently developed programmes, it is not to be expected that the strategies will include wages as a major topic.

3.7. Impact of CSR initiatives on remuneration

In general, CSR has shown an impact in different fields. Mostly its effect is seen in environmental issues, corporate strategies or participation in international CSR initiatives. Considering the importance of income for a person to sustain a living, uphold independence from social security payments and also bolstering self-esteem, it needs to be evaluated, what impact wage regulations in CSR initiatives so far had on the right to a fair remuneration.

This chapter focuses on the following areas:

- Remuneration;
- Payment of overtime;
- Working hours.

The discussion on wages has been rising in the last few years as global poverty provides a growing risk to economies and to the legitimisation of states through rising unrest of the population, as was the case in Bangladesh in 2013.²³⁷

Kawaguchi and Ohtake studied the impact of remuneration on employee satisfaction and their extensive research shows that wage has a major influence on overall job satisfaction and therefore productivity. They measured that a wage increase, boosts employee satisfaction by approx. 8 % whereas a decrease or pay freeze diminishes their satisfaction by about 3 %.²³⁸

3.7.1. Long-term study on the South African wine industry and the flower-cutting sector in Kenya

So far, the academic discussion on CSR has covered quite a broad range of topics. It considered the influence on financial output by companies, the connection to working conditions or the possible impact on corporate behaviour. Yet only one empirical study took the aspect of wages into account during their

²³⁷ Spiegel Online, 2013, *Protest gegen Ausbeutung: Textilarbeiter in Bangladesch wollen höhere Löhne*, at: <http://www.spiegel.de/wirtschaft/soziales/protest-gegen-ausbeutung-textilarbeiter-in-bangladesch-wollen-hoehere-loehne-a-709358.html> (consulted 26 November 2013).

²³⁸ Kawaguchi/Ohtake, 2007, p. 66.

inquiries. Nelson, Martin and Ewert conducted a 3-year study on the wine industry in South Africa and the flower-cutting sector in Kenya.

The study focused on 8 main aspects:

- Worker priorities and code provisions;
- Work status and gender;
- Material impacts;
- Social impacts;
- Empowerment indicators;
- Managers' perceptions;
- Overall impact on workers;
- Wider impact.²³⁹

As the wage levels differ between different groups of employees the study draws the distinction between permanent and casual workers. It was visible that there was a difference in wage levels between employees (including permanent and casual workers) between code-adopting and non-adopting companies and during the time of the study, this gap widened even further. The investigators also measured the ownership of household durables, which showed the same result as the wage levels.²⁴⁰ In general the authors of the study came to the conclusion that employees in code-adopting companies were better off than those in non-adopting companies. Nevertheless there are still differences between workers within code-adopting companies. As already mentioned, permanent workers receive the greatest part of the benefits and casual workers tend to have the lowest wages and higher job insecurity. Again there is a gender wage gap, as generally more dangerous or hazardous engagement is better paid, whereas men often fill these positions. Women usually engage in less physically demanding and therefore lower paid positions.²⁴¹

In spite of these findings the authors are not completely convinced that, code implementation is the only reason that these companies scored better than their

²³⁹ Nelson/Martin/Ewert, 2007, pp. 64-68.

²⁴⁰ Ibidem, p. 65.

²⁴¹ Ibidem, p. 67.

non-adopting counterparts. They found that in some cases manager pre-disposition towards corporate responsibility had the same results, even without implementation of a CoC. In some cases the impression may arise that code implementation is the sole reason for the improvement of working conditions, where the real reasons are manifold and cannot be reduced to the CoC.²⁴² Finally the authors point out the risks of increased code implementation while upholding the current buying policies. The need for cheap goods, results in a tight production schedule, putting the producers under pressure of producing the requested quantity in a short time and for the agreed price. Therefore the costs of CoC implementation are very likely to be counterbalanced by changes in the employment environment throughout the supply chain. These changes could include the reduction of permanent workers in favour of casual workers or the preference of workers through employment agencies instead of employing workers directly. For both, casual and indirectly employed workers, the codes usually provide less protection or none at all. In any case the study shows that the most important feature for the implementation of change, whether codified or not, is the position of the management. That left the authors with the question, if these suppliers “[...] who see no market incentives for code adoption will adopt codes of practice.”²⁴³ Even though Nelson, Martin and Ewert found improved situations in code-adopting companies they also found that the power difference within the global value chain constitutes a persistent problem for the empowerment of the workers. Yet this issue lies outside the scope of Codes and therefore is an issue, which needs to be addressed by international, national and local governance in order to facilitate a strategic approach and provide a sustainable impact for people.²⁴⁴

²⁴² Ibidem, p. 68.

²⁴³ Ibidem, p. 69.

²⁴⁴ Ibidem, pp. 71f.

3.7.2. Complementary studies

In 2006 Harrison and Scorse published their insights concerning the connection of minimum wage legislation and Anti-Sweatshop activism in Indonesia. They compared the compliance with minimum wage legislation for national and international corporations during a 6-year period. Their main finding was that compliance of foreign owned companies exceeded that of domestically owned by approx. 30 % and compliance of export-oriented companies exceeded that of domestically oriented by up to 20 %.²⁴⁵ Even though the authors did not link this evidence to the existence of CoCs, it can be assumed that most foreign owned companies adopted a code, which requires adherence to the minimum wage legislation of the host state.

Powell and Skarbek came to a similar conclusion when they point out that most sweat shops, no matter how low the wages are, still offer their employees an above-average standard of living and firms, created by foreign investment, on-average provided for higher wages than their domestic counterparts.²⁴⁶ They compared income data available for ten countries and pointed out that in 80 %, sweatshop workers income was above the average national income.

During research, conducted by Hoang and Jones in Vietnam, they discovered that the close link between an MNE and its supplier companies is an important factor. They investigated companies supplying a number of MNEs and compared them to factories with only one or few industrial consumers. Their result is clear, the number of buyers and the closeness of the link between supplier and buyer influences code adherence and through that, compliance with wage standards.²⁴⁷

A reason that could hinder the effectiveness of codified solutions is the diverging interests of buyers and suppliers as well as the interests of employers and employees. Buyers usually want higher quality, low costs of production and short delivery times whereas suppliers need a certain amount of time to be able to produce the goods. Even if they cannot manage to produce the requested

²⁴⁵ Harrison/Scorse, 2006, pp. 150f.

²⁴⁶ Powell/Skarbek, 2006, pp. 263f.

²⁴⁷ Hoang/Jones, 2012, pp.75f.

amount, they still accept bigger orders in order to earn more money, even though they will be short of workforce to meet the deadlines. As a result, they want to achieve high productivity while paying minimum wages and employees want to work fewer hours and need better working conditions.²⁴⁸

To the current state of research, especially according to the study conducted by Nelson, Martin and Ewert, it can be stated that there seems to be a connection between CSR and wages, nevertheless, CoCs adopted in MNEs are certainly not the sole influence for a wage raise in the supply chain.

Other relevant factors are:

- Closeness of relation between supplier and buyer;
- Company ownership;
- Export orientation;
- Commitment of the CEO;
- National legislation;
- Compliance with national laws;
- Level of freedom of the press;
- Presence of international NGOs;
- Visibility of the violations.

These studies provide evidence for the above-mentioned cooperation of labour inspection and private initiatives. While private action can clearly be an incentive for corporations to voluntarily apply international standards, only an effective system of national legislation and public inspection can ensure the effectiveness of the right to a fair remuneration for workers in the supply chain.

3.8. Impact of Codes of Conduct on remuneration

So far, a number of studies have been conducted on the impact of CoCs on different aspects of the working relationships. In 2003 the World Bank Group

²⁴⁸ FLA, 2011a, *Wages Along the Supply Chain: trends, Progress and Looking Ahead*, at: <http://www.fairlabor.org/report/wages-along-supply-chain-trends-progress-and-looking-ahead> (consulted 27 November 2013), p.6.

analysed a number of CoCs and international standards in order to provide a comparable study.

They concluded that, regarding wages, CoCs and most international standards maintain a similar content, leaving room for the national governments to set the minimum wage at a level, which is required with respect to the state's state of development. If states have ratified the ILO minimum wage fixing convention this should be the guideline on criteria to be included in a minimum wage. Other than that, some terms of reference rely on the living wage approach and some rely on industry practices in case that there is no national minimum wage.²⁴⁹

Concerning payment of overtime, the typical content is that it should be paid at a premium rate and overtime itself should be used only in exceptional cases instead of being a standard procedure. Most codes stipulate that the normal working time should not exceed 60 hours per week and a maximum overtime is set with 12 hours per week.²⁵⁰

With regard to freedom of association and collective bargaining the study concluded that, due to the controversy of this topic in different regions of the world, the codes adopted a rather variable approach. This means that in countries where the right to associate is prohibited by law, the corporations should "[...] 'recognise and respect lawful rights' of freedom of association and collective bargaining."²⁵¹ Additionally, they should provide for some kind of alternative workers representation. Union representatives should be protected from discrimination as well as being given access to the union members in the workplace.²⁵²

Koçer and Fransen for example investigated the connection between CoCs and the freedom of association in the Turkish textile industry and came to the conclusion that they can have two contradicting effects. Either they lead to a

²⁴⁹ WBG, 2003, *Company Codes of Conduct and International Standards: An analytical comparison*, at: http://siteresources.worldbank.org/INTPSD/Resources/CSR/Company_Codes_of_Conduct.pdf (consulted 29 November 2013), p. 8.

²⁵⁰ Ibidem, p. 9.

²⁵¹ Ibidem, p. 11.

²⁵² Ibidem.

democratisation of the union or the union collaborates with the employer against the employees. They identify that the problem is the inherent structural imbalance of power between employers and employees in national legislation, which hinders CoCs to ensure freedom of association. Nevertheless they could provide at least some kind of protection for organised industrial relations where nothing else can be relied on.²⁵³

Du Toit used the example of the ETI base code to measure the impact in South Africa. He argues that, whereas the codes are seemingly diverse concerning subject and details, they are similar in the overall design. They promote international standards, which nevertheless seem to strengthen western interests, thereby reinforce the institutionalised power inequalities between developed and developing countries. Another criticism he raises is that the ETI base code seems to put the responsibility of labour conditions on the supplier instead of the retailer who actually implemented the CoC and controls the monitoring. That can lead to the results discovered by Nelson et al. in their study about the South African wine sector. After code implementation the additional costs caused by code compliance were borne by the workers e.g. through the reduction of permanent contracts.

Du Toit concludes that the CoCs need to be tailored to the needs of one corporations instead of a one-for-all approach and that the diversity of paths to compliance needs to be taken into account. The overall incentive should be the improvement of conditions for workers instead of focusing on changing one isolated area.²⁵⁴

A study concerning the electronic sector conducted by Locke, Rissing and Pal they discovered that a majority of the leading global electronic firms as well as suppliers, had joined the Electronic Industry Citizenship Coalition (EICC) and adopted the respective CoC. The EICC affiliated firms require their suppliers to comply with the EICC code. The authors of the study learned that the

²⁵³ Koçer/Fransen, 2009, pp. 253f.

²⁵⁴ Du Toit, 2001.

investigated suppliers provided a copy of the EICC code to the staffing agencies through which they covered their staffing requirements. However they did not implement a system to ensure the compliance with the code, leading to violation of the basic labour rights of short-term employees.²⁵⁵ They concluded that private CoCs can either complement or substitute government regulations. Usually it corresponds with a strong or weak governmental enforcement of national legislation. Nevertheless, as far as agency staff is concerned, the private codes are usually insufficient, leaving a loophole for employers to avoid compliance with CoCs.²⁵⁶ Duong criticises that CoCs are a 'toothless' tool to hold retailers responsible for the working conditions at their sub-contractors factories even if these factories are located within close range. She referred to the factory of Donna Karan New York located in midtown Manhattan.²⁵⁷ Another aspect is that the top-down codes usually include other issues than they would include if a bottom-up approach would be considered, showing the difference of interests of employers and employees. Yanz concluded that the top priorities for workers are wages and job security. Company codes however, tend to neglect these issues at all or only touch upon them in a very general matter.²⁵⁸

The research conducted by Weil suggests that monitoring has an influence on minimum wage compliance. Nevertheless it also shows that the current forms of monitoring are insufficient and the frequency of controls, therefore the probability to be caught in violation, has to be enhanced. Also the penalties for violating companies need to be higher. He suggests that new forms of supply chain monitoring, e.g. means of private penalties, are more effective than the means of the government.²⁵⁹

²⁵⁵ Locke/Rissing/Pal, 2013, p. 534.

²⁵⁶ Ibidem, pp. 543f.

²⁵⁷ Duong, 2000, p. 5.

²⁵⁸ Yanz, 2000, p. 6.

²⁵⁹ Weil, 2005, p. 255.

A study published in 2005 explored the influence of wage levels in host countries for the location decision of U.S. MNE's. They examined 22 countries over a time period of 10 years and found out that there was a connection between wage level and foreign investment decisions, thus contradicting previous research. However the influence on the decision is not as significant as it was expected. The study also determines that the main factors influencing relocation decisions are the GDP of the host country, decentralised bargaining structure and employment policy, especially restrictions on layoffs. Other variables, which influence these decisions, are cultural openness, corruption, geographic distance, corporate tax rates and tariffs.²⁶⁰

Looking at this study as a starting point, one could draw the conclusion that MNEs show little interest in paying a minimum wage, or even exceed the legislation through their codes of conduct. Even though wage levels are not the main factor influencing the production location decision it still plays a viable role. Thus improving the wage situation in these countries would render them unappealing for foreign investment.

3.9. CSR: actual change v. public relations

As the EC recognised in the reviewed CSR strategy, state regulation on the CSR topics is important in order to facilitate an environment "[...] more conducive to enterprises voluntarily meeting their social responsibility [...]"²⁶¹ The EU encourages all member states, which have not yet done so, to join one or multiple internationally recognised frameworks dealing with the subject of MNEs and supply chain management. Supply chain or value chain issues have become increasingly important due to the globalisation process and the production of goods in low-wage countries. Nevertheless the increase in suppliers exacerbates the implementation of labour standards through CoCs.

²⁶⁰ Bognanno/Keane/Yang, 2005, pp. 194f.

²⁶¹ Supra note 178, p. 5.

Very often, suppliers produce goods for more than one buyer which would oblige them to adhere to different CoCs sometimes contradicting each other.²⁶² John Ruggie concluded in his Framework that, human rights, including labour standards, are to be protected by the state and respected by corporations. The obligation of businesses is weaker than the state obligation, stressing the importance of the adoption of national laws according to the international obligations. However it cannot be ignored that some states are either unable or unwilling to introduce a proper legal framework. In this case it is the obligation of corporations to respect a minimum standard, which reflects international standards, in their business conduct.

The so-called weak governance zones are not necessarily regions at war. The reasons for a failure of state governance can be diverse and include e.g. political repression, lack of rule of law, economic restrictions or civil conflicts.²⁶³ The International Organization of Employers in cooperation with the International Chamber of Commerce and the Business and Industry Advisory Committee prepared recommendations for businesses, operating in weak governance zones based on experiences of companies already located in such surroundings.

The recommendations include among others:

- Compliance with legal and regulatory requirements;
- Integration of human rights observance within management systems;
- Sustaining political neutrality;
- Conducting dialog with clients and business partners on the issue of human rights and the performance of due diligence;
- Speaking out in cases of violations and also maintaining an open channel of communication with the government;
- Supporting the protection of human rights.²⁶⁴

²⁶² Supra note 255, p. 524.

²⁶³ IOE et al., 2006, p. 4.

²⁶⁴ Ibidem, pp. 4-7.

In supply chain evaluation the wage level is an important factor that is included in several initiatives, working in the field of supply chain management. Usually initiatives require compliance with a living wage or at least a national minimum wage. The reference to a national legislation however could lead to the above-mentioned problems caused by a lack of governance. The implementation of a minimum wage is not the only factor determining the wage level on a global basis for MNEs. Another issue is e.g. the working hours during which payment of a minimum wage is reached. Working hours are an important factor insofar as suppliers often use subcontractors in order to meet excessive demands for a product or in order to meet deadlines.²⁶⁵

An evaluation of the CoCs of the 10 Companies with the best CSR reputations²⁶⁶ shows that, if they refer to wage issues at all, five of them had no such provisions but were mainly concentrated on employee behaviour in various situations, the majority relies on the state to set a minimum wage to which the company then should adhere. If there is no minimum wage system, two of the codes refer to industry wage standards. Two codes relate to a living wage in terms of covering the basic needs and providing for some discretionary income. One corporation simply referenced their behaviour to respect the ILO declaration on fundamental principles and rights at work. This result shows that most MNEs see CSR as a tool to handle their stakeholder relationship however, when it comes to labour rights, the codes, which are also valid for suppliers, tend to rely on states to live up to their international obligations.

In his article, on voluntary standards for governments, Walter touched upon the topic of 'mock compliances' by governments under pressure where international standards may be adopted to create the impression of adherence, nevertheless failing to implement monitoring procedures thus leaving the adopted standards useless.²⁶⁷ In order to support states in the facilitation of CSR standards, Lenox

²⁶⁵ Supra note 253, p. 242.

²⁶⁶ Forbes, 2013, *The 10 Companies with the best CSR reputations*, at: <http://www.forbes.com/pictures/efkk45mmlm/the-10-companies-with-the-best-csr-reputations/> (consulted 5 December 2013).

²⁶⁷ Walter, 2007, p. 45.

proposes three incentives for states to make corporations adhere to self-regulation.

- The threat of future regulation;
- Use of state apparatus to require firms to abide to industry standards;
- Allow some forms of collusion to enable self-regulation through industry pressure.²⁶⁸

As H&M announced, they want to introduce a system paying at least a 'fair living wage' to workers.²⁶⁹ With that, they are said to join other famous companies like Nike, Puma and Adidas in taking a close look towards the wage situation in their overseas affiliates. However, when examining their CoCs it is obvious that their wage policies do not differ from the ones implemented in other corporations. Puma's provision reads "[...] respectful of basic needs and all benefits mandated by law. As a floor, payment of at least the minimum wage required by local law or the prevailing industry wage [...]"²⁷⁰ Nike includes the payment of a minimum wage and legally mandated benefits.²⁷¹ Adidas explicitly states: "Adidas does not control what subcontractors choose to pay their workers" and that "[...] it [the wage] is the responsibility of the subcontractors who have the economic freedom over the workers."²⁷² Yet they also state that they were trying to influence suppliers into respecting fundamental workers rights and pay an adequate wage. The 2007 Adidas workplace standards, intends to improve the working conditions of workers in their supply chain but again refers to the national minimum wage. However it also mentions that remuneration is essential for workers and Adidas prefers to work with suppliers

²⁶⁸ Lenox, 2007, pp. 73f.

²⁶⁹ The Guardian, 2013, *H&M pledges living wage for textile workers in Bangladesh and Cambodia*, available at: <http://www.theguardian.com/business/2013/nov/25/h-m-living-wage-textile-workers-bangladesh-cambodia> (consulted 12 December 2013).

²⁷⁰ Puma, 2013, *Code of Conduct* at: http://about.puma.com/wp-content/themes/aboutPUMA_theme/media/pdf/CodeofConduct.pdf (consulted 12 December 2013).

²⁷¹ Nike, 2013, *Code of Conduct*, at http://www.nikeinc.com/system/assets/2806/Nike_Code_of_Conduct_original.pdf (consulted 12 December 2013).

²⁷² Adidas, 2013, *Adidas supply chain and impact*, at <http://wheels12adidas.weebly.com/adidas-supply-chain-and-impact.html> (consulted 12 December 2013).

who try to raise the living standard of their workers.²⁷³ Yet, the improved workplace standards from 2010, even though revered to by Adidas itself, are unavailable and therefore could not be assessed in an exhaustive manner. These CoCs are in no way different from the ones of other corporations and Locke has conducted investigations on the improvements achieved in working conditions in connection to the monitoring activities by Nike at their partner companies. He found that some of the conditions have indeed improved but others stagnated or even deteriorated and this is in no way a unique experience.²⁷⁴

The research shows that companies invest a great amount of effort in the publication of sustainability reports including all the various aspects of their interaction with the corporate environment.

They include among others:

- Environmental assessments;
- Social issues;
- Philanthropy;
- Company investment;
- Financial output;
- Corporate Identity.

Despite the variety of topics the reports and the CoCs usually neglect dealing with wage issues. Even the companies who have a reputation for recognising wages as an important issue, in the end include standard formulations with reference to national minimum wage, ILO conventions or industry standards. That provokes the impression that despite talks on wage issues, changes to the current situation are hardly supported. This impression is reinforced when taking a second look at the national CSR programmes where only a handful of states actually mention wages at all, whereas most of the states leave it to be a

²⁷³ Adidas, 2007, Adidas workplace standards, at http://www.adidas-group.com/media/filer_public/2013/07/31/english_workplace_standards_en.pdf (consulted 2 May 2014), p. 2.

²⁷⁴ Locke/Quin/Brause, 2007, p. 21.

matter of minimum wage legislation. Therefore Vaughan-Whitehead calls for urgent changes in sensitivity and responsiveness when it comes to wages, increased flexibility and awareness on the part of MNEs.²⁷⁵ Concluding it can be said, that CSR and the more direct CoCs can actually impact corporate behaviour if adherence to the adopted principles is enforced through public opinion. Otherwise there is a present risk of deteriorating working conditions through code adoption because of reallocation of resources.

²⁷⁵ Supra note 59, pp. 205f.

4. Complementary considerations on human dignity and employment

As all other human rights, the right to work and the right to an adequate standard of living are interlinked and interdependent, especially since it is impossible to achieve an adequate standard of living without the proper financial means. These means should primarily be gained through work. Yet this is exactly one problem of today's economy. Many people do not have the chance to work in order to support their living, or can support neither themselves nor a family because they simply do not earn enough to cope with the household's needs. According to the Kantian interpretation this would be a violation of human dignity.

Since the topic of joblessness and the related, mental and physical, health problems has stirred discussions, scholars in Germany conducted studies investigating the effects of joblessness. The registered Association for Behavioural Therapy conducted a long-term study accompanying young adults from former East Germany from 1986-2006. The results clearly showed that the overall satisfaction of unemployed people decreases significantly. This trend is already evident from a period of unemployment from four months on.²⁷⁶ This dissatisfaction concerned private issues but also overall democracy, society and politics. The longer a person was unemployed the higher the risk of social exclusion and isolation, leading to an ongoing downwards spiral. However, not only are the costs of social exclusion enormous, it leads to a loss in work force, motivation and potential, decreasing the wish to be employed and exacerbating the chance of unemployed people to find a job.

Human dignity plays a part in various discussions. It has a place in almost every part of life. Be it the problems concerning euthanasia²⁷⁷, abortion, stem cell research²⁷⁸ or poverty and living conditions in developing countries.

²⁷⁶ Berth et al., 2008, p. 95.

²⁷⁷ Schwarzburg, 2012, p. 340.

²⁷⁸ Ibidem, p. 182-186.

Especially for lawyers, human dignity seems to remain a concept, setting limits to the endless possibilities of modern science. It is therefore imperative that dignity should also have a part in the employment context, as a borderline to arbitrary behaviour of employers and as an additional protection of workers. A human being with inherent human dignity cannot be treated in any way the employer deems fit. Employers should have to adhere to rules in order to treat their employees properly and remuneration is a weak spot for most employees since they depend on the income to support their living. Paying low wages or not adhering to a national minimum wage requirement is just as burdening for workers as working 60 or 70 hours a week.

Payment of wages cannot be seen as an isolated part in the employment context. A properly set minimum wage as well as an effective enforcement thereof is just as important as limitations of working hours. Working the allowed hours per week must attain a fair wage. Wages need to be paid in full and regularly, directly to the worker.

Even though wages and the payment of minimum wages are not as shocking as people dying because of a poor working environment²⁷⁹ they are still a major factor of working life. If people are unable to support their living through work and social services are insufficient or inexistent, the only way to survive may be by begging. In developed countries however, the discussion has been sparked if begging can be seen as a dignified way to earn money. It would definitely be the better approach to pay a fair wage to workers in order to maintain their dignity than to discuss whether begging maintains human dignity or not.

Nowadays it becomes evident that, just as during the industrial revolution, people are merely seen as workforce. Through globalisation a vicious circle commenced. Production costs in developing countries started price dumping and low-cost production, leaving consumers accustomed to cheap products.

²⁷⁹ Globalnews, 2013, Bangladesh factory collapse prompts reforms, but long-term impact uncertain at: <http://globalnews.ca/news/1035856/bangladesh-factory-collapse-prompts-reforms-but-long-term-impact-uncertain/> (consulted 28 February 2014).

With the rise of CSR and an increase in consumer awareness, corporations have been pressured to pay attention to their social, environmental and ecological impact. Thus trying to distance themselves from poor production practices by hiring suppliers and issuing CSR reports. However the facts did not change greatly. Goods are either produced through long supply chains, with MNE's trying to distance themselves from violations, or in a more costly environment. The Euro crisis provided an additional opportunity to level or decrease real wages. Minimum wage may be set at a level, which makes it impossible for workers to sustain a living on only one job or to survive without working excessive over time. Another factor is high youth unemployment leaving a whole generation in the loop. These young people are often highly educated and skilled, yet it seems impossible for them to find employment. The working conditions this generation faces are definitely not dignified. Often chasing jobs or even unpaid internships, working excessive hours, working on a monthly, weekly or maybe even daily basis without knowing if they will be hired for another period of time.

The trends show the exchangeability of people in today's economy being the exact opposite of Kant's approach. People should not only be representatives of their added value. They should be seen as the person they are, cherished for their qualities and valued for the abilities they introduce to the working environment. Economy is usually seen as a trendsetter, so it should also be the economy to revive the distinction between person and value and not merely using people in order to achieve profit. This approach manifests a failure of modern day economy and society. Where previously people were important and seen as the way to achieve a goal, nowadays people are reduced to being a small wheel in the bigger machinery. Life has become more about money and profit than about the people who actually achieve this profit.

The financial crisis generates the impression that the objective of the EU changed from improving living conditions and achieving peace for the people towards being about the advancement of individuals. The power seems to be no longer vested in the people but in the assets. When the Declaration of

Independence was written, the drafters already knew about the importance of a fair distribution of power. The founding fathers of the U.S. had been ruled by a government, which no longer searched for the benefit of the people but for their own. Therefore they included the following right of the people “[...] governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government [...]”²⁸⁰ This formulation expresses the inherent right of individuals, to stand up for their rights and their dignity and of peoples to stand up against a government if that government is no longer representing their interests. This development has already evolved during the year 2013 with social unrests, protests and revolutions and, as the Economist predicts in the table below, it will continue in 2014.²⁸¹

Table 8: Risk of social unrest in 2014. Source: The Economist 2013.

Risk of social unrest* in 2014						
Very low risk	Low risk	Medium risk		High risk	Very high risk	
Austria	Australia	Angola	Ivory Coast	Albania	Macedonia	Argentina
Denmark	Botswana	Armenia	Jamaica	Algeria	Madagascar	Bahrain
Japan	Canada	Azerbaijan	Kenya	Belarus	Mexico	Bangladesh
Luxembourg	Chile	Belgium	Kuwait	Brazil	Moldova	Bolivia
Norway	Costa Rica	Belize	Latvia	Bulgaria	Morocco	Bosnia
Switzerland	Czech Republic	Benin	Lithuania	Burkina Faso	Myanmar	Egypt
	Finland	Britain	Malawi	Burundi	Nicaragua	Greece
	Germany	Cape Verde	Malta	Cambodia	Pakistan	Guinea
	Hong Kong	Colombia	Mozambique	Cameroon	Panama	Iraq
	Iceland	Congo-Brazzaville	Netherlands	Chad	Papua New Guinea	Lebanon
	Lesotho	Cuba	Oman	China	Peru	Libya
	Malaysia	Dominican Republic	Paraguay	Croatia	Philippines	Nigeria
	Mauritius	Ecuador	Qatar	Cyprus	Portugal	Sudan
	Namibia	El Salvador	Russia	Ethiopia	Romania	Swaziland
	New Zealand	Equatorial Guinea	Rwanda	Guatemala	South Africa	Syria
	Poland	Eritrea	São Tomé & Príncipe	Guyana	Spain	Uzbekistan
	Senegal	Estonia	Saudi Arabia	Haiti	Sri Lanka	Venezuela
	Singapore	France	Serbia	Honduras	Tajikistan	Yemen
	Slovakia	Gabon	Seychelles	Iran	Togo	Zimbabwe
	Sweden	Georgia	Slovenia	Jordan	Tunisia	
	Taiwan	Ghana	South Korea	Kazakhstan	Turkmenistan	
	The Gambia	Hungary	Tanzania	Kyrgyzstan	Turkey	
	United Arab Emirates	India	Thailand	Laos	Ukraine	
	United States	Indonesia	Trinidad & Tobago			
	Uruguay	Ireland	Uganda			
		Israel	Vietnam			
		Italy	Zambia			

* 150 countries. Social or political unrest is defined as developments that pose a serious threat to governments or the existing political order.

Source: Economist Intelligence Unit

Scores: Based on forward-looking assessments of the risk of social unrest by the Economist Intelligence Unit's country analysts on a scale of 0 (very low) to 4 (very high)

²⁸⁰ U.S., 1776, *Declaration of Independence*, at: http://www.archives.gov/exhibits/charters/declaration_transcript.html (consulted 6 March 2014).

²⁸¹ The Economist, 2013, *Protesting predictions*, at: <http://www.economist.com/blogs/theworldin2014/2013/12/social-unrest-2014> (consulted 6 March 2014).

The people seem to be unhappy with their governments. Bank bail outs, financial burdens and cuts on social welfare and state services rendered the people unsatisfied with their representation, this becoming ever clearer since the Arab Spring in 2010. Another form of protest was the Occupy movement standing up against social and economic inequalities. Demonstrations in the Parisian arrondissements concerning mainly social exclusion of immigrants or the protests in London on labour standards of university employees.²⁸²

Therefore it would be the responsibility of every individual to recollect the importance of human dignity and invert the vicious circle of exploitation, turning it into a human focused approach, reintroducing human dignity into our lives and our working environment.

²⁸² BBC, 2013, *Arrests after University of London Union 'occupation'*, at: <http://www.bbc.com/news/uk-england-london-25237915> (consulted 7 March 2014).

5. Conclusion

Looking at various human rights treaties it is evident that human dignity is not only a concept philosophers dealt with in history. It is embedded in many treaties on a national and international level and is the inherent basis for the human rights system.

Human dignity is often seen to be a limitation for modern technologies and systems. It is brought into play for various topics and in manifold debates serves as an argument for both sides, thus reflecting the adaptability of human dignity. As much as it has been discussed, Kant has found a unique explanation of what dignity could be, irrespective of religion, value system or culture. The uniqueness makes his approach the most suitable for the universal, indivisible and interdependent context of human rights.

The research has provided evidence that the right to a fair remuneration is closely linked with the right to an adequate standard of living. Assessing the current legal system and decisions of human rights bodies the result is clear. The minimum wage should be set by the states with regards to the needs of the workers, including food, water, housing, health, education and discretionary income, nevertheless keeping in mind economic requirements for development and growth. The ECSR has concluded that a wage is insufficient and unfair if it is below 60 % of the average net wage. Even though this has been applied for several years now, other human rights bodies still prefer to enumerate the workers needs, which should be covered by a wage, instead of setting a certain percentage below which the wage is considered unfair.

The presented wage systems vary insofar as the minimum wage sets a rather low standard, which should only be the least amount legally payable. The living wage takes into considerations the workers needs and an additional amount in order to enable the worker to increase his or her living standards. The fair wage approach, which is not yet accepted by the international community, includes 12 essential elements. These elements can help identify a truly fair wage, which

could enable workers and corporations to meet their needs and still provide sufficient incentive to raise workers' productivity. Many international NGOs as well as the ILO predominantly promote the living wage approach. Nevertheless the minimum wage system is prevailing and also included in ILO conventions and recommendations. The development of the fair wage system has led to a new angle on the whole wage system and indicates that remuneration requires being more than a certain amount. It contains many other crucial factors like timely payment or payment in legal tender.

The occupation with CSR has shown that, so far, many corporations actually have some kind of reporting mechanism or participate in international monitoring, labelling or reporting initiatives. These initiatives assess the compliance of corporations with their code of conduct and according to the implementation, the enterprise is rewarded e.g. through the use of the initiative's label. The result of the literature review is that up until now many studies have been conducted on the impact of CSR on the supply chain and the working conditions in supplier's nations. However little attention has been given to remuneration in this context. One study by Nelson, Martin and Ewert has also focused on the consequences of the introduction of a minimum wage floor. The lack of research displays the need for further and more focused research in the area of remuneration in the supply chain, but also in home states of MNEs. The presented wage statistics indicate that, in the EU area the income has decreased over the last years, and the numbers of people living in poverty or close to the poverty line are rising. Especially the situation of young people needs attention as many of them are starting to lose hope and with this a whole generation is in danger of being unable to support their living through work.

This evidence from the current economic situation is in clear contradiction to the Kantian system of human dignity. Article 6 ICESCR states that the "States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work [...]" People realise

their situation and request their human dignity to be recognised. Over the last years the dissatisfaction of people has been rising, leading to revolution and recurring protests. These situations should be a wake up call for governments and for economic leaders.

Abstract

This thesis deals with the Right to Work focusing on the right to an adequate remuneration as stipulated in article 7 lit. a ICESCR. In order to provide a balanced point of view its focus is not solely directed to the states' obligations to respect, protect and fulfil but also takes into account the view of private parties, in this case multinational corporations and their impact through the means of corporate social responsibility.

In the first chapter the paper provides an overview of the legal framework of the right to work on an international level. In order to clarify the working terms, the second chapter includes terminology and the most common concepts concerning remuneration. The definitions also reflect on the legal evaluation from chapter one and how these requirements moulded the practical approaches. It also provides data on the current minimum wages thereby focusing on the EU member states and their provisions.

The third chapter deals with the concept of CSR, gives insight to its extent and a short overview on the historic development. It also deals with the main CSR monitoring and labelling initiatives and the requirements for their members, focusing also on the national CSR policies of the currently 28 EU member states. To round up the topic of CSR, the paper sheds light on the available literature of CSR and its impact on wages in the supply chain.

Finally, since the starting point for this thesis was the topic of human dignity, the last chapter comprises some remarks on the idea of human dignity on the basis of Kant's interpretation clarifying why human dignity needs to be considered in the debate on fair remuneration.

Zusammenfassung

Ziel dieser Masterarbeit ist es den Kant'schen Ansatz der Menschenwürde auf die gegenwärtige Arbeitswelt anzuwenden.

Hierzu konzentriert sich das Thema auf das Recht auf faire Entlohnung, als Bestandteil der Arbeitsrechte, wie es in Art. 7 lit. a des Internationalen Pakt der Sozialen, Wirtschaftlichen und Kulturellen Rechte festgehalten ist. Um die beiden Hauptakteure zu beachten, stehen die staatlichen Verpflichtungen, sowie die Verantwortung von Internationalen Unternehmen durch ihre 'Corporate Social Responsibility' Maßnahmen im Mittelpunkt.

Das erste Kapitel bietet einen Überblick über den internationalen rechtlichen Rahmen im Hinblick auf das Recht auf Arbeit, in dessen Rahmen die Arbeitsechte fallen.

Das zweite Kapitel setzt mit einer Darlegung der wichtigsten Begrifflichkeiten und Konzepten, welche in diesem Zusammenhang relevanz zeigen fort. Die Definitionen schließen die rechtliche Evaluierung mit ein und wie die rechtlichen Grundsätze die praktische Umsetzung beeinflussen. An dieser Stelle sind ebenfalls aktuelle Entlohnungsstatistiken enthalten, welche sich auf die EU Mitgliedstaaten konzentrieren.

Das dritte Kapitel gibt Einblick in das Konzept der 'Corporate Social Responsibility', enthält eine kurze geschichtliche Darstellung und bietet einen Überblick über die wichtigsten Kontroll- (monitoring) und Bewertungsmechanismen (labelling).

Abschließend enthält dieses Kapitel eine Literaturanalyse weltweiter Studien und akademischen Texten welche sich mit dem Thema des Einflusses von CSR auf Entlohnung in Produktionsketten beschäftigen. Da der Ausgangspunkt für die gegenwärtige Arbeit die menschliche Würde war, geht das letzte Kapitel kurz auf die Kant'sche Auslegung ein und stellt dar, dass der Mensch mit seiner Würden, nicht länger als Produktionsfaktor identifiziert werden könnte und warum Würde im Hinblick auf Entlohnung ein essentieller Faktor ist.

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