

**Monitoring, Governmental Data Access and the Invocation of Article 8 ECHR by
Legal Persons**

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The European Convention on Human Rights (ECHR) grants the rights enshrined in Article 8 to “everyone”. The European Court of Human Rights (ECtHR) has interpreted legal persons falling within the scope of “everyone” in various judgments, primarily pertaining to governmental searches and seizures.

With the proliferation of digital technology, corporations now hold vast amounts of personal data, leading to increasing pressure on them to disclose such data to governmental surveillance agencies for various purposes. The article analyses ECtHR case law and employs theories of legal personality to explore the possibility and extent to which legal persons could invoke Article 8 in the context of governmental interferences affecting the rights of associated natural persons. After identifying the legal framework, the article applies it to two distinct use cases: governmental control of fishing vessels to identify infringements of fishing regulations and signal intelligence practices affecting legal persons that own and operate telecommunication infrastructure. These examples encompass two different types of governmental interference to which legal persons could be subjected; methods affecting associated natural persons through personal data held by the legal persons and interferences targeting the legal person in its capacity as a legal entity. Overall, the article attempts to map out the possibility of invoking various rights under the ECHR Article 8 by legal persons. The question of whether potential interferences are proportionate is left outside the scope of the article as a subject of future research.

Keywords: Human Rights; legal personality; privacy; data protection; Article 8 ECHR

Introduction

As society becomes more complex, crimes become more international, and technology more advanced, methods and approaches of governmental surveillance also develop.¹ Surveillance capitalism is a concept characterised by the widespread collection and processing of personal data by private entities.² The power and control these private entities have through the widespread collection and dissemination of personal data has been widely analysed in the scholarly discourse.³ Governmental surveillance is traditionally a distinctive concept from surveillance capitalism.⁴ However, there are several instances of authorities acquiring personal data from private data brokers through various methods.⁵ The focus of this paper is a specific part of this development of governmental surveillance practices and methods relating to the acquiring of data from private entities by authorities. More precisely, the research question examined is whether and to what extent legal persons could invoke Article 8 of the European Convention on Human Rights (ECHR)⁶ in the context of authorities requesting personal data held or controlled by private entities.

The focus will be on the ECHR, rather than other human or fundamental rights instruments, such as the Charter of fundamental rights of the European Union (the Charter). The Article will limit its scope against the Charter due to the fact that the traditional scope of the Charter is limited to when EU institutions and member states are implementing European Union (EU) law, according to Article 51 of the Charter. Although this limitation of scope is interpreted in a wide manner by the CJEU, the ECHR has a broader scope encompassing a wider set of potential interferences than the

Charter. The Article will, therefore, only refer to case law from the CJEU to illustrate specific aspects, and will not analyse the corpus of CJEU case law specifically.

The ECHR, along with other human rights conventions, is primarily a convention centred around the rights of human beings.⁷ Nevertheless, the European Court of Human Rights (ECtHR) has rendered judgements that interpret the scope of Article 8 ECHR to include not only natural persons but also professional activities, premises and even legal person as applicants.⁸ However, it is important to note that the ECtHR rulings in which legal persons have invoked Article 8 have predominantly pertained to cases involving governmental searches and seizures, rather than governmental surveillance, monitoring practices and acquisition of data held by private entities. Given the continuous evolution of governmental surveillance practices and programmes, it becomes imperative to examine whether legal persons can assert certain rights under Article 8 ECHR in this context.

After analysing ECtHR case law, the paper examines two distinct examples of government surveillance practices that specifically target and affects legal persons and that have implications for the interests of the legal persons. The first example focuses on governmental surveillance of fishing vessels in order to detect illegal fishing practices. The second example involve governmental signal intelligence practices in which legal persons is obliged to collaborate with governmental surveillance agencies. By analysing these two examples, the article attempts to shed light on the complex dynamics between governmental surveillance programs and the (potential) activation of Article 8 ECHR by legal persons.

Regarding governmental surveillance of fishing operations, both the (EU)⁹ and various jurisdictions in Europe¹⁰ have put forth proposals and, in some cases, implemented surveillance programmes to detect and prevent illegal fishing practices.

An example of such illicit practices includes illegal discarding of fish. Notably, Denmark has adopted mandatory closed-circuit television (CCTV) surveillance on fishing trawlers operating in the Kattegat region in 2022.¹¹

Such a mandatory surveillance programme has privacy, data protection and human rights implications for the natural persons working on board the vessels. However, it is worth noting that illegal fishing practices are a category of crime often initiated by the legal entity owning the vessel. As a result, illegal fishing practices could be classified within the realm of a corporate rather than an occupational crime.¹² There is no clear distinction between corporate and occupational crime in the fishing use case analysed in the article. However, the term “corporate crime” is often applied in criminological research as a criminal offence conducted by a legal person, or in the interest of a legal person.¹³

Consequently, the focus in the article is on the question whether or not the legal person owning the vessel could invoke Article 8 of the ECHR in such a surveillance program. The example is applied to illustrate the relationship between authorities and legal persons within an existing monitoring program, and the article does not conclude whether such programs involving CCTV are proportionate interferences. Such an assessment would need to be conducted on a case-by-case basis.

Regarding governmental signal intelligence practices affecting legal persons, somewhat similar patterns as in the fishing example could be discerned. Such signal intelligence programmes primarily target individuals who pose threats to national security and public safety within large-scale communications networks, as well as other users of communications networks. The targets of surveillance are the users, clients and customers of the communication network. However, it is crucial to acknowledge that these surveillance practices also have consequences for the legal persons owning the

telecommunication infrastructure. For instance, such surveillance programs can lead to reputational damage, economic loss and potential disruptions and downtime for the network providers. Against this backdrop, it is both relevant and pertinent to analyse case law from the ECtHR to critically discuss and assess whether legal persons could invoke Article 8 in such a scenario.

The focus of the article is delimited to the question of whether legal persons could invoke Article 8 of the ECHR in a surveillance context. Notably, the article does not encompass the adjacent question of the proportionality of a potential interference in Article 8 under subparagraph 2 of Article 8 for legal persons, as such proportionality assessments would need to be conducted on a per-case basis. Although, the article is delimited against subparagraph 2 of Article 8, there will be some focus on the rationale of the ECtHR awarding rights to legal persons under Article 8. These analyses will, only to the extent necessary, cover the reasoning behind Article 8, including the protection against arbitrary governmental interference.

The article begins by analysing case law from the ECtHR and consulting academic literature on legal personality. This analysis is aimed at establishing a legal architecture relating to a legal person's ability to invoke Article 8 in the context of authorities requesting access to personal data processed by the legal person or imposing other monitoring measures, which is presented in section 2. Section 3 provides the essential contextual information concerning the two distinct examples of monitoring practices targeting and affecting legal persons. The discussion and conclusion on the research question pertain to these two examples. In section 4, attention is directed towards current trends in the development of surveillance practices, highlighting the significance these emerging trends have on Article 8 ECHR protection for legal persons. Finally, section 5 sums up the overall findings and concludes the article.

Article 8 ECHR and Legal Persons

Introduction

Article 8 of the ECHR grants the right to respect for one's private and family life, home, and correspondence to "everyone". The full wording of Article 8 of the ECHR reads as follows:

"1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

In the context of the ECHR being a human right convention and that the primary purpose of Article 8 of the Convention being to protect the physical and moral integrity of persons and their self-determination, neither the overall scope of the ECHR nor the rationale of Article 8 corresponds well with legal persons. A literal analysis of the wording of Article 8 supported by case law from the ECtHR, however, suggests that legal persons could potentially invoke Article 8 in a surveillance context related to the wording "home" and "correspondence" under Article 8.¹⁴

The subsequent analysis in the following sections aim to extract the underlying rationale employed by the ECtHR when conferring rights under Article 8 ECHR to legal persons. Initially, the case law of the ECtHR will be examined to ascertain the specific circumstances in which legal persons may invoke the rights enshrined in Article 8 ECHR. An important part of this analysis is case law on admissibility for legal person applicants under the Convention from the former European Commission on Human

Rights and the ECtHR. Subsequently, some theoretical concepts from academic literature on legal personality are examined in order to establish a conceptual framework that outlines the legal structure for legal persons invoking Article 8 ECHR within a context of authorities imposing measures and requesting data from private entities.

Case law of the ECtHR regarding legal persons and Article 8

In the majority of the cases where legal persons have lodged an application with the ECtHR, the legal person in question has invoked the right enshrined in Article 6 ECHR,¹⁵ the right to protection of property under Article 1 of the first protocol to the ECHR,¹⁶ and the right to freedom of expression under Article 10¹⁷ of the ECHR.¹⁸

However, legal person applicants have also been successful in invoking the rights protected under Article 8 ECHR before the ECtHR. The recognition and protection of legal persons' rights under Article 8 of the ECHR has undergone a continuous evolution within the ECtHR's case law. A milestone in this evolution was marked by the case *Niemietz v. Germany*.¹⁹ This case was the first case where the Court extended the protection under Article 8 from the private sphere of an individual to a business sphere. The applicant in the case was a natural and not a legal person. However, the *Niemietz* case is still important because it marks the early start in the evolution of ECtHR case law towards the possibility of invoking the rights under Article 8 for legal persons.

Mr Niemietz was the applicant in the case and a lawyer. The case revolved around a search conducted by German police authorities in Mr Niemietz's office, with the applicant contending that the search amounted to an infringement upon his rights under Article 8 of the convention. The German government argued that Article 8 did not provide protection against searches in an office and that the Convention clearly

distinguished between home and private life and professional life and professional premises. The Court disagreed with the German government's position and affirmed that "private life" could include activities and premises of a business nature, thereby extending the protection of Article 8 to include such contexts and premises.²⁰

The rationale underlying the ECtHR's reasoning in the *Niemietz v. Germany* case primarily stems from the recognition that certain professions, such as lawyers, often involve a gliding transition between the individual's private and professional lives and that work is a large part of natural persons' identity and a place where one develops one's identity.²¹ Furthermore, the Court's reasoning behind including an office under the protection of "home" under Article 8 is that such an interpretation is consonant with the essential object and purpose of Article 8, to protect individuals against arbitrary interference by a public authority.²²

To prevent an excessive expansion of the protection under Article 8, the Court also emphasised that such an interpretation would not unduly hamper the Contracting states. The states still would retain their opportunity to interfere under subparagraph 2 of Article 8, and the entitlement to interfere under Article 8 (2) might be more far-reaching where professional activities or premises are interfered with.²³

Building upon the early start of a precedent set by the *Niemietz* case, the ECtHR further extended the protection afforded under Article 8 to legal persons in the subsequent *Société Colas Est and Others v. France* case.²⁴ The three applicants in this case were French road-building firms, legal persons, who had their business premises subjected to searches and seizures by the French competition authorities. These actions were driven by suspicions of unlawful contractual practices. The competition authorities conducted the searches in accordance with a French law dating from 1945 that did not require approval from the search object or prior judicial approval. Based on the

documents obtained during the searches, the competition authority imposed financial penalties on the three applicants. Challenging the legality of these searches, the three companies lodged complaints with the ECtHR, contending that the searches violated their rights under Article 8.

In the context of assessing the applicability of Article 8 ECHR to legal persons following a governmental search of their business premises, the ECtHR emphasised that the Convention had to be interpreted as a living instrument and in the light of present-day conditions.²⁵ The ECtHR then referred to the emerging case-law that allowed legal persons to invoke other ECHR rights other than the rights in Article 8. Drawing from this jurisprudential development, the Court concluded that the protection granted by Article 8, specifically relating to the concept of “home”, could be interpreted as including the right to respect for a company’s “registered office, branches or other business premises”.²⁶ Consequently, the ECtHR concluded that the extensive search of the companies’ offices constituted an interference in the applicants’ rights guaranteed by Article 8.²⁷

The ECHR has two official language versions, the English and the French. The English wording “home” in Article 8 is “respect (...) de son domicile” in the French language version. The French wording “domicile” has a broader meaning than “home”, referring both to a person’s place of residence and the place the person has his or hers principal establishment.²⁸ The inclusion of legal person’s business premises in the protection of home is, thus, in line with the French concept of “domicile”.

In line with the Court’s ruling in the *Niemietz v. Germany* case,²⁹ the right to respect for professional relations and communications was considered to be closely linked to the rights of the individual concerned. However, the subsequent *Société Colas Est* case witnessed an expansion of the protection granted under Article 8 protection for

“home” to legal person applicants. In this particular instance, the protection of “home” was no longer linked to a specific natural person – as observed in the Niemietz case – but rather extended to encompass the legal person itself.

The interpretative approach in the *Société Colas Est* case, wherein legal persons and corporate entities were allowed to invoke the protection for “home”, has been upheld and reaffirmed in subsequent case law of the Court.³⁰ According to the ECtHR’s case law, legal persons may also invoke the right to respect for “correspondence” under Article 8 ECHR.³¹ Moreover, the ECtHR has affirmed in later case law that legal persons possess the capacity to invoke Article 8 of the ECHR in pursuit of the interests specific to the legal person itself.³²

In the case of *Liblik and Others v. Estonia*,³³ two of the five applicants were companies, legal persons. The applicants alleged that Estonian secret surveillance practices constituted interferences under Article 8 ECHR. The Court, in determining the admissibility of the case for the companies, deliberated on the question of whether a legal entity could possess a “private life” within the scope of Article 8 ECHR.³⁴

While the Court did not definitively settle the issues, it acknowledged that the question of whether a legal person can enjoy a private life within the meaning of Article 8 was open for consideration. However, the Court went on to conclude that the concept of “correspondence” under Article 8 encompassed mail and other communications, applying equally to communications originating from both private and business premises.³⁵ This conclusion – and previous case law referenced in the former sections – implies that legal persons, including companies, may be entitled to the protection afforded by Article 8 of the ECHR in relation to their *home* and their *correspondence*. However, the Court’s reserved stance regarding the notion of a “private life” for legal persons highlights the ongoing debate and the need for further clarification in future

cases concerning the extent of rights granted to legal persons under Article 8 in a surveillance context.

Legal Persons as Victims under Article 34 of the ECHR

In the examination of whether legal persons have the capacity to invoke Article 8 ECHR in a governmental interference context consisting of requests for access to data or other monitoring methods, it is crucial to consider not only the substantial provisions outlined in Article 8, but also the criteria for admissibility under the ECHR, particularly those stipulated in Articles 34 and 35 of the Convention. The value of a right enshrined in the Convention is diminished if it cannot be effectively invoked before the ECtHR.

In the Niemietz case, the question of victim status for legal persons was not relevant since the applicant was a natural person. Moreover, the French government did not challenge the victim status of the applicant in the Société Colas Est case. The next paragraphs will, therefore, analyse legal persons victims status under the ECHR in cases regarding alleged interferences with Article 8 of the ECHR.

The ECtHR has established specific criteria for determining victim status in cases involving surveillance, which are elucidated in the subsequent paragraphs.

Under Article 34 ECHR, the Court has the authority to “receive applications from any person, non-governmental organisations or group of individuals claiming to be the victim of a violation”. The full wording of Article 34 is the following:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

There is a difference between the equally authoritative French and English version of Article 34 of the ECHR. In the English language version, it seems that legal persons are included in the term “any person”. In the French version, the ECtHR may receive complaints from “toute personne physique, toute organisation non gouvernementale ou tout groupe de particuliers qui se prétend victime d’une violation par l’une des Hautes Parties contractantes”. The French language version thus indicates that the legal person has to rely on being a non-governmental organisation since the wording “personne physique” does not include legal persons.

A legal person – such as a corporation or a company –meeting the requirements of a “non-governmental organisation” may act as an applicant before the Court.³⁶ The inclusion of legal persons, such as companies, in the wording “non-governmental organisation” in Article 34 may not seem intuitive, but it has been upheld by the ECtHR in a consistent body of case law.³⁷ Moreover, the choice of the alternative “non-governmental” organisation seems more intuitive when the English and French language versions of the ECHR are interpreted together.

Victim status concerns both direct targets of the alleged interference and indirect victims who would suffer harm or have a valid personal interest in seeking interference brought to end.³⁸

As a fundamental approach, the ECtHR engages in a case-by-case interpretation of the articles in the convention, and the Court is not a theoretical or doctrinal research institution. Consequently, the Convention does not, therefore, allow for *actio popularis* and it does not, as the main rule, review laws *in abstracto*.³⁹ This starting point presents challenges in cases regarding secret surveillance. On the one hand, the applicant may lack absolute certainty regarding whether they have been subjected to surveillance measures due to the clandestine and stealthy nature of such activities. On the other

hand, hypothetical cases would conflict with the principle that the ECtHR does not handle *actio popularis* and *in abstracto* cases.

To navigate this terrain, the Court has developed a specific framework concerning victim status in relation to surveillance measures, striking a balance. In certain specific situations involving secret surveillance, the ECtHR acknowledges that an applicant could be considered a *potential* victim under Article 34 of the ECHR. This potential victim status may be recognized when the applicant is unable to substantiate that they have been directly subjected to secret surveillance measures have been applied to the applicant due to the secretive nature of such practices.⁴⁰

In such cases, the applicant must present reasonable and persuasive evidence that establishes the likelihood of a violation affecting their rights, as mere suspicion alone is insufficient.⁴¹ The burden rests on the applicant to provide convincing proof, taking into account the difficulty in obtaining concrete evidence in the context of secret surveillance.

In the case of *Liblik and Others v. Estonia*,⁴² two of the five applicants were companies, legal persons. The applicants alleged that Estonian secret surveillance practices constituted interferences under Article 8 ECHR.

In the case, the underlying criminal charge that warranted the secret surveillance was related to illegal gratuities, a simple form of bribery. One of the natural person subjected to the surveillance regime was a member management board of the legal person applicant. The Court held that the natural person offering illegal gratuities acted in the interest of the legal person and that there was, therefore, no reason to distinguish the interference in the natural person's correspondence with the legal person's.⁴⁵ The legal person could therefore assert victim status within the framework of Article 34 of the ECHR. By establishing a connection between the actions of the natural person and

the interests of the legal person, the Court recognised the possibility for a legal person to invoke the protections and remedies provided under the ECHR in cases involving secret surveillance.

The case demonstrates the Court's recognition of the intertwined nature of the natural person's actions and the interests of the legal person, thereby allowing the legal person applicant to claim victim status under Article 34 of the ECHR. This approach signifies the evolving understanding of the scope of rights and protections available to legal persons in relation to surveillance practices.

The connection between natural persons affected by an alleged interference and a legal person acting as an applicant has been elaborated through a consistent body of case law from the previous European Commission on Human Rights and the ECtHR.⁴⁶ According to the established rule derived from this case law, there has to be a sufficiently direct link between the legal person as such and the alleged breaches of the ECHR.⁴⁷ Such a link has been deemed sufficiently direct in the case law if the interference affects both the employees of a legal person and the legal person itself.⁴⁸

Conversely, there are examples of the Court declaring an application inadmissible because the interference solely affected natural persons with a strong link to the legal person, without affecting the legal person itself.⁴⁹ Nonetheless, it is important to note that the interests of natural persons with a relationship to the legal person applicant are not disregarded in the case law. When assessing the existence of a sufficiently direct connection between the legal person and the violations of Article 8, the Court has the ability to consider the interests of natural persons associated with the legal person, such as employees.⁵⁰ To conclude, it is possible for an application to be deemed admissible even if the legal person applicant is only a *potential* victim in a

surveillance context. In such situations, the applicant must present evidence that demonstrates the likelihood of a violation affecting them.⁵¹

However, it is important to emphasize that the case law developed by the ECtHR does not permit legal persons to invoke Article 8 rights of natural persons on behalf of the natural person. In order for an application to be admissible, the legal person *as such* must have been affected by the alleged interference in Article 8.

The interests of associated natural persons may be taken into account in this assessment, but such interests cannot be the sole basis behind the application. If only interests of associated natural persons are affected by the interference, the analysed case law from the ECtHR supports that the legal person would not be able to invoke Article 8. However, if it is established that the interests of the legal person are affected by the interference, natural person's interests could be a supportive argument for the legal person to invoke Article 8.

In this regard, the relationship between legal person applicants and partnerships are also relevant. In order for a partnership to be a victim under Article 34 of the ECHR, it must, most likely, have a limited or separate legal personality under domestic law in order for it to be a potential victim under the “non-governmental organisation” alternative in Article 34 of the ECHR. If a partnerships does not have such a legal personality, the ECtHR will, most likely, view it as a group of individuals.

Conceptualising an Architecture of Legal Persons Invoking Article 8

The former section concluded that legal persons could be victims for the purpose of Article 34 of the ECHR. The focus of the current section is whether the legal person acting as an applicant is entitled to rely on the particular right under Article 8.

In order to analyse such a question, the following section will undertake an in-depth examination of the substantive content of the rights afforded to legal persons'

under Article 8 ECHR. The material scope and the rationales of the ECtHR awarding rights under Article 8 to legal persons could not be interpreted solely by analysing case law. The analysis will therefore examine case law in interaction with legal theory to provide a more nuanced understanding of the issue at hand.

Why does the ECHR award “everyone” a right to privacy? The primary objective behind Article 8 is to provide protection for individuals against arbitrary public interference from the state.⁵² Protection from arbitrary governmental interference is included in the wording of Article 12 of The Universal Declaration of Human Rights,⁵³ which has strongly influenced the ECHR. Interestingly, the protection from arbitrary interference was originally included in the suggested wording of Article 8 of the ECHR from the European Commission in its preparatory works on the Convention.⁵⁴ The wording of Article 8 was, however, amalgamated to its current form after The Conference of Senior Officials in Strasbourg in June 1950.⁵⁵

In the travaux préparatoires to the ECHR Article 8, it is further evident that there was a discussion on the meaning and scope of the term “arbitrary interference” when drafting the Convention. It is clear from the travaux préparatoires that an interference from a public authority could be lawful and yet “arbitrary”.⁵⁶ Furthermore, the drafters of the Convention also discussed the difference between the negative obligation for the state to not interfere, and the positive obligation for the state to implement measures to protect individuals from arbitrary interference from private parties.⁵⁷

In order to further examine the scope and meaning of the term “arbitrary interference” in relation to legal person applicants, it is necessary to analyse some case law, including some case law referring to Article 8 (2) of the ECHR. Overall, case law where the ECtHR has concluded that the interference was arbitrary, has concerned interferences where the domestic provision in national law authorising the interference

has been vague and unclear, and thus not providing the individual with an adequate indication of when the authorities are entitled to interfere.⁵⁸ Moreover, the ECtHR has concluded that interferences were arbitrary if the domestic law does not meet specific minimum requirements to protect the individual during the interference.⁵⁹ In cases regarding surveillance and monitoring measures, such minimum requirements has included that the domestic law must specify the offences warranting the interception, limits in the form of chronological, personal, and storing limits, procedures when sharing data with third parties, prior or ex post facto review, and other procedural minimum requirements.⁶⁰

When the state's interference is not arbitrary, but legitimate, necessary, and proportionate, based on a clear and unambiguous legal basis in domestic law, and have associated minimum procedural requirements, the interference in the right to privacy does not constitute a violation. The right to privacy is a right balancing between the individual's interests of autonomy and the societal need to sometimes interfere in this autonomy because of the interests of others or societal interests at large.

The rights under Article 8 ECHR are therefore a set of rights highly intertwined with personal autonomy and personal freedom. These interests do not, traditionally, match well with legal persons and companies. The question therefore arises: What is the rationale behind the ECtHR awarding substantial rights under Article 8 ECHR to legal persons through case law?

Oliver argues that in order for a court to decide whether and to what extent a fundamental right should apply to legal persons and companies, the "nature, history and purpose" of the right in question needs to be interpreted and the question of whether it is appropriate to extend the right to legal persons needs to be answered.⁶¹ The rationale behind granting fundamental rights to companies, is often a consequence of the legal

order that makes it possible to develop legal persons. The establishment of the concept of legal persons entails the need for certain safeguards to ensure that the legal person is not arbitrarily interfered with by the government without due process of law.⁶²

Before attempting to construct a legal architecture for legal persons invoking Article 8, it is necessary to elucidate some of the foundational theoretical frameworks behind legal corporate personality.⁶³ Acknowledging the significance of such theoretical frameworks is essential to ensure a well-grounded approach to the development of norms concerning legal persons in the realm of governmental monitoring and authorities requesting data held by legal persons and Article 8 ECHR.

Traditionally, legal personality has been explained using three distinct theories: the aggregation theory, the artificial entity theory, and the real entity theory.⁶⁴

The aggregation theory posits that a legal person can be perceived as a collective representation or aggregation of the interests held by the natural persons comprising the legal person.⁶⁵ In this view the legal person functions as an consolidation of individual interests of the natural persons that form the legal person.

The artificial entity theory contends that *legal* persons solely exist in legislation formed by the state. Consequently, the state possesses the authority to govern the legal persons according to its discretion,⁶⁶ efficiently treating the legal person as an extension of the state.

Finally, the real entity theory posits that a legal person possesses an intrinsic existence, separate from being merely an aggregation of the interests of its constituent natural persons or a mere extension of the state.⁶⁷ Under this perspective, a legal person is considered a tangible entity – a real entity – in its own right, distinct from both individual interests and state authority.⁶⁸

When examining the application of legal personality theories to the existing case law of the ECtHR where legal persons have invoked Article 8, a distinct framework emerges. The criteria for admissibility under the ECHR in cases of legal persons invoking Article 8 reveal that legal persons cannot assert the rights under Article 8 solely on behalf of affected natural persons. Instead, cases have been deemed admissible under Article 34 of the ECHR when the legal person applicants have invoked the rights in relation to the legal person itself. This observation suggests that the aggregation theory, which posits that a legal person is merely an aggregation of the interests of its constituent natural persons, cannot serve as the primary rationale behind the Article 8 protection extended to legal persons.

Furthermore, the case law from the ECtHR has recognised Article 8 protection to legal persons in instances involving governmental searches and seizures. This raises questions regarding the applicability of the artificial entity theory, which views legal persons as a construct by the state granting the state unfettered authority over them. If legal persons were subject to such unconstrained authority by the state, the recognition of ECHR Article 8 protection for legal persons would be incompatible. Consequently, the case law pertaining to Article 8 suggests that its rationale does not align with the principles of the artificial entity theory.

Hence, the rationale underlying the case law on legal persons invoking Article 8 ECHR appears to align closely with the principles of the real entity theory. This theory also harmonises well with the general rationale behind Article 8 ECHR, which seeks to safeguard everyone, including legal persons, from arbitrary governmental interference. Thus, the application of the real entity theory serves as a coherent framework in understanding the reasoning behind Article 8 protection extended to legal persons within the context of the ECHR and case law from the ECtHR.

Based on the analysis of the case law from the previous European Commission on Human Rights and from the ECtHR on both the admissibility of cases featuring legal persons as applicants and the substantive interpretation of Article 8 ECHR with regard to legal persons, it becomes feasible to consolidate the findings in the following legal framework:

1. When assessing the admissibility of an application from a legal person invoking Article 8 ECHR, a key criterion lies in whether the case pertains to an alleged violation of the rights under Article 8 ECHR specifically pertaining to the legal person itself. While the interests of natural persons may be relevant to the overall context, they do not singularly determine the admissibility of the application.
2. In cases involving covert surveillance, the legal person may be awarded victim status if it can substantiate the likelihood of the alleged violation affecting the legal person. Establishing victim status for a legal person necessitates presenting evidence that demonstrates a reasonable probability of the alleged infringement directly affecting the rights or interests of the legal entity in question.
3. Legal persons are entitled to invoke the essence of the Article 8 protection related to protection of “home” and “correspondence”. The underlying rationale for extending the Article 8 ECHR protection to legal persons centres on protecting them from arbitrary governmental interference. Thus, the application of Article 8 protection to legal persons aligns with the overarching objective of preserving their rights and integrity within the legal framework.

Governmental Monitoring Practices and Requests for Data Affecting Legal Persons

Introduction

The subsequent sections will employ the aforementioned identified legal framework to analyse and evaluate two distinct examples: surveillance of marine fishing vessels aimed at detecting illegal fishing practices and surveillance methods in telecommunication infrastructure, impacting the legal person who owns and operates such infrastructures.

In order to gain a comprehensive understanding of the legal architecture applied to these particular use cases, it is essential to provide contextual information regarding the unique characteristics and intricacies associated with these examples. By examining the specifics of these scenarios, a thorough analysis of the application of the legal framework can be undertaken, shedding light on the implications surrounding surveillance practices targeting and affecting legal persons.

Monitoring of Fishing Vessels to Prevent Illegal Fishing

Illegal, unreported, and unregulated fishing (IUU-fishing) poses a significant threat to the long-term sustainability of global fisheries.⁶⁹ The United Nations has estimated that IUU-fishing leads to a global annual estimated loss of around 11-26 million tonnes of fish.⁷⁰

To combat this pressing issue, the European Parliament has proposed the implementation of governmental electronic video surveillance on fishing vessels.⁷¹ This surveillance solution involves installing video cameras on board the vessels, which continuously captures footage of fishing activities. The camera streams are then monitored by fishing inspectors stationed at fishing monitoring centres on the mainland. The primary objective of this surveillance initiative is to ensure compliance with fishing

regulations, to ensure that vessels do not illegally discard catches or violate other fishing regulations.⁷²

Both the European Union⁷³ and The Norwegian Directorate of Fisheries⁷⁴ have identified a fundamental deficiency in existing fisheries control regimes, highlighting the absence of reliable and verifiable data regarding the exploitation of fish resources. The deficiency stems from the prevalent reliance on self-reported information provided by fishing vessels, coupled with limited oversight and few controls measures implemented by the authorities. Consequently, there exist significant risk of inadequate or underreporting of catches. This substantial shortcoming undermines the accuracy and integrity of data pertaining to fishery activities, impeding effective resource management and regulatory enforcement.

A comprehensive report underpinned by a quantitative analysis commissioned by the Norwegian government, has revealed a disconcerting reality regarding the inspection and control practices within the Norwegian fishing industry. The findings indicate that the Norwegian fishing authorities inspect and control 0.6 % of the annual landed catch in Norway.⁷⁵ The exceedingly low level of control and oversight underscores a vulnerability within the existing control regimes, wherein vessels engaging in potential violations of fishing regulations face minimal risk of detection or intervention by control authorities.

At the present, a surveillance programme implemented in Denmark relies on manual inspection of video streams to identify and detect violations of fishing regulations. Nevertheless, the European Fisheries Control Agency (EFCA)⁷⁶ and several academic initiatives⁷⁷ have emphasised the feasibility and necessity of automating the analysis of both the video streams and input data from various sensors installed on board the vessels.

In view of the fact that illegal fishing is often initiated by a legal entity and that legal persons in the fisheries sector face criminal and administrative sanctions if fishing regulations are infringed, it seems relevant to consider whether the legal person who owns the vessel could invoke Article 8 ECHR if subjected to such a governmental surveillance regime.

The question will be analysed based on the legal architecture conceptualised in section 2 of the Article.

In the case of a fishing company, potential admissibility of their claims under Articles 34 and 35 of the ECHR relies on whether the alleged interference concerns the interests of the legal person as such and not solely natural persons with a connection to the legal person. In situations where a surveillance programme targets all actors in a specific industry, such as in the fishing example, the interests of the legal person may be impacted due to the mandatory nature of participation. This compulsion could imply that all the actors, in some capacity, are operating in a legal grey area and potentially violating fishing regulations. If all legal persons in an industry is mandated to be part of a governmental surveillance program without individual assessments, it could be a supportive argument for victim status for the legal person since the legal persons interests are affected by the potential interference.⁷⁸

Furthermore, if it can be established that the interests of the legal person are indeed affected, the assessment of admissibility could also consider the interests of the natural persons employed on board the fishing vessels. The unique nature of a fishing vessel as a workplace and living environment, where individuals often spend extended periods of several weeks or months, distinguishes it from public spaces – such as streets or other public spaces – subjected to CCTV surveillance. The interests of the employees directly impacted by the monitoring program on board the vessels can serve as a

supporting argument in the admissibility assessment, particularly when it is established that the surveillance programme affects the interests of the legal person as such.

As highlighted in the analysis in section 2, the underlying principle behind the protection of legal persons under Article 8 is to protect them from arbitrary governmental interference. Hence, it is crucial to examine whether an obligation imposed on a fishing company to participate in a governmental surveillance programme could be considered as an arbitrary interference with the legal person's right to "home" and "correspondence".

In the case of *Société Colas Est and Others v. France*,⁷⁹ the ECtHR concluded that a French law allowing searches of business premises without prior judicial assessment of the legality constituted an interference with the rights of legal person under Article 8 ECHR. Similarly, in the context of surveillance of fishing vessels, one could argue that it might amount to an arbitrary interference if all actors in the industry are subjected to the same treatment and compelled to install the surveillance system, without individual assessments of each vessel's history and the risk posed by potential infringements of fishing regulations. Moreover, it is possible to argue that the interference could be regarded as arbitrary if the domestic law authorising the monitoring regime is not sufficiently clear and without minimum procedural requirements – such as requirements for deletion of the data, authorisation and prior or ex post facto review – implemented.

Several examples from the ECtHR where legal person applicants have successfully invoked Article 8 of the ECHR has involved searches of business premises, such as the case of *Société Colas Est and Others v. France*. Is commercial fishing vessels entitled the same level of protection as business premises, or should a vessel be regarded more as a mechanism used by the legal person? When a vessel, where

personnel live and work for many weeks or months at a time, is compared to the case law of the ECtHR concerning business premises, it becomes clear that such an environment has more in common with business premises than a plant or mechanism used by a legal person. Hence, intrusion into this field has potential to invoke the main rationale behind the Article 8 protection for legal persons, the protection against arbitrary governmental interference.

In the context of surveillance systems, the potential for arbitrary interference can also be argued as a result of the automated analysis in the system. Notably, the European Fisheries Control Agency (EFCA)⁸⁰ and several academic initiatives⁸¹ have explored the feasibility of real-time surveillance systems that utilizes advanced automated analysis, such as artificial intelligence and machine learning capabilities, to identify anomalies from sensory input. However, such systems inherently carry the risk of producing false-positive outputs and results. Another aspect of potential arbitrary interference arises when the analysis component of the surveillance system is automated, and if the outputs from such a system, which may include legal sanctions for the legal person involved, are prone to false-positive results. For instance, if a false-positive result by an automated surveillance system results in legal action or sanctions towards the fishing vessel.

Based on the foregoing assessment of the fishing example, it has been demonstrated that a fishing company could potentially invoke Article 8 ECHR if it is compelled to install a surveillance system specifically targeting corporate crime committed by the legal person. However, this article does not examine whether such interference would be deemed proportionate under subparagraph 2 of Article 8. Therefore, it remains a possibility that such an interference could be considered proportionate and, therefore, not a violation of Article 8. The purpose of the use case

and the analysis has been to illustrate the relationship between legal persons, affected associated natural persons and the legal framework established in section 2 of the article.

Signal Intelligence Practices and Legal Persons

The next example under examination diverges from the fishing examples as it is not related to a surveillance system targeting a corporate crime committed by a legal person. The example pertains to a governmental surveillance system implemented within a network infrastructure owned by a legal person, specifically focusing on signal intelligence practices commonly referred to as bulk surveillance.⁸² To facilitate the analysis within the framework established in section 2, it is essential to provide background information concerning the nature of signal intelligence activities involving large-scale retained communications data.

In most jurisdictions, bulk surveillance is typically structured as follows:

- I) The national agency responsible for national security and/or public safety accumulates communications data obtained from privately owned telecommunication infrastructures.
- II) This communications data is stored on either governmental servers or by the telecommunication providers themselves for a specific period, such as 12 or 18 months.
- III) If the governmental agency possesses reasonable grounds to suspect that the stored communications data could contribute to identifying threats to national security or public safety, it can obtain authorised access to the stored information and conduct searches for patterns to detect potential terrorist networks or other threats to security or safety.⁸³

Numerous cases from both the ECtHR⁸⁴ and the Court of Justice of the European Union (CJEU)⁸⁵ have addressed the proportionality of surveillance programmes of this nature. Although the ECtHR and not the CJEU is the authoritative interpreter of the ECHR, case law from the CJEU is often cited by the ECtHR and, therefore, have some relevance. Examples where the ECtHR cite CJEU case law include the cases *Bărbulescu v. Romania* and *Big Brother Watch and Others v. The United Kingdom*.⁸⁶ The following paragraphs will specifically focus on the aspect of such programmes that involves legal persons owning and operating the telecommunications infrastructure, examining whether the legal person can invoke Article 8 when compelled to cooperate and give access to the infrastructure.

The analysis of this question will be conducted within the legal framework established in section 2 of the article. Firstly, the admissibility of an ECHR Article 8 application initiated by a legal person may be affirmed if the case revolves around an alleged violation of the legal person's right under Article 8 ECHR. In most jurisdictions, bulk surveillance and storage regimes necessitates a certain level of cooperation between the signal surveillance agency and the legal person that owns and operates the communications network. This cooperation may entail granting the surveillance agencies access to cables and other hardware, allowing entry to buildings and other locations, and disclosing encryption protocols to the surveillance agencies.⁸⁷ Such obligations can significantly impact the interests of the legal person.

These obligations have the potential to affect the legal person due to potential downtime of services and resulting economic loss and reputational damage arising from the installation of physical hardware on cables and infrastructure. In situations where hardware is installed on the infrastructure, the additional hardware has potential to lead to downtime in the service delivery. At the same time, the owner of the infrastructure is

not allowed to communicate the reason for the downtime to its customers, potentially leading to loss of customers and economic loss. Additionally, some telecommunications providers might have marketed themselves as secure communications channels, particularly with end-to-end encryption. Forcing such providers to disclose their encryption protocols could lead to both reputational damages and economic loss.⁸⁸

While the interests of associated natural persons might have relevance, they are not the sole determining factor for the admissibility of an application from a legal person under Article 8 ECHR. However, if the legal person itself experiences an impact on its interests affected by a signal intelligence obligation, it is plausible that the interests of the telecommunication provider's customers could also become part of the admissibility assessment by the ECtHR. Therefore, in the specific context of the ECtHR, if the interests of both legal persons and natural persons are affected, it would be consistent with case law on admissibility.⁹⁰

In terms of the substantive scope of the protection afforded to legal persons under Article 8 ECHR, the analysis conducted in section 2 revealed that the rationale of the ECtHR awarding the rights under Article 8 to legal persons, is to protect them from arbitrary governmental interference. The question then arises: Can an obligation for a telecommunications provider to cooperate with a governmental signal intelligence agency constitute an arbitrary interference?

One potential scenario for arbitrary governmental interference affecting the telecommunication provider is when the legal basis for the cooperation is ambiguous and opaque. Telecommunications providers in Norway have expressed concerns in this regard.⁹¹ These telecommunication providers are caught in a delicate balancing act between safeguarding the interests in protecting the privacy and data protection of their customers and complying with the obligation imposed by the signal intelligence

authority. If the legal basis for cooperation is unclear and lacks transparency, this balancing exercise could yield arbitrary outcomes.

To conclude on the signal intelligence case, the analysis demonstrates that the telecommunication provider may meet both the admissibility criteria and the rationale underlying the Article 8 protection for legal persons, as identified in section 2 of the article.

However, it is important to note that the example above solely assesses whether a legal person can invoke Article 8 of the ECHR. The question of whether an interference is proportionate under subparagraph 2 of Article 8 remains unexplored, and such an interference might be deemed a proportionate measure.

Emerging Surveillance Trends: Implications for the Future of Article 8 Protection

The following section will examine the ability of legal persons to invoke Article 8 ECHR to protect their interests within the perspective of a prevalent trend: the privatisation of governmental surveillance.

Previously, governmental surveillance, data monitoring, and collection were predominantly carried out by governmental authorities themselves. However, in recent decades, a current trend has emerged wherein authorities seek access to data retained by private organisations for purposes unrelated for the original processing purpose for the private organisation.⁹²

This trend is discernible in the telecommunication industry, where providers retain data and metadata primarily for billing purposes, yet national authorities request access to this data for crime control and national security objectives. Additional instances of this trend can be found in Passenger Name Records (PNR) maintained by

air carriers⁹³ and “Know Your Customer” (KYC) practices employed by financial institutions in Anti Money Laundering efforts.⁹⁴

The analysis conducted in section 2 established that for a legal person to invoke Article 8 of the ECHR, it is a prerequisite that the interests of the legal person as an entity are affected by the alleged violation of Article 8. The following paragraph will challenge this criterion in a scenario that is closely related to the emerging privatisation of surveillance: governmental requests for access to commercial DNA databases.⁹⁵ The reasoning behind the choice of this scenario is that there is reason to believe that the emerging use of such commercial databases also would lead to an emerging number of access requests to the genetic data in the future. Through the analysis of this emerging development, the motivation is to demonstrate that the framework identified in section 2 has a broader societal importance than just the two examples discussed previously in the article.

Consider a scenario where a national cold case group within the police has identified a DNA sample on a piece of old evidence using new DNA analysis technology. However, the DNA sample fails to provide any matches within the national DNA database since it is not registered therein. In response, the Police authorities send the sample to the five largest commercial DNA databases worldwide, requesting a search for a DNA match within their databases.

If this example is examined through the lens of the identified criteria in section 2, an application from a legal person – the commercial DNA database – would only be deemed admissible if the interests of the legal person as an entity are affected by the request. However, in this case, the request primarily affects the natural person who matches the DNA sample, rather than the commercial DNA database as a legal person.

As per the analysis in section 2, the interests of affected natural persons alone cannot serve as the sole basis for victim status based on such an application.

The example illustrates and underscores that the criteria for legal persons to invoke Article 8 ECHR within the context of information requests could potentially lead to inadmissible applications in the ECtHR. Nonetheless, it is crucial to establish criteria on victim status and admissibility to prevent legal persons from making applications on behalf of natural persons who might not share the same interests as the legal person.

One solution for the DNA example and similar cases could involve interpreting the protection of personal data pertaining to affected customers, clients and employees as an integral part of the interests of the legal person in relation to alleged breaches of Article 8 ECHR.⁹⁶

Conclusion

As society becomes more complex, crimes more international, and technology more advanced, methods and approaches of governmental surveillance also develop. This article has outlined the criteria for legal persons to invoke Article 8 within a surveillance context. By employing two real-world use cases – the surveillance of fishing vessels to detect infringements of fishing regulations and the impact of signal intelligence practices on legal persons – the paper has exemplified the applicability of these criteria.⁹⁷

The analysis has unveiled that legal persons can successfully invoke the rights enshrined in Article 8 ECHR when they are the specific target of surveillance, as demonstrated in the fishing example. Additionally, when surveillance practices use infrastructure owned and operated by a legal person to a level affecting the interests of the legal person, the rights under Article 8 ECHR may also be invoked.

Furthermore, the examination of ECtHR case law, in conjunction with theories on legal personality has revealed that the court's case law aligns most with the real entity theory of legal personality. This implies that the underlying rationale behind the Article 8 protection for legal persons is to protect them from arbitrary governmental interference.

Human rights, at their core, pertain primarily to individuals rather than legal persons. However, in a society where arbitrary interference in the realm of legal persons also affects associated natural persons, such a development could potentially pave the way for an incremental degradation, thereby increasing the risk of arbitrary interference in the rights and fundamental freedoms of natural persons.

¹ See for instance, David Lyon, 'Surveillance Society: Monitoring Everyday Life.' [2001]. Open University Press; Pete Fussey, 'Beyond Liberty, Beyond Security: The Politics of Public Surveillance.' [2008]. 3 (1) *British Politics* 120-135.

<https://doi.org/10.1057/palgrave.bp.4200082>; John Gilliom and Torin Monahan, 'Supervision: An Introduction to the Surveillance Society'. [2013] University of Chicago Press; Asaf Lublin, 'We Only Spy on Foreigners: The Myth of a Universal Right to Privacy and the Practice of Foreign Mass Surveillance'. [2018]. 18 (2) *Chicago Journal of International Law*.

² See, Shoshana Zuboff, 'Surveillance Capitalism and the Challenge of Collective Action'. [2019] *New Labor Forum*. 28 (1): 10–29. <https://doi.org/10.1177/1095796018819461>. ISSN 1095-7960. S2CID 159380755.

³ See for instance, Jenna Burrell and Marion Fourcade, 'The society of algorithms.' [2021] *Annual Review of Sociology* 47: 213-237 <https://doi.org/10.1146/annurev-soc-090820->

[020800](#) and Jathan Sadowski, 'When data is capital: Datafication, accumulation, and extraction'. [2019] *Big data & society* 6.1: 2053951718820549

<https://doi.org/10.1177/2053951718820549>.

⁴ Shoshana Zuboff, 'Surveillance Capitalism or Democracy? The Death Match of Institutional Orders and the Politics of Knowledge in Our Information Civilization'. [2022] *Organization Theory*, 3(3). <https://doi.org/10.1177/26317877221129290>.

⁵ For an overview of the how governmental intelligence agencies procure commercially available information (CAI) from private entities see the declassified report to the US Director of National Intelligence of 27. January 2022, available: <https://www.dni.gov/files/ODNI/documents/assessments/ODNI-Declassified-Report-on-CAI-January2022.pdf> last accessed 17.09.2024.

⁶ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

⁷ See, Turkuler Isiksel, 'The Rights of Man and the Rights of the Man-Made: Corporations and Human Rights'. [2016]. Vol. 38 no. 2. *Human Rights Quarterly*. Page 295 with further references; Peter John Oliver, 'What Fundamental Rights, if Any, Should Companies Enjoy? A Comparative Perspective'. [2022] Vol 03. Issue 4. *Revue Européenne du Droit*. Page 48. Available at SSRN: <https://ssrn.com/abstract=4202763>. Last accessed: 12.06.2023.

⁸ See, for instance *Niemietz v. Germany* App no 13710/88 (ECHR, 16 December 1992) and *Société Colas Est and Others v. France* App no 37971/97 (ECHR, 16 April 2002).

⁹ European Parliament, Fishing rules: Compulsory CCTV for certain vessels to counter infractions. (2021). Available: <https://www.europarl.europa.eu/news/en/press-room/20210304IPR99227/fishing-rules-compulsory-cctv-for-certain-vessels-to-counter-infractions>. Last accessed: 17.09.2024.

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- ¹⁰ See for instance, TV2 Østjylland, Fiskere raser over overvågning- Det er krænkende. (2019). Available: <https://www.tv2ostjylland.dk/norddjurs/fiskere-raser-over-overvaagning-det-er-krænkede>. Last accessed: 17.09.2024.
- ¹¹ Tv2Nord, Alle trawlere i Kattegat skal have kamera på fangstbåndet- fiskerne er imod. Available: <https://www.tv2nord.dk/nordjylland/alle-trawlere-i-kattegat-skal-have-kamera-paa-fangstbaandet-fiskerne-er-imod>. Last accessed: 17.09.2024.
- ¹² See for instance, Council Regulation (EC) NO 1005/2008 of September 2008 establishing a community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/199 [2008] OJ L 286 Recital 11 and Article 2 (a) and United Nations Office on Drugs and Crime (UNODC), Fisheries Crime. Page 3. Available: https://www.unodc.org/documents/about-unodc/Campaigns/Fisheries/focus_sheet_PRINT.pdf. Last accessed: 17.09.2024.
- ¹³ See further, Sally S. Simpson; Christopher S. Koper, "Deterring Corporate Crime," *Criminology* 30, no. 3 (August 1992): 347-376.
- ¹⁴ See, *Centrum för rättvisa v Sweden* App no 35252/08 (ECHR, 19 June 2018) [85] and Jon Fridrik Kjølbro, *Den Europæiske Menneskerettighedskonvention for praktikere*, Djøf Forlag [2023] page 876 Juridika.
- ¹⁵ See for instance, *Funke v. France* App no 10828/84 (ECHR, 25 February 1993), *Västberga Taxi Aktiebolag and Vuliv v. Sweden* App no 36985/97 (ECHR, 23 July 2002), *Fortum Oil and Gaz Oy v. Finland* App no 32559/96 (ECHR, 12 November 2002).
- ¹⁶ See for instance, *Tre Traktörer Aktiebolag v. Sweden* App no 10873/84 (ECHR, 7 July 1989), *Gasus Dossier- Und Fördertechnik GmbH v. The Netherlands* App no 15375/89 (ECHR, 23 February 1995), and *Oao Neftyanaya Komaniya Yukos v. Russia* App no 14902/04 (ECHR, 20 September 2011).
- ¹⁷ See for instance, *Autronic AG v. Switzerland* App no 12726/87 (ECHR, 22 May 1990).

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- ¹⁸ See, Turkuler Isiksel, ‘The Rights of Man and the Rights of the Man-Made: Corporations and Human Rights’. [2016]. Vol. 38 no. 2. *Human Rights Quarterly* and Marius Emberland, *The Human Rights of Companies Exploring the Structure of ECHR Protection* (Oxford University Press 2006).
- ¹⁹ *Niemietz v. Germany* App no 13710/88 (ECHR, 16 December 1992).
- ²⁰ *Niemietz v. Germany* App no 13710/88 (ECHR, 16 December 1992) [29].
- ²¹ *Niemietz v. Germany* App no 13710/88 (ECHR, 16 December 1992) [28-29].
- ²³ *Niemietz v. Germany* App no 13710/88 (ECHR, 16 December 1992) [31].
- ²⁴ *Société Colas Est and Others v. France* App no 37971/97 (ECHR, 16 April 2002).
- ²⁵ *Société Colas Est and Others v. France* App no 37971/97 (ECHR, 16 April 2002) [41].
- ²⁶ *Société Colas Est and Others v. France* App no 37971/97 (ECHR, 16 April 2002) [41].
- ²⁷ *Société Colas Est and Others v. France* App no 37971/97 (ECHR, 16 April 2002) [41].
- ²⁸ See further, Jana Gajdšová, Article 8 ECHR and its Impact on English Law, University of East Anglia law school [2008] page 110. Available at https://ueaeprints.uea.ac.uk/id/eprint/10564/1/Thesis_n069532_ARTICLE_8_ECHR_AND_ITS_IMPACT_ON_ENGLISH_LAW_Jana.Gajdosova.pdf. Last accessed 17.09.2024.
- ²⁹ *Niemietz v. Germany* App no 13710/88 (ECHR, 16 December 1992) [30 – 33].
- ³⁰ See for instance, *Association for European Integration and Human Rights & Ekimdshiev v. Bulgaria* App no 62540/00 (ECHR, 28 June 2007) and *Wieser & Bicos Beteiligungen GmbH v. Austria* App no 74336/01 (ECHR, 16 October 2007).
- ³¹ See, *Association for European Integration and Human Rights & Ekimdshiev v. Bulgaria* App no 62540/00 (ECHR, 28 June 2007) [60], *Kent Pharmaceuticals Limited and Others v. The United Kingdom* App no 9355/00 (ECHR, 11 October 2005) and Marius Emberland, *The Human Rights of Companies Exploring the Structure of ECHR Protection* (Oxford University Press 2006) page 145.

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- ³² *Van Rossem v. Belgium* App no 41872/98 (ECHR, 9 December 2004), *Buck v. Germany* App no 41604/98 (ECHR, 28 April 2005), *Saint- Paul Luxembourg S.A. v. Luxembourg* App no 26419/10 (ECHR, 18 April 2013), *Bernh Larsen Holding AS and Others v. Norway* App no 24117/08 (ECHR, 14 March 2013) and *Sérvulo & Associados-Sociedade de Advogados, RL and Others v. Portugal* App no 27013/10 (ECHR, 3 September 2015).
- ³³ *Liblik and Others v. Estonia* App no 173/15, 181/15, 374/15, 383/15, 386/15 and 388/15 (ECHR, 28 May 2019).
- ³⁴ *Liblik and Others v. Estonia* App no 173/15, 181/15, 374/15, 383/15, 386/15 and 388/15 (ECHR, 28 May 2019) [110].
- ³⁵ *Liblik and Others v. Estonia* App no 173/15, 181/15, 374/15, 383/15, 386/15 and 388/15 (ECHR, 28 May 2019) [110].
- ³⁶ See, *Východoslovenská Vodárenská spoločnosť, A.S. v. Slovakia* App no 40265/07 (ECHR, 2 July 2013) [32], *Ärztammer für Wien and Dorner v. Austria* App no 8895/10 (ECHR, 16 February 2016) and Peter John Oliver, ‘What Fundamental Rights, if Any, Should Companies Enjoy? A Comparative Perspective’. [2022] Vol 03. Issue 4. *Revue Européenne du Droit*. Page 52. Available at SSRN: <https://ssrn.com/abstract=4202763>. Last accessed: 17.09.2024.
- ³⁷ See the case law cited in n (30).
- ³⁸ See, *Vallianatos and Others v. Greece* [GC] App no 29381/09 and 32684/09 (ECHR, 7 November 2013) [47].
- ³⁹ See, *Roman Zakharov v. Russia* [GC] App no 47143/06 (ECHR, 4 December 2015) [164].
- ⁴⁰ See, *Klass and Others v. Germany* App no 5029/71 (ECHR, 6 September 1978) [34].
- ⁴¹ See, *Senator Lines GmbH v. fifteen member states of the European Union* App no 56672/00 (ECHR, 10 March 2004) and *Róisín Shortall and Others v. Ireland* App No 50272/18 (ECHR, 19 October 2021).

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- ⁴² *Liblik and Others v. Estonia* App no 173/15, 181/15, 374/15, 383/15, 386/15 and 388/15 (ECHR, 28 May 2019).
- ⁴⁵ *Liblik and Others v. Estonia* App no 173/15, 181/15, 374/15, 383/15, 386/15 and 388/15 (ECHR, 28 May 2019) [111-112].
- ⁴⁶ See, *Mersch and Others v. Luxembourg*, nos. 10439-41/83, 10452/83 and 10512/83 and 10513/83, Commission decision of 10 May 1985, *Scientology Kirche Deutschland* no. 34614/97 Commission Decision of 7 April 1997, *Herbecq and Association "Ligue des droits de l'homme v. Belgium* nos. 32200/96 and 32201/96 Commission Decision 14 January 1998 and *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* App no 62540/00 (ECHR, 28 June 2007).
- ⁴⁷ *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* App no 62540/00 (ECHR, 28 June 2007) [61].
- ⁴⁸ *Bernh Larsen Holding AS and others v. Norway* App no 24117/08 (ECHR, 14 March 2013) [90].
- ⁴⁹ *Avilkina and others v. Russia* App no 1585/09 (ECHR, 6 June 2013) [59].
- ⁵⁰ *Bernh Larsen Holding AS and others v. Norway* App no 24117/08 (ECHR, 14 March 2013) [90].
- ⁵¹ *Bernh Larsen Holding AS and others v. Norway* App no 24117/08 (ECHR, 14 March 2013) [90].
- ⁵² See, *Libert v. France* App no 588/13 (ECHR, 22 February 2018) [40-42] and *Arvelo Aponte v. The Netherlands* App no 28770/05 (ECHR, 3 November 2011) [53]; Bart van der Sloot, 'Do Groups Have a Right to Protect Their Group Interests in Privacy and Should They? Peeling the Onion of Right and Interests Protected under Article 8 ECHR'. [2017]. In Linnet Taylor, Luciano Floridi and Bart van der Sloot (eds.) *Group Privacy. Philosophical Studies Series. Vol 126.* Springer.

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- ⁵³ UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10 December 1948.
- ⁵⁴ See, Conseil De L' Europe, European Commission of Human Rights – Preparatory Work on Article 8 of the European Convention of Human Rights [1956]. Available: <https://www.echr.coe.int/documents/d/echr/echrtravaux-art8-dh-56-12-en1674980>. Last accessed 17.09.2024.
- ⁵⁵ See, Conseil De L' Europe, European Commission of Human Rights – Preparatory Work on Article 8 of the European Convention of Human Rights [1956]. Available: <https://www.echr.coe.int/documents/d/echr/echrtravaux-art8-dh-56-12-en1674980>. Last accessed 17.09.2024.
- ⁵⁶ See, Conseil De L' Europe, European Commission of Human Rights – Preparatory Work on Article 8 of the European Convention of Human Rights [1956]. Available: <https://www.echr.coe.int/documents/d/echr/echrtravaux-art8-dh-56-12-en1674980>. Last accessed 17.09.2024.
- ⁵⁷ See, Conseil De L' Europe, European Commission of Human Rights – Preparatory Work on Article 8 of the European Convention of Human Rights [1956]. Available: <https://www.echr.coe.int/documents/d/echr/echrtravaux-art8-dh-56-12-en1674980>. Last accessed 17.09.2024.
- ⁵⁸ *Uzun v. Germany* App no 35623/05 (ECHR, 2 September 2010).
- ⁵⁹ *Weber and Saravia v. Germany* App no 54934/00 (ECHR, 29 June 2006), *Association for European Integration and Human Rights & Ekimdshiev v. Bulgaria* App no 62540/00 (ECHR, 28 June 2007), *Liberty and Others v. The United Kingdom* App no 58243/00 (ECHR, 1 October 2008).
- ⁶⁰ *Weber and Saravia v. Germany* App no 54934/00 (ECHR, 29 June 2006), *Association for European Integration and Human Rights & Ekimdshiev v. Bulgaria* App no 62540/00

(ECHR, 28 June 2007), *Liberty and Others v. The United Kingdom* App no 58243/00

(ECHR, 1 October 2008).

- ⁶¹ Peter John Oliver, ‘What Fundamental Rights, if Any, Should Companies Enjoy? A Comparative Perspective’. [2022] Vol 03. Issue 4. *Revue Européenne du Droit*. Page 58. Available at SSRN: <https://ssrn.com/abstract=4202763>. Last accessed: 17.09.2024.
- ⁶² This is inspired by Justice Rehnquist in the U.S. Supreme Court, see *First National Bank of Boston v. Bellotti* 435 US 765, 824 (1977).
- ⁶³ For legal analysis of these theories, see: Meir Dan Cohen, *Rights, Persons and Organizations, a Legal Theory for a Bureaucratic Society* (University of California Press, 1986); Phillip Blumberg, *The Corporate Entity in an Era of Multinational Corporations*. [1990] Vol 15 No. 2 *Delaware Journal of Corporate Law*; Karel Beran, *The Concept of Juristic Person* (Wolters Kluwwer, 2020); Peter John Oliver, ‘What Fundamental Rights, if Any, Should Companies Enjoy? A Comparative Perspective’. [2022] Vol 03. Issue 4. *Revue Européenne du Droit*. Page 58. Available at SSRN: <https://ssrn.com/abstract=4202763>. Last accessed: 17.09.2024.
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- ⁷⁰ United Nations, ‘The toll of illegal, unreported and unregulated fishing’ (2021) <<https://www.un.org/en/observances/end-illegal-fishing-day>>. Last accessed: 17.09.2024.
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⁸² See footnote number 1.

⁸³ See footnote number 1.

⁸⁴ See, for instance, *Klass and Others v. Germany* App no 5029/71 (ECHR, 6 September 1978), *Szabó and Vissy v. Hungary* App no 37138/14 (ECHR, 12 January 2015), *Weber and Saravia v. Germany* App no 54934/00 (ECHR, 29 June 2006), *Liberty and Others v. The United Kingdom* App no 58243/00 (ECHR, 1 October 2008), *Kennedy v. The United Kingdom* App no 26839/05 (ECHR, 18 August 2010), *Roman Zakharov v. Russia* App no 47143/06 (ECHR, 4 December 2015), *Barbulescu v. Romania* App no 61496/08 (ECHR, 5 September 2017), *Breyer v. Germany* App no 50001/12 (ECHR, 7 September 2020), *Big Brothers Watch and Others v. The United Kingdom* App nos. 58170/13, 62322/14 and 24960/15 (ECHR, 25 May 2021), *Centrum for Rättvisa v. Sweden* App no 35252/08 (ECHR, 25 May 2021), *Ekimdzhiiev and Others v. Bulgaria* App no 70078/12 (ECHR, 11 January 2022), *Haščák v. Slovakia* App no 58359/12 (ECHR, 14 November 2022). *Pending cases (as of December 2022)*: *Association confraternelle de la presse judiciaire v. France* App nos. 49526/15, 49615/15, 49616/15, 49617/15, 49618/15, 49619/15, 49620/15, 49621/15, 55058/15, 55061/15, 59602/15 and 59621/15, *Follorou v. France* App no 30635/17, *Johannes v. France* App no 30636/17, *Pietrzak v. Poland* App no 72038/17, *Bychawska-Siniarska and Others v. Poland* App no 25237/18, *A.L. v. France* App no 44715/20 and *E.J. v. France* 47930/21.

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- ⁸⁷ See for instance, The Norwegian Intelligence Service Act (Lov 19 Juni 2020 nr. 77) Section 7-2 and the Swedish Signal Intelligence Act (Lag 2008:717) Section 12.
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- ⁹¹ See for instance, consultation response from Runbox Solutions AS to the Norwegian government. Available: <https://www.regjeringen.no/no/dokumenter/horing-forslag-til-enderinger-i-etterretningstjenesteloven/id2920954/?uid=ef84d3e2-5a4d-4d97-b8fa-ba6181ac13c8>. Last accessed: 17.09.2024.
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- ⁹³ See, Case C-817/19 *Ligue des droits humains v. Conseil des ministres*.
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⁹⁵ See, Tillmar A, Fagerholm SA, Staaf J, et al. “Getting the conclusive lead with investigative genetic genealogy - A successful case study of a 16-year-old double murder in Sweden”.

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