



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

**DIVISION DE LA RECHERCHE
RESEARCH DIVISION**

***Article 1 of Protocol No. 1
Victim status of company shareholders in
relation to measures affecting their companies
or their shares***

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The manuscript for this text was finalised in November 2019 and may be subject to editorial revision.

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**STUDY OF THE ECHR CASE-LAW
ARTICLE 1 OF PROTOCOL NO. 1**

SUMMARY

The report examines the issue of victim status of shareholders in relation to various measures taken in respect of, or within, the companies in which they own shares and which are possibly capable of affecting their individual rights. It traces the development of the *Agrotexim* case-law concerning the “corporate veil” and explores its application and exceptions. In particular, the study identifies the situations in which individual shareholders can have standing in respect of measures taken against their companies as well as circumstances allowing them to submit complaints in their own name.

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INTRODUCTION

1. The report examines the issue of victim status of shareholders in relation to various measures taken in respect of, or within, the companies in which they own shares and which are possibly capable of affecting their individual rights. While the issue has been salient in cases involving liquidation of companies, it has also arisen in other contexts. The report first sets out briefly the relevant general principles concerning victim status before proceeding to outline the approach taken by the European Commission of Human Rights until the landmark case of *Agrotexim and Others v. Greece* of 1995. It then examines the application of the *Agrotexim* principles in different contexts with a view to determining situations where the *locus standi* of shareholders can be accepted.

2. It should be noted that although the *Agrotexim* principles were established in the context of property-related disputes under Article 1 of Protocol No. 1 involving corporate entities, they have been applied equally to complaints under other Convention provisions, notably Article 6 (e.g. length and fairness of proceedings) and Article 10 (e.g. withdrawal of broadcasting licences). The present report will focus mainly on Article 1 of Protocol No. 1 cases. It does not deal with corporate actors other than shareholders (e.g. managers, directors, chairmen, directors are members of the board).

I. RELEVANT GENERAL PRINCIPLES CONCERNING VICTIM STATUS

3. According to the Court's established case-law, in order to lodge an application under Article 34 of the Convention, an individual must be able to show that he or she was "directly affected" by the measure complained of.¹ The concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act.² The conditions governing individual applications under Article 34 are not necessarily the same as the national criteria relating to *locus standi*.³ There must, however, be a sufficiently direct link between the applicant and the harm which he considers he has sustained on account of the alleged violation.⁴

4. The Court has underlined that while the existence of a "victim" is indispensable for putting the protection mechanism of the Convention into motion, this criterion cannot be applied in a rigid, mechanical and inflexible

¹ See, among many authorities, *Lambert and Others v. France* [GC], no. 46043/14, § 89, ECHR 2015 (extracts), and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 92, ECHR 2012.

² *Lambert and Others v. France* [GC], cited above, § 89.

³ *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003.

⁴ *Beguš v. Slovenia*, no. 25634/05, § 25, 15 December 2011.

way throughout the whole proceedings,⁵ especially in cases which involve pecuniary claims.⁶ The principle that the Convention must be interpreted as guaranteeing rights which are practical and effective is also applicable to Article 34.⁷

II. EARLY CASE-LAW

5. The European Commission of Human Rights was confronted with the question of standing of shareholders already in a 1966 case *X. v. Austria*⁸, where it accepted that the applicant could claim to be a victim of various actions affecting his company's solvency and rights in the bankruptcy proceedings on the ground that he held about 91% of the shares in that company. In *Kaplan v. the United Kingdom*⁹ it also held that the main shareholder had a sufficient direct interest to claim to be a victim of a decision to impose restrictions on the company's business.

6. In *Yarrow and Others v. the United Kingdom*¹⁰ the Commission explained further its rationale in the above two cases:

“The Commission has previously held in two cases that a shareholder was entitled to claim to be the "victim" of measures directed against a company. ... However the Commission recalls that in both these cases the individual concerned held a **substantial majority shareholding** in the company. In effect both applicants were carrying on their own business **through the medium of the company** and both applicants had a **direct personal interest** in the subject-matter of the complaint.”

7. It went on to distinguish those cases from the facts at hand where the applicants complained of inadequate compensation following the nationalisation of a company. The first applicant – Yarrow company- was the sole shareholder in the nationalised company whereas the remaining applicants all held shares in Yarrow. In rejecting the standing of those applicants, the Commission reasoned as follows:

“The circumstances of the present case are not, in the Commission's view, comparable to the two cases referred to. None of the three applicants in question here **held a majority or controlling interest** in Yarrow. The nationalisation measure did not involve them personally. It is true that **by reducing the assets of Yarrow** (as they allege) **it would no doubt have reduced the value of their shareholdings**. However **it is open to Yarrow itself to lodge a complaint under the Convention**, as it has done. There is no question of Yarrow having been left in a position where it is incapable of taking this course. In the circumstances the Commission considers that

⁵ *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 96, ECHR 2014.

⁶ *Capital Bank AD v. Bulgaria*, no. 49429/99, § 78, ECHR 2005 XII (extracts),

⁷ *Credit and Industrial Bank v. the Czech Republic*, no. 29010/95, § 48, ECHR 2003-XI (extracts), and *Vefa Holding sh.p.k and Alimuçaj v. Albania* (dec.), no. 24096/05, § 90, 14 June 2011.

⁸ *X. v. Austria*, no. 1706/62. Commission decision of 4 October 1966, Collection of Decisions 21, p. 34.

⁹ *Kaplan v. the United Kingdom*, no. 75598/76, Report of the Commission adopted on 17 July 1988. D.R. 21, p. 5, paras. 129-131.

¹⁰ *Yarrow and others v. the United Kingdom*, no. 9266/81, Commission decision of 28 January 1983. D.R. 30, p. 155)

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the matters complained of in the present application had only an **indirect effect** on the second, third and fourth applicants and not a direct affect such as to entitle them to claim to be "victims"..."¹¹

8. The issue of victim status of shareholders, both majority and minority, has also arisen in the context of legislative measures relating to taxation of companies.

9. In *Company S. and T. v. Sweden*¹² the two applicants were a company and a minority shareholder in five different companies. They complained of the introduction of legislation concerning the employee investment funds, involving the payment of an additional tax and a pension charge by the employers. Having found that the second applicant was not required to pay any tax or additional charge and was thus not directly and personally affected by the legislation in question, the Commission proceeded to analyse the effect of the operation of the employee investment funds on his shares.

“The Commission has first examined whether the second applicant, in the light of the Commission's earlier case-law set out above, can claim to be a victim with regard to this particular complaint. Insofar as the second applicant refers to the value of the shares he owns the Commission recalls its decision in the Yarrow case where a **decrease in value of shares was found not to affect the applicants to such an extent that they could be considered victims** The Commission maintains this position here.

However, the applicant has also complained under Article 1 of Protocol No. 1 to the Convention that **he is deprived of his influence and power over the companies** in which he holds shares. In this respect the Commission observes that a company share is a complex thing. It certifies that the holder possesses a share in a company together with the corresponding rights. **This is not only an indirect claim on company assets but other rights, especially voting rights and the right to influence the company,** may follow the share. **In these circumstances the Commission would not exclude that the applicant may claim to be a victim of an alleged violation of Article 1 of Protocol No. 1** and this complaint is not rejected for this reason.

In the present case the Commission recalls that the **second applicant owns shares in five companies liable to contribute under the new system.** There is no doubt that these shares are "possessions" within the meaning of Article 1 of Protocol No. 1. However, in the present case, the Commission also recalls that the second applicant **has not been compelled in any way to surrender his shares** nor is he liable to contribute to the tax system in question. The issue which might arise is therefore only whether the second applicant's power or influence over the companies as shareholder is protected by Article 1 of Protocol No. 1 and, if so, whether the applicant's situation was indeed of such a character that the right secured to him by that provision has been infringed.

The Commission does not find it necessary, however, **in this case to decide whether the power or influence a shareholder may acquire over a company is a "possession"** within the meaning of Article 1 of Protocol No. 1, because even assuming this to be the case the present case does not disclose any appearance of a breach of this provision. In the companies in which the second applicant holds shares, **his shareholdings are of such size that he cannot in his capacity as**

¹¹ See also *Penton v. Turkey*, no. 24463/94, Commission decision of 14 April 1998, confirming that minority shareholders cannot in principle claim to be victims of measures directed against the property of the company.

¹² *Company S. and T. v. Sweden*, no. 11189/84, Commission decision of 11 December 1986, D.R. 50, p. 138.

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shareholder control any of these companies. There has accordingly not been any interference with his rights under Article 1 of Protocol No. 1.”

10. In *Kustannus OY Vapaa Ajatteliija AB and Others v. Finland*,¹³ the Commission rejected a complaint by a majority shareholder in a company which had been required to pay church tax:

“In the present case the taxes at issue were levied exclusively on the applicant company and appeals against the taxation could only be brought by the applicant company itself. It is true that the **applicant association is the company's majority shareholder**. The Commission nevertheless finds that neither the association nor the third applicant was **decisively affected** by the imposition of the taxes on the company, also having regard to the **minor amounts at stake**.”¹⁴

11. When a new legislation imposed a property tax on life insurance companies, the Commission found a complaint by the policyholders inadmissible for the reason that the legislation in question did not affect them directly and personally to such an extent that it could claim to be a victim.¹⁵

III. THE AGROTEXIM CASE

12. The landmark case of *Agrotexim and Others v. Greece*, no. 14807/89, concerned town-planning measures taken by a municipality with a view to expropriating real estate belonging to a limited company (Karolos Fix Brewery) in difficulties. The applicants were six companies holding about 51 % of its share. They complained of a breach of Article 1 of Protocol No. 1 inasmuch as the measures adopted by Athens Municipal Council with regard to the sites owned by Fix Brewery amounted to an unjustified interference with their right to the peaceful enjoyment of their possessions.

13. The Commission declared the application admissible, finding that the applicant companies as majority shareholders in Fix Brewery could claim to be victims of the measures affecting the latter's property. It reasoned as follows:

“The Commission finds that, the question whether a shareholder may claim to be victim of measures affecting a company cannot be determined on the sole criterion of whether the shareholder detains the majority of the company shares. This element is an objective and important indication but other elements may also be relevant in view of the circumstances of each particular case. In this respect the Commission recalls that it has previously taken into account the fact that an applicant shareholder was carrying out his own business through the medium of the company and that he had a personal interest in the subject-matter of the complaint (cf. above-mentioned

¹³ *Kustannus OY Vapaa Ajatteliija AB and Others v. Finland*, no. 20471/92, Commission decision of 15 April 1996, D.R. 85-A, p. 29.

¹⁴ Complaints from shareholders in relation to taxation of their companies have been found inadmissible also later by the Court, for example in *T.W. Computeranimation GmbH and Others v. Austria* (dec.), no. 53818/00, 1 February 2005, concerning the raising of the minimum corporate tax and its effect on the financial interests of the shareholders.

¹⁵ *Wasa Liv Ömsesidigt, Försäkringsbolaget Valands Pensionsstiftelse and a group of approximately 15,000 individuals v. Sweden*, no. 13013/87, Commission decision of 14 December 1988.

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Applications No. 1706/62 and 9266/81). It has also considered whether it was open to the company itself, being the direct victim, to lodge an application with the Commission.

In the present case the Commission notes that, although none of the applicants separately holds the majority of the company's shares, the group of the applicant companies holds 51,35% of the Karolos Fix Brewery S.A. shares. It is moreover apparent that the applicant companies have an interest in the subject-matter of the application.

Furthermore, in the Commission's view, the circumstance that the company is under liquidation and subject to the special regime of ailing enterprises is of particular relevance.

...

The Commission finds that the company Karolos Fix Brewery S.A., has been essentially under effective State control since 1983. Consequently, this company cannot reasonably be expected to lodge an application with the Commission against the Greek State. In these specific circumstances, the Commission finds that the applicant shareholders are entitled, by lifting the veil of the company's legal personality, to claim that they are victims of the measures affecting the company's property.... In this respect the Commission recalls that not only substantive rights under Section I of the Convention or its Protocols but also Article 25 of the Convention, which confers upon individuals and non-governmental organisations a right of a procedural nature, must be interpreted as guaranteeing rights which are practical and effective as opposed to theoretical and illusory.”¹⁶

14. Subsequently, the Commission adopted a report expressing the opinion that there had been a violation of Article 1 of Protocol No. 1. In discussing the existence of an interference with the applicants' rights it held as follows:

“59. The Commission notes that the applicant's rights at issue are their rights as majority shareholders in the company Karolos Fix Brewery S.A. The measures complained of were directed against the company but also indirectly affected the applicant's rights. Consequently, insofar as there has been an interference with the company's property rights, this interference must be considered to extend to the applicants' property rights as well.”¹⁷

15. The Court disagreed with the Commission's approach which seemed to suggest that where a violation of a company's rights protected by Article 1 of Protocol No. 1 resulted in a fall in the value of its shares, there was automatically an infringement of the shareholders' rights. It considered that such a criterion was an unacceptable one, in view of a potential conflict of interest between different actors as well as of difficulties arising in connection with the exhaustion of domestic remedies:

“65. It is a perfectly normal occurrence in the life of a limited company for there to be differences of opinion among its shareholders or between its shareholders and its board of directors as to the reality of an infringement of the right to the peaceful enjoyment of the company's possessions or concerning the most appropriate way of reacting to such an infringement. Such differences of opinion may, however, be more

¹⁶ *Agrotexim and Others v. Greece*, no. 14807/89, Commission decision of 12 February 1992.

¹⁷ Report of the Commission, adopted on 10 March 1994.

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serious where the company is in the process of liquidation because the realisation of its assets and the discharging of its liabilities are intended primarily to meet the claims of the creditors of a company whose survival is rendered impossible by its financial situation, and only as a secondary aim to satisfy the claims of the shareholders, among whom any remaining assets are divided up.

To adopt the Commission's position would be to run the risk of creating - in view of these competing interests - difficulties in determining who is entitled to apply to the Strasbourg institutions.

The Commission's view would also engender considerable problems concerning the requirement of exhaustion of domestic remedies. It may be assumed that in the majority of national legal systems shareholders do not normally have the right to bring an action for damages in respect of an act or an omission that is prejudicial to "their" company. It would accordingly be unreasonable to require them to do so before complaining of such an act or omission before the Convention institutions. Nor could, conversely, a company be required to exhaust domestic remedies itself, because the shareholders are of course not empowered to take such proceedings on behalf of "their" company."

16. In order to reduce such risks and difficulties, the Court considered that:

"66. ...the piercing of the "corporate veil" or the disregarding of a company's legal personality will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or - in the event of liquidation - through its liquidators."

It noted that in the present case the applicant companies did not complain of a violation of the rights vested in them as shareholders of Fix Brewery, such as the right to attend the general meeting and to vote. Their complaint was based on the proposition that the alleged violation of the brewery's property rights had adversely affected their own financial interests because of the resulting fall in the value of their shares.

However, it had not been established that at the time when the application was lodged, it was not possible for Fix Brewery to apply through its liquidators to the Convention institutions. There was no indication that the liquidators had failed to protect the insolvent company's assets. The Court therefore concluded that the applicant companies could not be regarded as being entitled to apply to the Convention institutions.¹⁸

IV. CIRCUMSTANCES JUSTIFYING STANDING OF SHAREHOLDERS WITH RESPECT TO MEASURES TAKEN AGAINST THEIR COMPANIES

A. Sole owner

17. Although companies with separate legal personality are not normally to be identified with their shareholders, the Court has accepted that there are situations where it would serve no purpose to distinguish between the two. Exceptional circumstances allowing for the piercing of the corporate veil exist when a sole owner and shareholder brings an application complaining

¹⁸ *Agrotexim and Others v. Greece*, 24 October 1995, §§ 62-71, Series A no. 330-A.

of acts directly affecting the company. The rationale for accepting the victim status of a sole owner is that in such a situation there is no risk of differences of opinion among shareholders or between shareholders and a board of directors as to the reality of infringement of Convention rights or to the most appropriate way of reacting to such an infringement.¹⁹

18. However, when such a company is in the process of liquidation, a potential conflict of interest may exist between the owner(s) and the liquidator of the company tasked with protecting the company's property.²⁰

19. In case of multiple applicants, involving companies and sole shareholders at the same time, the Court has referred to the companies as "mere vehicles" for shareholders' business, accepting the victim status of all the applicants.²¹

B. Complaints relating to liquidators

20. Exceptions entitling (majority) shareholders to lodge a valid application have also been accepted where the acts or decisions complained of related to the appointment or actions of a liquidator.

21. In *G.J. v. Luxembourg*, no. 21156/93, 26 October 2000 the Court accepted the standing of a shareholder in a company referring both to the nature of the complaint and the applicant's substantial stake in the company, mirroring the approach previously adopted by the Commission :

"24. However, in the present case the company was under liquidation and **the complaint brought before the Court relates to the activities of the liquidators**, i.e. the official receiver and the Commercial Court. In these circumstances the Court considers that it was not possible for the company, as a legal personality, at the time, to bring the case before the former Commission. Moreover, the Court recalls that **the applicant held a substantial shareholding of 90% in the company. He was in effect carrying out his business through the company and has, therefore, a direct personal interest in the subject-matter of the complaint.** Therefore, the Court finds that the applicant may claim to be a victim of the alleged violation of the Convention affecting the rights of the limited liability company."

¹⁹ See *Ankarcrona v. Sweden* (dec.), no. 35178/97, 27 June 2000; *Jafarli and Others v. Azerbaijan*, no. 36079/06, § 41, 29 July 2010; *Gubiyev v. Russia*, no. 29309/03, §§ 53-54, 19 July 2011; *Beguš v. Slovenia*, no. 25634/05, § 26, 15 December 2011; and *Vladimirova v. Russia*, no. 21863/05, § 40, 10 April 2018.

²⁰ See *Veselá and Loyka v. Slovakia* (dec.), no. 54811/00, 13 December 2005 where the Court found that due to the potentially competing interests between the applicants – sole owners of the company which had been put in liquidation – and the trustee of the company, the application should have been introduced on behalf of the company by its trustee, there being no indication that the trustee had failed to represent the company's interests properly.

²¹ See *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 42, Series A no. 222, where the third applicant (Mr Healy) was the sole shareholder of the second applicant (Healy Holdings) which wholly owned the first applicant (Pine Valley). For the Court, "...Pine Valley and Healy Holdings were no more than vehicles through which Mr. Healy proposed to implement the development..." See also *KIPS DOO and Drekalović v. Montenegro*, no. 28766/06, § 87, 26 June 2018, where the Court considered that the two applicants (a company and an individual owning 99,2% of its shares) were so closely identified with each other that it was artificial to distinguish between them for the purpose of their victim status. The same reasoning was applied in *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 74, 20 April 2010.

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22. In *Credit and Industrial Bank v. the Czech Republic*, no. 29010/95, ECHR 2003-XI (extracts), an application was initially brought both by a bank and its former president and majority shareholder (Mr Moravec). They complained that their rights had been violated in that they had had no remedy against the administrative decision concerning the imposition of compulsory administration on the applicant bank. While the Commission found that the second applicant could not claim to be a victim of the alleged violation of the banks' rights,²² the Court considered there were exceptional circumstances which entitled Mr Moravec to lodge a valid application on the bank's behalf:

“51. The Court observes that, in contrast to the situation in the *Agrotexim* case, the complaint under the Convention which is made in the present case **relates not to an alleged interference with the property rights of the bank which the compulsory administrator had been appointed to protect** and manage and in respect of which the administrator could apply on the banks behalf to the Convention institutions. **On the contrary, the complaint made relates to the very fact that a compulsory administrator was appointed** at the instance of the CNB without a proper opportunity being granted to the bank which was the subject of the administration order to oppose it. Where, as in the present case, **the essence of the complaint is the denial of effective access to court to oppose or appeal against the appointment of a compulsory administrator**, to hold that the administrator alone was authorised to represent the bank in lodging an application with the Convention institutions would be to render the right of individual petition conferred by Article 34 theoretical and illusory.”

23. In *Camberrow MM5 AD v. Bulgaria* (dec.), no. 50357/99, 1 April 2004, the applicant company held about 98% of the shares of a commercial bank (DCB AD) which had been declared bankrupt. Here too the Court found that there were special circumstances allowing the applicant claim to be a victim of the alleged violations of the rights of DCB AD:

“The Court notes at the outset that most of the applicant's complaints relate not to an alleged violation of its Convention rights, but the rights of DCB AD of which it is a shareholder.

...

However, in the present case DCB AD was first managed and represented by special administrators appointed by BNB and then, when it was declared bankrupt, by trustees in bankruptcy appointed by the court, while the application before the Court **relates precisely to the complex of events leading to the appointment of the special administrators and the trustees and the actions of the trustees**. In these circumstances, the Court considers that **because of the conflict of interests** between DCB AD and its special administrators and trustees it was not possible for the bank itself to bring the case before the Court. **Moreover, the Court recalls that the applicant held a substantial shareholding of 98% in the bank. It was in effect carrying out part its business through the bank and has, therefore, a direct personal interest in the subject-matter of the application** (see *G.J. v. Luxembourg*, no. 21156/93, § 24, 26 October 2000).”

24. Similar considerations emphasising the particular nature of the complaint made led the Court to accept the standing of shareholders also in several subsequent cases. In *Capital Bank AD. v. Bulgaria* (dec),

²² *Credit and Industrial Bank and Moravec v. the Czech Republic*, no. 29010/95, Commission decision of 20 May 1998.

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no. 49429/99, 9 December 2004, where all three shareholders in the applicant bank were granted victim status, the Court followed its reasoning in the *Camberrow* case above:

“In the present case, in contrast to the situation obtaining in *Agrotexim and Others*, the application does not concern a matter in respect of which the trustees could be expected to act in protection of the bank’s interests. On the contrary, it relates precisely to the complex of events leading to the appointment of the trustees and to the role of the trustees in the in the proceedings before the Sofia Court of Appeals and the Supreme Court of Cassation. There is therefore a clear conflict of interests between the bank and the trustees, making it unfeasible for the bank to apply to the Court through them ...”²³

25. Where no conflict of interest has been established between the company in liquidation and its administrator with regard to the object of the complaint, an application must be introduced by the liquidator.²⁴

26. It could be noted that while the Court has granted standing to shareholders in the above mentioned circumstances to pursue complaints *on behalf of their companies*, it has rejected complaints filed by them in *their personal capacity* as incompatible *ratione personae* in so far as they concerned measures directed against their companies.²⁵

C. Liquidation of a company

27. Apart from situations involving complaints by shareholders about bankruptcy proceedings, the Court has accepted the standing of shareholders also when their company has ceased to exist as a legal person. For example, in *S.C. Fiercolect Impex S.R.L. v. Romania*, no. 26429/07, 3 December 2016, where the application had been introduced by the sole shareholder of the applicant company which during the Strasbourg proceedings had been dissolved, the Court rejected the Government’s request to dismiss the application as inadmissible *ratione personae*:

²³ See also *International Bank for Commerce and Development AD and Others v. Bulgaria*, no. 7031/05, §§ 89-91, 2 June 2016, where an individual holding 93.63% of the bank’s shares was entitled to complain on the bank’s behalf about the revocation of its licence and appointment of special administrators; *Vefa Holding sh.p.k and Alimuçaj v. Albania (dec.)*, no. 24096/05, §§ 91-92, 14 June 2011, where the sole shareholder of a company in compulsory administration could validly introduce an application both on his own and the company’s behalf in relation to complaints concerning the appointment of special administrators, their role and conduct in the compulsory administration proceedings.

²⁴ *NASK, S.R.O. v Slovakia (dec.)*, no. 50817/15, § 22, 30 April 2019, where the complaint concerned the quashing of a final judgment in the company’s favour. It could also be noted that in cases where an application has been brought concurrently by a company and its owner(s) and has the same object, the owner(s) cannot have separate standing from that of the company. See *Sandu and Others v. the Republic of Moldova and Russia*, nos. 21034/05 and 7 others, § 52, 17 July 2018; *Hotel Promotion Bureau S.r.l and Others v. Italy (dec.)*, no. 34163/07, § 30, 5 June 2012; *Družstevní záložna Pria and Others v. the Czech Republic*, no. 72034/01, § 100, 31 July 2008; and *Minda and Others v. Hungary (dec.)*, no. 6690/02, 13 September 2005.

²⁵ See, for example, *Feldman and Slovyansky Bank v. Ukraine*, no. 42758/05, § 30, 21 December 2017, and *Pokis v. Latvia (dec.)*, no. 528/02, ECHR 2006-XV, where a majority shareholder of a company under liquidation objected to measures relating directly and exclusively to the company’s capital.

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“40. The Court notes that the alleged breaches of Article 1 of Protocol No. 1 in the present case concern the procedure whereby the applicant company had challenged the finance inspectorate’s decision to impose a fine and to confiscate a large sum of money. Under the Companies Act, following the dissolution of a company and its removal from the register, its assets are transferred to its shareholders In the instant case, the applicant company was a limited liability company with a sole shareholder. After the dissolution of the applicant company, its sole shareholder expressed his interest in continuing the proceedings before the Court.

41. In these circumstances, the Court considers that since its decision will have a direct impact on the sole shareholder as the person to whom the applicant company’s claims have been transferred, the Government’s objection has to be dismissed.”

28. In *Capital Bank AD v. Bulgaria*, considered above, the Court had found in its admissibility decision that it was permissible for the shareholders to lodge an application on behalf of the bank which at that time was in liquidation. The bank was subsequently dissolved and the Government requested that the case be struck out. In rejecting the request, the Court held in its judgment:

“80. The Court notes that the various alleged breaches of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 in the present case concern the procedure whereby the applicant bank’s licence was revoked and the bank was wound up, which ultimately led to its ceasing to exist as a legal person. Striking the application out of the list under such circumstances would undermine the very essence of the right of individual applications by legal persons, as it would encourage governments to deprive such entities of the possibility to pursue an application lodged at a time when they enjoyed legal personality ... It would also render nugatory the Court’s reasoning in its admissibility decision in the present case This issue in itself transcends the interests of the applicant bank and therefore the Court rejects the Government’s request for the application to be struck out of its list.”²⁶

29. Similar reasoning was used in *Süzer et Eksen Holding A.Ş. v. Turkey*, no. 6334/05, 23 October 2012, where the two applicants held more than 99% of the capital of a dissolved bank:

« 92. La Cour marque également son désaccord avec le second argument du Gouvernement, selon lequel les requérants ne seraient pas en droit d’agir en tant qu’anciens actionnaires d’une banque qui a cessé d’exister sur le plan juridique. En effet, outre le fait que les conditions régissant les requêtes individuelles introduites au titre de la Convention ne coïncident pas nécessairement avec les critères nationaux relatifs au locus standi (voir, parmi d’autres, *Norris c. Irlande*, 26 octobre 1988, § 31, série A no 142), force est d’observer qu’en l’espèce, la dissolution de Kentbank ne change rien à la circonstance que les requérants, qui en détenaient le contrôle, furent longtemps actifs dans le secteur bancaire, de sorte qu’ils étaient forcément en possession, entre autres, de licences d’exploitation, de biens mobiliers et immobiliers et d’une certaine clientèle. Au demeurant, c’est bien eux qui ont introduit avec succès les instances administratives dans cette affaire, alors que leur banque se trouvait déjà dissoute ..., et avait ainsi perdu la possibilité d’ester en justice par l’intermédiaire de ses organes statutaires ou par ses liquidateurs ..., ces derniers ayant décidé d’interrompre le processus de liquidation

Accepter que les requérants n’aient pas qualité pour agir dans de telles circonstances saperait la substance même du droit de recours individuel des personnes morales ou de leurs sociétaires, dans la mesure où cela serait de nature à encourager les gouvernements à dépouiller de leur personnalité juridique celles qui pourraient

²⁶ *Capital Bank AD v. Bulgaria*, no. 49429/99, § 80, ECHR 2005-XII (extracts).

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déposer une requête devant la Cour ...pour ensuite dénier aux ex-sociétaires le droit de saisir la Cour en leur propre nom. »²⁷

D. Other circumstances justifying lifting of the corporate veil

30. In addition to the situations where the corporate veil can be pierced in the interests of the company's shareholders, there are also situations where the lifting of that veil can be justified in the interests of its creditors. One such instance is where a company is used merely as a façade for fraudulent actions by its owners or managers.²⁸ An exception to the principle of the corporate veil has also been recognised where a shareholder had been made liable for a debt of a company.²⁹

31. However, in this type of cases the issue of victim status did not arise as the shareholders concerned were the direct target of the impugned measure.

V. COMPLAINTS BY SHAREHOLDERS IN THEIR OWN NAME

32. While shareholders of a company, including the majority shareholders, cannot claim to be victims of an alleged violation of the company's rights, save in the exceptional circumstances outlined above, the Court has dealt with a number of cases where shareholders have alleged that the measures directed at their companies, for instance, during the liquidation proceedings or otherwise, have had an adverse effect on their financial interests or the value of their shares. The complaints however have all failed under the *Agrotexim* test either because the effect of the measures was considered to be too indirect,³⁰ the applicant was a minority shareholder³¹ or it was open to the company itself to file an application with the Court.³²

33. In *Olczak v. Poland* (dec.), no. 30417/96, ECHR 2002-X, the Court explained its approach to shareholders' standing as follows:

²⁷ See also *OAO NEFTYANAYA KOMPANIYA YUKOS v. Russia* (dec), no. 14902/04, §§ 439-444, 29 January 2009.

²⁸ *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 877, 25 July 2013, where major shareholders were made liable for unpaid company taxes.

²⁹ *Lekić v. Slovenia* [GC], no. 36480/07, 11 December 2018.

³⁰ *Pokis v. Latvia* (dec.), no. 528/02, ECHR 2006-XV.

³¹ *Teliga and Others v. Ukraine*, no. 72551/01, §§ 79 and 87 21 December 2006. See also *Bakalov and Others v. Bulgaria* (dec.), no. 55796/00, 18 September 2007, where the lack of a substantial shareholding by individual shareholders in a bank was considered decisive for denying them victim status in relation to the alleged violations of their own rights in the bank's insolvency proceedings.

³² *Paparatti and Others v. Italy* (dec.), nos. 37196/97 and 8 other, 1 June 1999; *CDI Holding Aktiengesellschaft and Others v Slovakia* (dec.), no. 37398/97, 18 October 2001; and *T.W. Computeranimation GmbH and Others v. Austria* (dec.) no. 53818/00 1 February 2005. See also *Družstevní záložna Priea and Others v. the Czech Republic*, no. 72034/01, §§ 97-100, 31 July 2008, and *Lebedev v. Russia* (dec.), no. 4493/04, 25 November 2004 where the companies in question had in fact applied to the Court.

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“59. as regards the distinction between the shareholder’s interests and those of the company, it should be recalled that the concept of the public company is founded on a firm distinction between the rights of the company and those of its shareholders. Only the company, endowed with legal personality, can take action in respect of corporate matters. A wrong done to the company can indirectly cause prejudice to its shareholders, but this does not imply that both are entitled to claim compensation. Whenever a shareholder’s interests are harmed by a measure directed at the company, it is up to the latter to take appropriate action. **An act infringing only the company’s rights does not involve responsibility towards the shareholders, even if their interests are affected. Such responsibility arises only if the act complained of is aimed at the rights of the shareholder as such (...) or if the company has been wound up.**”

34. The applicant in that case was a shareholder in a commercial bank which was subject to a recovery and restructuring programme. The National Bank appointed a Board of Receivers in order to improve the bank’s financial standing and preserve the assets deposited with it. The Board amended the bank's memorandum of association and took various measures including the reduction of the nominal value of its share capital through the cancellation of more than half of the shares and very considerable reduction in the value of the remainder. The effect of these operations was to reduce the applicant's shareholding from approximately 45% to 0.4%. The applicant was involved in various sets of proceedings but was unsuccessful in his attempts to have the Board of Receivers' resolutions set aside.

35. He complained under Article 1 of Protocol No. 1 that the Board of Receivers had divested his share of any value. In considering whether the applicant had locus standi to complain of a violation of his property rights distinct from those of the bank, the Court observed:

“58. ... firstly, that the present case can be distinguished from *Agrotexim* in one important way: **the nature of the measures taken in the latter case**, i.e. the prohibition to build and the institution of expropriation proceedings were such that it was the company itself which was the direct victim. In the present case, the measures complained of consisted of the cancellation of certain shares, including those belonging to the applicant; they were thus **directly aimed at the applicant’s rights as a shareholder**. Accordingly, it was the applicant’s rights protected by Article 1 of Protocol No. 1 which were directly affected. Moreover, in the *Agrotexim* case the measures complained of were to the detriment of the company, whereas in the present case their purpose was, on the contrary, to prevent the bank from becoming insolvent. Consequently, **the bank was to benefit from them**, whereas the applicant’s interests suffered.”

36. In according the applicant victim status the Court had regard to the following factors:

“61. The Court observes that in the present case, the shares held initially by the applicant represented approximately 45 per cent of the bank’s equity capital. Following measures of the Board of Receivers appointed by the National Bank of Poland, the applicant’s shareholding decreased to 0,4 per cent. As a result, **the value of the shares in real terms was very seriously reduced**. The applicant undeniably lost his property as a result of these measures. Moreover, **the applicant’s powers resulting from his ownership of shares and his powers to influence the company and to vote have decreased seriously**. It must be recalled in this connection that the term “victim” used in Article 25 of the Convention denotes the person directly affected by the act or omission which is at issue (*Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, p. 30, § 66), in specie the applicant.”

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37. It confirmed that shares in a public company constituted “possessions” within the meaning of Article 1 of Protocol No. 1, clarifying the rights attached to a share:

“60. The Court observes in this respect that a share in a company is a complex object. It certifies that the holder possesses a share in a company together with the corresponding rights. **This encompasses the right to a share to the company’s assets in the event of its being wound up, but other unconditioned rights, especially voting rights and the right to influence the company’s conduct** (Eur. Comm. HR, No. 11189/84, Dec. 11.12.1986, D.R. 50, p. 158).”

38. The Court was faced with a significant reduction of shareholding also in the case of *Sovtransavto Holding v. Ukraine*, no. 48553/99, 25 July 2002 where the applicant company’s part in another company [SL] was reduced from 49% to 20.7% by the management of that company whose decisions were ratified by the competent municipal authority. There was no issue with the standing of the applicant company in relation to its complaint under Article 1 of Protocol No. 1 that the value of its shareholding in SL had been unlawfully reduced and that it had lost control of the company's activity and assets as a result. In examining the applicability of Article 1 of Protocol No. 1 the Court found as follows:

« La Cour observe qu’en l’espèce, la société requérante possédait au départ 49 % des actions de [SL], ce qui lui permettait, conformément au droit ukrainien et au statut de [SL], de participer directement à l’activité de la société et au vote à l’assemblée des actionnaires. La requérante pouvait, le cas échéant, bloquer toute décision de la société anonyme en matière de modifications de ses actes statutaires ou d’augmentation de ses fonds statutaires. A cet égard, elle relève que la dévalorisation des actions de la requérante a entraîné la perte de son influence sur l’activité de [SL]. La Cour estime donc que les actions que détenait la requérante avaient indubitablement une valeur économique et peuvent être considérées comme des « biens » au sens de l’article 1 du Protocole no 1. »³³

39. In contrast to the above cases, where the applicants held significant shares, the Court in *Hodina v. the Czech Republic* found no interference with the property rights of a shareholder in bank complaining about a decision of the general meeting which allegedly violated the principle of equality of shareholders:

« Elle note d’emblée que le requérant n’a pas montré avoir la qualité d’actionnaire majoritaire de la société en question ...Son portefeuille n’était donc pas d’un volume tel qu’il puisse en sa qualité d’actionnaire contrôler la société dans laquelle il ne détenait pas une participation décisive.

Dans ces conditions, la Cour estime que les faits dénoncés à l’occasion de la présente requête n’avait qu’un effet indirect sur le requérant et que ce dernier n’a pas démontré qu’il ait effectivement subi une ingérence dans l’exercice de ses droits garantis par l’article 1 du Protocole no 1 (...) »³⁴

³³ Decision on admissibility of 27 September 2001. In its judgment the Court also observed that “... there were changes in the powers the applicant company exercised as a shareholder, that is to say in its ability to run the company and control its assets.” (§ 92).

³⁴ *Hodina v. the Czech Republic* (dec.), no. 66450/01, 30 March 2004.

40. In *Süzer et Eksen Holding A.Ş. v. Turkey*, no. 6334/05, 23 October 2012 the Court accepted that the rights of the two applicants, who had controlled over 99% of the capital of a private bank, had been affected after the bank had been prohibited by the Bank Regulatory and Supervisory Agency from performing banking operations and transferred to a State-owned entity:

« 144. Les mesures prises par l'ARSB ont eu pour conséquence de priver les requérants des droits patrimoniaux, tant corporels qu'incorporels, liés à l'exploitation de leur ancienne banque. A cet égard, la Cour considère que la perte des licences en cause se trouve au cœur du problème, étant entendu que celles-ci sont la condition sine qua non pour œuvrer dans le secteur bancaire et que leur retrait a ipso jure justifié la liquidation de l'établissement, puis la disparition de sa personnalité morale ... Il s'ensuit que les mesures litigieuses ont constitué une ingérence dans la jouissance du droit au respect des biens des requérants et que, par conséquent, l'article 1 du Protocole no 1 s'applique. »³⁵

41. An interference with the rights of shareholders and their victim status were not questioned where, following a merger of their company with another company, the applicants – minority shareholders - were obliged by a court order to exchange the shares in the old company against shares in the new one at an unfavourable rate.³⁶

42. Finally, although the notion of “victim” is to be interpreted autonomously and irrespective of domestic rules, the applicant's participation in the domestic proceedings is a relevant factor to be taken into account. In the cases discussed in this section where shareholders were found to have standing they participated in their own name in the domestic proceedings, disputing the measures affecting their rights as shareholders.³⁷

CONCLUSION

43. The Court has recognised that companies have a distinct legal personality from shareholders. In case of measures affecting a company it is for the latter to lodge an application with the Court through its organs or liquidators, unless, due to exceptional circumstances, it is not in a position to do so. In assessing those circumstances, the Court takes into consideration the nature of the impugned measure, the nature of the complaint and any conflict of interests between the parties involved.

44. Individual shareholders have been granted standing to complain about the alleged violation of their company's rights when they have been the sole owners, their complaint relates to the appointment or acts of the liquidator or when the company has ceased to exist. In case of substantial shareholding, the Court has also taken into account the direct personal

³⁵ As discussed above, the Court had accepted the victim status of the applicants.

³⁶ *Offerhaus and Offerhaus v. the Netherlands* (dec.), no. 35730/97, 16 January 2001.

³⁷ By contrast, if it is the company that was a party to the domestic proceedings, its shareholders can claim victim status only in exceptional circumstances. See, among other authorities, *Erduran and Em Export Dış Tic. A.Ş. v. Turkey*, nos. 25707/05 and 28614/06, §§ 59-60, 20 November 2018, with further references.

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interest of the shareholders who used the company as a vehicle for their business.

45. However, when shareholders have complained of the effect of the measures taken in respect of their company (either under new legislation or in specific proceedings) on their shares and financial interests, such complaints have been rejected with reference to the “corporate veil.”

46. Only when the examination of the nature of the impugned measure reveals that it is aimed at the rights of the shareholder as such, can the latter claim to be directly affected for the purposes of his/her victim status. Under the existing case-law this has been the case, in particular, with the cancellation of shares, their significant reduction or the obligation to exchange them at a disadvantageous rate. When it is established that the measure in question has a direct bearing on the rights inherent in owning shares, the level of shareholding need not necessarily reach majority for the individual to be granted victim status. As shares constitute “possessions” under Article 1 of Protocol No. 1, the size of shareholding is a factor relevant for the assessment of the question of “interference”.