CONTOURS OF NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS IN CENTRAL AND EASTERN EUROPE

Introduction

Central and Eastern Europe has been since the creation of the United Nations one of its five regional groups. This region spreads from Slovenia at the furthest west point to the most Eastern points of the Russian Federation. Societies in Central and Eastern Europe have in the past decades experienced systematic and wide-spread business-related human rights abuses, which range from violations of equal treatment and health and safety at work to protecting human dignity in the extractive industries. Moreover, human rights defenders have generally and specifically in the field of business and human rights often faced prosecution. As a result, Central and Eastern European


countries share common recent history, culture and mentality. Corporations in the regions have often directly and indirectly interfered with the human rights of employees and the wider populations. Business and human rights has in the past lagged behind developments at the other continents and globally. Most states have not been fully involved in the preparation of soft law standards and potential binding standards on business and human rights. For instance, recently only a few states participated at the negotiations for the potential UN Business and Human Rights. Moreover, only few scholars from the region have been in past decades actively involved in research and building capacity on business and human rights.

The UN Human Rights Council in June 2011 adopted the UN Guiding Principles on Business and Human Rights as an authoritative international document on business and human rights standards. The Guiding Principles establish a three-fold framework of state obligations and responsibilities in business and human rights. States have primary obligations to protect individuals against business-related human rights abuses, corporations are to respect and protect human rights, and thirdly state and corporations are to establish judicial, quasi-judicial and non-judicial mechanisms to enforce corporate and state responsibility.

The UN Working Group has visited Azerbaijan and Georgia among the countries of Central and Eastern Europe. The UN Member States have been encouraged to adopt National Action Plans to implement the UN Guidelines in their domestic systems. So far 24 states have adopted National Action Plans on Business and Human Rights, including 4 states

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4 Beata Faracik, Jernej Letnar Černič and Olena Uvarova have in 2019 founded the Central & Eastern European Business & Human Rights Association (https://pihrb.org/ceebhra/).


from Central and Eastern Europe (Czech Republic, Lithuania, Poland and Slovenia).\textsuperscript{10} Georgia and also recently Ukraine\textsuperscript{11} adopted its action plan as a part of its national action plan on business and human rights.\textsuperscript{12} The Russian Federation as the largest country in Central and Europe has so far not adopted the National Action Plan.\textsuperscript{13} This article will briefly analyse contours of the National Action Plans on Business and Human Rights of the Czech Republic, Poland, Lithuania, Georgia, Ukraine and Slovenia by examining their qualities and deficiencies. It argues that the field of business and human rights in Central and Eastern Europe should be strengthened in order to effectively protect the human dignity of rights-holders.

I. National Action Plans on Business and Human Rights in Central and Eastern Europe

This section describes and examines all six National Action Plans on Business and Human Rights that have been so far adopted in Central and Eastern Europe. Moreover, it provides some recommendations on the improvement of those National Action Plans.

1. National Action Plans on Business and Human Rights of the Czech Republic

The Czech Republic launched its National Action Plan in February 2017.\textsuperscript{14} It is divided in three parts and follows the tripartite structure of the UN Guiding Principles. As for state obligation to protect, it includes detailed list of actions in several subfields such as:

Publication and dissemination of existing documents, education and awareness-raising, Criminal liability of legal persons in the field of human rights, Disqualification of a member of a body, protection of social service clients, Most serious infringements of working conditions, Trade in military equipment, Supply chains and conflict minerals, Non-financial reporting, public


procurement, State aid, guarantees and subsidies, enterprises and companies in which the state has a shareholding, and External policy.\textsuperscript{15}

The plan notes that “human rights standards encapsulate not only a legal commitment, but also moral and ethical responsibility independent of state authority and its enforcement of the law.”\textsuperscript{16} It adds that “respect for human rights is both a legal obligation and the least that can be expected of business ethics.”\textsuperscript{17} As for the access to remedy, it focuses among others on access to courts, collective actions and alternative and online dispute resolution, by specifying the name of concrete projects and measures to be adopted to reach the deadline.\textsuperscript{18} The Czech National Plan is overall well prepared and goes very in detail concerning state and corporate human rights obligations in business and human rights. It has distinguished itself from other National Action Plans in Central and Eastern Europe that it includes goals, timeline and indicators, which enable measurements of the set commitments concerning state and corporations and access to remedy. The Ministry of Human Rights is reported to have regularly supervised the implementation of the Plan.\textsuperscript{19}

2. National Action Plans on Business and Human Rights of Georgia


\textsuperscript{16} Ibid, 29.
\textsuperscript{17} Ibid.
\textsuperscript{18} Ibid, 41–51.
\textsuperscript{21} Ibid.
\textsuperscript{22} Ibid.
\textsuperscript{23} Ibid.
Ensure conducting appropriate actions for public servants about UN main principles with the aim to provide information and raise awareness,” 24 “25.26.1. Raise awareness for the staff of judicial authority and investigative structures concerning human rights,” 25 “25.27.1. Ensure awareness rising about legal risks assessment for companies with the aim to prevent human rights violation” 26 and “25.28.1. Ensure strengthening high standard issues containing mechanisms, including out-of-court appeal.” 27 The Georgian National Action Plan does not provide for detailed commitments, goals and indicators state and corporate obligations in the field of business and human rights. As a result, it is of programmatic legal nature that does not grant rights-holders with the effective access to remedy. The UN Working Group on Business and Human Rights observed in the Statement at the end of visit to “Georgia that the content of the chapter on business and human rights should be improved post-2020 to capture fully all recommendations of the baseline assessment as well as our June 2020 report to the UN Human Rights Council.” 28 It urged the government to “… also consider developing a comprehensive National Action Plan on Business and Human Rights as per the guidance provided by the Working Group.” 29

3. National Action Plans on Business and Human Rights of Lithuania

Lithuania introduced in February 2015 its National Action Plan on Business and Human Rights as the first state in Central and Eastern Europe. 30 The Plan spans on only 6 pages, however it follows three pillars of the UN Guiding Principles. Lithuania recognized in its National Action Plan that it carries a positive obligation to ensure that companies in the Lithuanian legal order do not interfere with the human rights and freedoms of individuals. 31 Lithuania has so far not played a significant role in the international community in business and human rights. As a rule, with a few exceptions, it has not actively participated in global debates on business and human rights, as only a few experts and non-governmental organizations have been active in this field. Government authorities have so far too often

25 Ibid.
26 Ibid.
27 Ibid.
29 Ibid.
31 Ibid, 1–2.
confused business and human rights with discussions on corporate social responsibility. Initiatives for respect for human rights in the economy are present in Lithuanian society, but in rare cases they have exceeded corporate social responsibility initiatives such as philanthropy, donations and charitable campaigns.\textsuperscript{32} As for the access for remedies, the state has among others committed to introduce the possibility of class action in administrative procedure and to encourage self-regulation of business.\textsuperscript{33} The Lithuanian Action Plan is somehow limited in nature and its extent. Perhaps this can be explained by its early adoption. The Lithuanian government has in spite of earlier commitments so far not established any Working Group for supervision of implementation. Nonetheless, it seems to be working on the 2nd version of its National Action Plan.\textsuperscript{34}


Poland is one of the largest economies in Central and Eastern Europe and one of the most advanced countries as to the developments in Business and Human Rights.\textsuperscript{35} The National Action Plan on Business and Human Rights of Poland was adopted in May 2017.\textsuperscript{36} It is divided into three parts and implementation of the National Action Plan. It is well prepared and it includes 58 pages. The Polish government notes that “is sending a clear signal to entrepreneurs, pointing out that the obligation to apply the UN Guiding Principles is the best way to promote a responsible approach to conducting business activity and thus implementing other international standards, including the OECD Guidelines for Multinational Enterprises."\textsuperscript{37} As for access to the remedy, the National Action Plan notes that “the Polish legal system provides people who have been victims of human rights violations in the context of a broadly defined economic activity with a range of legal measures to seek judicial protection.” It adds that “access to these instruments is wide and allows appropriate remedial action to be taken, depending on the nature of the violation.”\textsuperscript{38} Although the Polish National Action Plan is a textbook example of good practices concerning business and human rights in Central and Eastern Europe, it has much room for improvement. The Polish government should in the Second version of the Action Plan include more detailed commitments in different areas of business and develop indicators and deadlines to measure business and human rights in practice.

\textsuperscript{33} Ibid, 6.
\textsuperscript{37} Ibid, 28.
\textsuperscript{38} Ibid, 37.

The development of the Ukrainian National Action Plan has been a long process, which started in 2017.39 Ukraine first published the National Baseline Assessment on Business and Human Rights in 2019.40 Ukraine thereafter published a National Action Plan on Business and Human Rights in March 2021.41 It is part of the national human rights action plan of the Republic of Ukraine.42 The chapter on business and human rights is only 2 pages long. Nonetheless, it notes that “business entities should apply a human rights approach in conducting business activities;” and “access to effective remedies should be guaranteed to victims of human rights violations related to business operations.”43 Nonetheless, it includes several indicators that could be used when measuring the respect for business and human rights in practice.44 The adoption of a chapter on business and human rights within the Ukrainian National Action Plan on Business and Human Rights is certainly the step in the right direction. It remains to be seen how the chapter will be implemented in practice and if Ukraine will in future adopt a stand-alone National Action Plan on Business and Human Rights.


The structure of the action plan of the Republic of Slovenia partially follows the UN Guiding principles.45 It was launched in November 2018. The National Action Plan of Slovenia includes commitments as to pillar 1 and pillar 3. Pillar 2 on corporate responsibility for human rights has not been included in the special chapter. Nonetheless, the Action Plan recognizes that corporations have constitutional and statutory obligations concerning human rights. The Action notes that corporations that “...must comply with the Constitution and the laws of the Republic of Slovenia, as well as generally recognised standards and principles and the rules of international human rights law.”46 Nonetheless, the absence of individual chapters on the obligations of corporations to respect human rights is difficult to understand, as there is already a legal basis for it in the Slovenian domestic legal system. Such a text contradicts the current constitutional system, which

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42 Ibid.
44 Ibid.
46 Ibid, 11.
already requires companies to respect and protect human rights. Corporations are to respect the Constitution and the laws of the Republic of Slovenia. The Plan list among priorities of Slovenia in its implementation the following areas: “Prevention of discrimination and inequality, and promotion of equal opportunities;” “Promotion and protection of fundamental workers’ rights, also in transnational businesses and along the entire production chain;” “Prevention of, and fight against, trafficking in human beings;” “Environmental protection, nature conservation, sustainable development;” and “Human rights due diligence.” It appears that the Slovenian state could have perhaps shown a clearer commitment that corporations operating in Slovenia must respect and protect human rights. The absence of a clear message in the action plan that corporations to respect and protect human rights in the Slovenian legal system diminishes the importance of the entire action plan. The Slovenian government has through its Ministry of Foreign Affairs since the adoption of the National Action Plan regularly supervised its implementation. It has mostly focused on the activities of the state-owned corporations. Nonetheless, the Slovenian government should in the implementation system further develop indicators and set deadlines for implementation of its and corporate commitments concerning business and human rights. The measurement of human rights compliance of businesses will illustrate a real-life picture of business and human rights in Slovenia.

II. Challenges Concerning National Action Plans on Business and Human Rights in Central and Eastern Europe

States must protect the individual against violations by private entities and exercise control over companies that are allegedly involved in human rights violations on their territory, and increasingly also control companies when operating outside its borders. National Action Plans on Business and Human Rights are generally summaries of national laws and/or of non-binding commitments. Several authors have in the past argued that they cannot provide rights-holders with an effective access to justice for business-related human rights commitments. The existing National Action Plans of Central and Eastern European states are in that regard no exception. Only a few states in Central and Eastern Europe

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48 Ibid.
50 Ibid.
51 Ibid.
52 Ibid.
53 Ibid.
54 Ibid.
55 Ibid.
56 Černič, “Business and Human Rights in Slovenia.”
have so far adopted National Action Plans. On the other hand, the adopted four or five National Action Plans substantially vary in the quality and extent of state pronouncements on their and corporate responsibilities. For instance, National Action Plans on Business and Human Rights of Georgia and Lithuania do not entail detailed commitments and indicators, as they focus more on general and programmatic commitments. On the other hand, the National Action Plans on Business and Human Rights of the Czech Republic, Poland and Slovenia are in pair with best practices concerning National Action Plans. One of the deficiencies of National Action Plans at the global level has been that they often lack goals, timelines for implementation and indicators, which enable measurements of the set commitments. Such has been also the case with most Action Plans in Central and Eastern Europe. With the exception of the Czech National Action Plan, National Action Plans in Central and Eastern Europe do not include goals, timeline and indicators. States could strengthen supervision of the implementation of National Action Plans by improving the rule of law and quality of domestic systems by drafting goals, indicators and setting timelines for their implementation.

As for the implementation of National Action Plans, not all states have established periodic supervisions mechanisms. The implementation of business and human rights standards has been in the past decades as both state and corporate actors have not been able or willing to efficiently protect the rights of individuals.59 Most countries in the region lack capacity both in their institutions and civil society to effectively address business-related human rights challenges. As a rule, much of the challenges in the business and human rights in the region have been connected to the general problems of the rule of law, weak institutions and limited access to justice in the case of human rights violations. As a result, the international community should support building capacity, knowledge, fairness, impartiality and independence concerning business and human rights in order to strengthen both civil society and government resilience to address business-related human rights abuses.60 One of the ways for states to illustrate commitment to business and human rights is to develop a National Action Plan with detailed goals and deadlines to achieve them. In this way, civil society and state institutions could periodically supervise and measure how states and corporations comply with business and human rights standards such the UNGPs. As a rule, the reform of business and human rights requires strong institutions and the rule of law, which effectively safeguards human dignity of the rights-holders.

III. Way Forward

There is much room for improvement in the area of business and human rights in Central and Eastern Europe. Business-related human rights abuses are not uncommon in the region. In some countries business-related human rights abuses are even systematic and general. As a result, there is a great need for accountability for business-related human

59 Černič, “Mapping Business and Human Rights.”
60 Ibid.
rights abuses. The general rule of law situation is far from ideal in the countries of Central
and Eastern Europe. The rule of law in most countries in the region suffers due to the
weak institution, corruption and collision of state and private interests. Rights-holders
in the regions have often been voiceless in enforcing state and corporate accountability
for business-related human rights abuses. Judiciaries are often not capable of providing
the right to fair, independent and fair trial for victims of human rights violations.61 Tens
of thousands of individuals from the region have since more than two decades turned
themselves to the European Court of Human Rights.62 As, business-related human rights
abuses have been an example of general and systematic violations.

The largest corporations in the region are often state-owned or connected to the
highest government circles. States carry primarily obligations to respect, protect and fulfil
human rights in the area of business of human rights and beyond. Their obligations are
even greater in the context with state-owned corporations. Simultaneously, corporations
have complementary negative and positive obligations to respect human dignity of the
rights-holders. In the context of corporate governance, it is indispensable that corporations
translate their rhetorical commitments in practice and to invest more resources in human
resources that will be able to supervise the compliance of their operations. The progress in
business and human rights hinges on the strengthening of the rule of law and institutions
in those states. As a result, corporations in Central and Eastern Europe are to integrate
respect for the rule of law at all levels of their business operations. Nonetheless, the step
forward for business and human rights in the region would be that also the rest of countries
in the region adopt National Action Plans and that they establish effective supervision
of National Action Plans. States in Central and Eastern European are to work towards
improving the rule of law and access to justice for victims of business-related human rights
abuses. The field of business and human rights in Central and Eastern Europe requires
reforms in order to effectively protect human dignity of rights-holders.

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61 Černič, “Mapping Business and Human Rights.”
62 Jernej Letnar Černič, “Impact of the European Court of Human Rights on the Rule of Law in Central


CONTOURS OF NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS...


Jernej Letnar Černič. Contours of National Action Plans on Business and Human Rights in Central and Eastern Europe

Abstract. Central and Eastern Europe has been often overseen in the debates on business and human rights. Countries in the regions share a common history, experience and culture. Human rights and fundamental freedoms were in the past systematically and generally violated. Since democratisation, countries have suffered from a wide range of related human rights abuses. Corporations in the regions have often directly and indirectly interfered with the human rights of employees and the wider communities. Business and human rights has in the past lagged behind global developments also in the light of the lack of capacity and general deficient human rights situation. This article describes and discusses contours of the National Action Plans on Business and Human Rights of the Czech Republic, Poland, Lithuania, Georgia, Ukraine and Slovenia by examining their strengths and deficiencies. It argues that the field of business and human rights in Central and Eastern Europe has made a step forward in the last decade since the adoption of the United Nations Guiding Principles on Business and Human Rights. Nonetheless, human rights should be further translated into practice to effectively protect human dignity of rights-holders.

Keywords: business and human rights; corporate accountability; human dignity; rule of law; Central and Eastern Europe.