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THE RESPONSIBILITY TO RESPECT WORKERS' RIGHTS IN GLOBAL SUPPLY CHAINS

Abstract. The purpose of this publication is to identify those responsible for violations of basic labour rights in global supply chains. The free movement of finance capital does not go hand in hand with the protection of human rights, and the possibility of using the work of workers all over the world in production does not guarantee equal treatment in the field of elementary human rights. The weakness of many states, the need for capital investment, the race to keep costs low, and the lack of diligence in complying with the law result in human rights violations. The multitude of actors involved and the jurisdiction of many countries do not create a clear picture of liability. It is necessary to try to assign responsibility to those process participants who are involved in the creation of the supply chain and who benefit financially from it.

Keywords: rights of workers, labour rights, multinational enterprises, UE regulations, global supply chain, International Labour Organisation

ODPOWIEDZIALNOŚĆ ZA PRZESTRZEGANIE PRAW PRACOWNIKÓW W GLOBALNYCH ŁAŃCUCHACH DOSTAW

Streszczenie. Celem niniejszej publikacji jest wskazanie podmiotów odpowiedzialnych za naruszania podstawowych praw pracowniczych w globalnych łańcuchach dostaw. Swoboda przepływu kapitału finansowego nie idzie w parze z ochroną praw człowieka, a możliwość korzystania w produkcji z pracy pracowników na całym świecie, nie gwarantuje równego traktowania w zakresie elementarnych praw człowieka. Słabość wielu państw, potrzeba inwestycji kapitałowych, wyścig o utrzymanie niskich kosztów i brak staranności w dostrzeganiu warunków pracy u dostawców skutkują łamaniem praw człowieka. Mnogość podmiotów zaangażowanych i jurysdykcja wielu państw nie tworzą jasnego obrazu odpowiedzialności. Koniecznym jest podjęcie próby przypisania odpowiedzialności tym uczestnikom procesów, który biorą udział w tworzeniu łańcucha dostaw i którzy czerpią z niego korzyści finansowe.

Słowa kluczowe: prawa pracowników, przedsiębiorstwa międzynarodowe, prawo UE, globalny łańcuch dostaw, Międzynarodowa Organizacja Pracy

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1. INTRODUCTION

States, employers, trade unions, and employees should bear in mind that work performed in workplaces complies with the provisions of labour law. The free movement of capital, the relocation of production, or the ordering of goods in countries which are not the seat of the contracting authority have a huge impact on workers' rights. This is particularly noticeable in the case of the relocation of production or the outsourcing of orders to countries with low labour costs, weak legal protection, and ineffective enforcement. The increasing fragmentation of production and the increase in global supply chains have a huge impact on national employment patterns, working conditions, and wages. It poses a huge challenge in protecting fundamental labour rights in global supply chains and raises the question of responsibility for actual and potential violations. The question is particularly important because of the large scale of employment made possible by globalisation, the complexity of supply chains, and the numerous actors in the process – the state, enterprises and their suppliers, subcontractors, employees, international organisations, trade unions.

2. STAKEHOLDERS INVOLVED IN THE CREATION AND OPERATION OF GLOBAL SUPPLY CHAIN

Labour regulation, jurisdiction, and the enforcement of standards take place at the national level, and the cross-border sourcing of goods and services hinders the proper protection of workers' rights. Many countries are not keeping up with the dynamic changes in the global economy and the opportunities it offers. Multinational companies, through the evolution of their capital and organisational structures, minimise legal and corporate liability. This is referred to as the global "governance deficit" (Gereffi 2006). The freedom to organise legal and capital structures results in difficult or even impossible enforcement of rights and creates a sense of impunity for companies violating the law as well as the powerlessness of employees. The possibility of ordering the production of a certain quantity and quality of goods does not go hand in hand with economic and social risks. Increased requirements in the cycle from design to product launch put pressure on suppliers and their employees. There is also a lack of information about the links between contractors or the ability to monitor compliance with the fundamental rights of employees in the lower layers of the supply chain. Fundamental rights include rights that are the subject of the ILO's conventions:[1]

[1] The International Labour Organisation's Declaration on fundamental principles and rights work (ILO 1998).

(a) freedom of association and effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective eradication of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

By transferring risk to suppliers and at the same time creating pressures on price, quality, and lead times, companies create a situation in which the ILO's conventions are likely to be violated using child labour, forced labour, or discrimination by suppliers.

The development of supply chains leads to changes in the economies of many countries, as companies and countries specialise in certain areas of the market and create new jobs and new forms of work delivery. This does not change the fact that workers' rights are violated, and new technological and economic solutions pose challenges in the implementation of the fundamental principles of labour law.

The law has not kept pace with regulating the dynamics of changes caused by the global movement of capital, and international law is sufficiently effective. It is not easy to indicate effective means of legal solutions, because we are dealing with a huge number of entities, legislation of many countries, and new technologies. This prevents states from exercising control over international business chains. It should be added that many countries have a low capacity to protect basic labour rights on their territory. This contributes to the creation of "regulatory enclaves" where only a handful of workers benefit from the protection of their rights (Posthuma, Bignami 2018). This is noticeable both at the level of countries and parent companies in capital groups. All those involved in production, distribution, and sales directly or indirectly affect the working conditions of employees. Just as supply chains are complex, it is difficult to clearly identify a single entity responsible for the violations of workers' rights. When looking for those responsible for the violation of labour standards in global chains, it is necessary to indicate the number of different participants who are involved in the extraction of raw materials, the production of goods, logistics, and sales, as well as the countries in which these processes take place.

The UN Guiding Principles on Business and Human Rights are based on three pillars: the state's obligations to protect human rights, corporate responsibility to respect human rights, and the need to ensure access to remedies for those who are victims of business activities. The main limitation of the Guidelines is their non-binding nature. All states have a duty to protect people from human rights violations committed by individuals or by companies. If the legal obligation for states to protect human rights already exists under international human rights law, the issue of corporate liability for human rights violations is more controversial as debates about the subjectivity of multinational corporations in international law are still ongoing. Companies also have a duty to respect human rights – even if

states fail to fulfil their obligations. However, when abuses occur, victims must have access to effective remedies through judicial and non-judicial complaint mechanisms.

The main burden of making and enforcing human rights lies with states. Labour law is largely territorial law, and international law is too weak to prevent abuses. Almost all countries in the world have signed treaties approving these rights, but practice shows that the ratification of conventions and protocols on workers' rights does not guarantee their observance or enforcement (Zbucka-Gargas 2020). The role of the host countries that benefit from investment from the increase in employment is to strengthen the protection of human rights and control working conditions. It should be pointed out that the countries involved are the countries in which the work is performed, as well as the countries in which the seat of the ordering party is located, as well as the country in which certain products are sold. This is a result of the complexity of supply chains.

In the EU, certain sectors are regulated, e.g. the Timber Regulation, which prohibits illegally harvested timber from entering the EU market and obliges EU operators to act with due diligence. The Conflict Minerals Regulation or the EU promotes s voluntary approach in the clothing, textile and leather industries. The European Commission has also presented a proposal for a directive on corporate due diligence for sustainable development. The proposed rules intend to oblige companies to exercise diligence in managing negative social and environmental impacts throughout the supply chain. Some EU countries have also introduced a regulation of the obligation to exercise due diligence in identifying risks related to business activity, but they concern certain violations, such as child labour (Kingdom of Netherlands law) or forced labour (UK Modern Slavery Act 2015). An example of cross-sectoral regulation is the 2017 French law on the duty of vigilance, which requires all large French companies to exercise due diligence in relation to group companies and all suppliers. Contracting countries also have tools in the form of public procurement through which they can stimulate good behaviour in the protection of workers' rights. The data shows that they account for around 12% of economic activity in OECD countries, and in some countries even more, such as the Netherlands – as much as 20.2% (OECD 2017, 172). Compliance with and enforcement of international labour standards in accordance with international labour standards ratified by states is the role of states and is crucial. The measures taken, although not sufficient, should be evaluated positively. It can be added that since companies cooperate across borders with other entities, close international cooperation at the level of countries is similarly necessary.

Although national governments are primarily responsible for establishing and enforcing workers' rights, multinational companies play a very important role. Bearing in mind their role and impact on human rights and the environment, many actors have implemented voluntary initiatives in the field of corporate responsibility (CSR). In order to promote standards of employee rights in suppliers

and subcontractors, companies implement codes of ethics, carry out audits of working conditions, implement traceability programmes for their products, and try to track the production, distribution or use of semi-finished products, raw materials. In practice, it is highly complicated to have information on the number of involved entities and the labour standards of the workers they employ. It should be borne in mind that the global supply chain may consist of tens of thousands of involved entities and is subject to constant change. And while it is quite simple in the case of suppliers in the first circle, in the subsequent links of the chain, identifying participants and preventing abuse of the law is complicated. Not only is the voluntary approach not effective enough, but it also raises doubts about the lack of a level playing field with those who do not. Competition between economic operators should not be based on the ability to minimise labour costs. The complexity and scale of actors, including households (agriculture), makes it difficult to spot irregularities, change abnormal practices, and thus make the implementation of corrective action plans less effective. Therefore, the attention of companies should be directed to identifying and taking actions to mitigate violations of rights in the so-called "hot spots", i.e. places where the risk of violating the rights of other human rights violations is the highest. This applies to scale, country, sector, the severity of the infringement, etc.

When touching on the aspect of the supply chain, it is necessary to mention the goods placed on the market and which have been produced in violation of human rights. States, protecting citizens – consumers in their regulations regarding specific products – require an assessment of whether we are not dealing with human rights violations. Consumers are tempted by a low price and usually do not have information about the origin of the product. On the other hand, their awareness of the protection of human rights and the environment is growing, and they expect information on this subject. These are activities in the field of other branches of law supporting labour law. Practice shows that there is no single measure or action that can identify or prevent violations of workers' rights in the supply chain. Similarly, no entity, considering the scale of its operations, can solve this problem. A combination of multiple actions – including policies, processes, and tools – is needed to identify and address risks of violations of workers' rights. The concept of "shared responsibility" is increasingly popular as a response to the consequences caused by globalisation, the low effectiveness of international law, and the limited capabilities of individual countries (Dahan, Lerner, Milman-Sivan 2013).

Therefore, we have international, national, and regional legal regulations, as well as the search for appropriate paths of behaviour of multinational corporations and consumers. The role of multinational companies is so large that the benefits they achieve through globalisation allows to put forward a thesis of a new division responsible for the violation of labour rights and their repair. They are the participants in the global supply chain, producing and marketing goods and

reaping profits, and, therefore, they are the ones who should be held accountable (Young 2004). Since there is a multiplicity of capital connections and trade links that involve entities from many countries subject to multiple legal regimes, liability should be distributed according to the circumstances. The literature suggests considering the following factors:

1) the existence of links between companies,
2) influence in the violation of the law,
3) the benefits they gain from violating the law,
4) the provision of immediate assistance and compensation for the damage caused,
5) the power relationship between actors (Dahan, Lerner, Milman-Sivan 2023).

Similar elements are contained in the Caparo test used by courts to determine whether there is a duty of care, considering the circumstances when determining whether a duty of care should be imposed (Caparo Industries PLC v. Dickman, 1990). The third, equivalent element of the Caparo test recognises that the imposition of a duty of care in such a situation is "fair, equitable and reasonable" and is assumed to introduce ethical elements as considered fair between the parties (High Court of Australia in Sutherland Shire Council v Heyman, 1985).

3. CONCLUSION

The challenge to stop violating rights is too great for a single country to change the *status quo*. International cooperation and cooperation between public and private actors is necessary. Also, in the context of the search for responsibility, it is necessary to take a fresh look and change the existing division into public and private law (Levy 2008). The combination of public and private regulations has the potential to reduce the scale of misconducts in global supply chains. It will attempt to establish liability among those who are realistically involved in the processes of global supply chains and who benefit from and participate (directly or indirectly, knowingly or through the lack of due diligence) in human rights violations. As indicated, it is necessary to strengthen compliance with international labour standards. Countries should focus on enforcing the law and signed the ILO's conventions. Companies, as key creators and beneficiaries of supply chains, should ensure their transparency, i.e. provide information on subcontractors and labour practices. This is particularly important in sensitive sectors, in countries that have low labour standards, posing a potential risk of labour rights violations. Supporting the audits that companies conduct to obtain information about compliance with labour rights and thus greater transparency, for example, can be blockchain technology to facilitate data acquisition and analysis. The monitoring of supply chain activities is being done by NGOs and trade unions, which can provide valuable insights and adopt proactive attitudes that are very helpful in

the prevention of labour rights violations. This should help workers voice their concerns, report irregularities, and participate in decision-making processes.

Cooperation between governments and businesses is essential to create an environment in which labour rights are protected and violations are punished. Countries can also introduce incentives for companies that comply with labour standards, such as preferential treatment in public procurement. Addressing labour rights violations requires a sustained and collective effort, joining forces and stakeholder strategies to build a responsible global supply chain. More research is needed to answer the question about how to share responsibilities and how to translate this into appropriate legal acts.

BIBLIOGRAPHY

Dahan, Yossi. Hanna Lerner. Faina Milman-Sivan. 2013. "Shared responsibility and the international labor organization." *Michigan Journal of International Law* 34(4): 675–743.

Dahan, Yossi. Hanna Lerner. Faina Milman-Sivan. 2023. "Shared Responsibility and Labor Rights in Global Supply Chains." *Journal of Business Ethics* 182: 1025–1040.

Gereffi, Gary. 2006. *The New Offshoring of Jobs and Global Development*. Geneva: International Labour Office.

Levy, David L. 2008. "Political contestation in global production networks." *Academy of Management Review* 33(4): 943–963.

OECD. 2017. "Government at a Glance", http://www.oecd.org/gov/govataglance.htm (accessed: 10.05.2023).

Posthuma, Anna. Renato Bignami. 2014. "Bridging the Gap? Public and Private Regulation of Labour Standards in Apparel Value Chains in Brazil." *Competition & Change* 18(4): 345–364.

Young, Iris Marion. 2004. "Responsibility and global labor justice." *Journal of Political Philosophy* 12(4): 365–388.

Zbucka-Gargas, Marta. 2021. "Zapobieganie pracy dzieci w globalnych łańcuchach dostaw." *Monitor Prawa Pracy* 4: 18–22.

Legal acts

ILO. 1998. International Labour Organisation Declaration on Fundamental Principles and Rights at Work.

Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.

Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM/2022/71 final.

Dutch Child Labour Due Diligence Law Wet van 24 oktober 2019 houdende de invoering van een zorgplicht ter voorkoming van de levering van goederen en diensten die met behulp van kinderarbeid tot stand zijn gekomen (Wet zorgplicht kinderarbeid), https://zoek.officielebekendmakingen.nl/stb-2019-401.html

The 2017 French law on the corporate duty of vigilance LOI n° 2017–399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, JORF n°0074 du 28 mars 2017.
Modern Slavery Act 2015, UK Public General Act 2015 c. 30.

Judgments of the court

Caparo Industries PLC v. Dickman (1990) UKHL2, 2 AC 605.
High Court of Australia in Sutherland Shire Council v Heyman (1985) 60 ALR 1, 43–44.