

Some Concluding Remarks on Business and Human Rights in Portugal

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The webinar series on Business and Human Rights Developments in Southern Europe kicked off on the 15th of September 2020. It is jointly organised by Nova School of Law and the British Institute for International and Comparative Law.

The keynote speech was delivered by the Vice-president of the European Parliament, Heidi Hautala. In recent years, much of the attention in the business and human rights field has focussed overwhelmingly on a small number of Northern European countries, so Hautala welcomed the initiative of the webinar series and its focus on other jurisdictions.

She discussed recent developments at the European level following the announcement by EU Commissioner for Justice, Didier Reynders, that the European Commission would introduce a legislative initiative on mandatory human rights and environmental due diligence as part of the post-COVID 19 recovery package in 2021. Hautala affirmed that the UN Guiding Principles on Business and Human Rights (UNGPs) have shaped global and European policies. She noted that pioneering legislation such as the Duty of Vigilance Law in France, or EU-level legislation such as the Conflict Minerals Regulation are in place. However she emphasised that 'after 10 years, it's now time to move from baby steps to giant strides'.

For the first episode of the webinar series, the spotlight was on Portugal.

The legal framework in relation to Business and Human Rights in Portugal is very frail and patchy and the Portuguese Government is yet to release its first National Action Plan on Business and Human Rights (which has been in the drafting stage for a number of years). As highlighted by Teresa Violante, Researcher at the Friedrich-Alexander Universität-Erlangen-Nürnberg, there is currently no overarching legislative framework on Business and Human Rights in Portugal. There are, however, a number of instruments covering certain specific areas pertaining to Business and Human Rights, and in particular in relation to gender equality within companies, the disclosure of non-financial information (implementing the EU Non-Financial Reporting Directive), the prevention and fight against harassment in the workplace, and collective labour agreements.

In this context, it is not surprising that the first National Enquiry on Responsible Business

Conduct and Human Rights in Portugal conducted in 2018 revealed that **less than one in five companies have human rights due diligence processes in place**. The low levels of corporate human rights and environmental due diligence practices in Portugal is correlated with the lack of awareness of the applicable legal framework by companies. As emphasized by Isabel Cabrita, Professor at the University of Lisbon (ISCSP), less than half (47%) of companies have ever heard about the UN Guiding Principles on Business and Human Rights. The enquiry also revealed differences between micro, small, and medium-sized enterprises on the one hand, and larger enterprises, on the other hand, with the levels of awareness dropping to 44% in relation to small enterprises and to 28% in relation to micro enterprises. Low levels of awareness were also observed in relation to other international instruments such as the OECD Guidelines on Multinational Enterprises and to the ILO Tripartite Declaration of Principles concerning multinational enterprises and social policy.

This might also explain the lack of specific instances before the Portuguese OCED National Contact Point, as pointed out by Beatriz Albuquerque (Trainee at Vieira de Almeida & Associados).

In relation to the low levels of corporate due diligence, the first National Enquiry on Responsible Business Conduct in Portugal observed, again, differences between SMEs and larger enterprises are visible. Whilst 56% of companies with more than 500 employees declared that they have human rights due diligence processes in place, amongst the companies with up to 10 employees and the ones with between 10 and 50 employees, only 12% had human rights due diligence processes in place. This suggests that awareness raising and capacity-building around these issues is required, something which the newly created NOVA Centre on Business, Human Rights and the Environment is aiming to address.

This is particularly important in light of the fact that numerous issues relating to business and human rights do exist in Portugal. In particular, Hugo Dionísio, Education and Training Expert at the General Confederation of Portuguese Workers (CGPT-IN) referred to issues surrounding decent work (such as precarious employment) which have been aggravated by the COVID-19 pandemic. He noted in this respect that Portugal is amongst the countries in the EU with the highest number of workers on temporary contracts. He also pointed to limitations on the right to unionise in the private sector, persistent issues of inequality in the workplace, and the treatment of migrant workers.

Executive director of Amnesty International, Pedro Neto, identified 3 areas in which action needs to be taken in Portugal, relating to three complementary responsibilities:

- The responsibility of the Government and the need to implement public policies and incentives for companies to respect human rights and the environment, and in particular for companies to undertake human rights and environmental due diligence.
- The responsibility of businesses and the need for companies to map their supply chains and track their entire chain of production to ensure that they are not feeding unethical business practices.
- The responsibility of consumers to buy ethically, and the need to be provided with products that are respectful of human-rights and of the environment

The upcoming Portuguese presidency of the Council of the European Union will be an opportunity to put Business and Human Rights in the spotlight in Portugal. In this respect, Pedro Almeida, Senior Officer in the Portuguese Ministry of Justice affirmed the commitment of Portugal to make a contribution to this timely debate and to follow-up the discussions on Business and Human Rights. As Portugal move towards considering the introduction of hard law legislation to regulate corporate behaviour in the future, the lessons learnt from other countries which have already adopted regulations in the field will be very valuable. In this regard Céline da Graça Pires reflects on the French experience with the French Duty of Vigilance Law.

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