Episodio 3: Sviluppi sui Diritti umani e Business in Italia

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Management Board - Alternate member
1. General Principles on AtoR

2. Specific points
General Principles on AtoR

1. A victims-oriented Perspective

2. Role of different concerned actors (both States and Companies)

3. A range of remedies
Specific Points

1. Development from CSR to BHR?

- CSR
- RBC
- CRtoP/BHR

European Commission CSR Communication 2011
Defining CSR

- The European Commission previously defined Corporate Social Responsibility (CSR) as
  “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”
- In 2011 the Commission puts forward a new definition of CSR as
  “the responsibility of enterprises for their impacts on society"

2011

2018
Specific Points

2. Corporate liability for HR violations in Italian legal system

Judicial remedies

Non-judicial remedies

NHRIs, etc.
NCPs
Operational level mechanisms
Specific Points

Judicial remedies

Legislative Decree 231/2001

Criminal law responsibility
Judicial remedies

Act 12 April 2019 «Disposizioni in materia di azione di classe»

Associations and other organization representing interests of victims/damaged parties may submit before domestic tribunals collective actions in order to establish civil liability and the compensation for damages.

Risk avoidance
Increasing of legal actions

Human Rights due diligence

1. prevention ✓
2. Liability exemption ? ×
Specific Points

Non-judicial remedies

OECD 1976 Guidelines NCPs

NCP cases: rare success
Lack of independence
Lack of transparency
What are National Human Rights Institutions?

“Independent institutions established by law and in compliance with the United Nations endorsed ‘Paris Principles’. NHRIs are mandated to protect and promote human rights at the national level in accordance with international human rights norms and standards.”


UNGPs 3 Commentary

National human rights institutions that comply with the Paris Principles have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors.
Non-judicial remedies

National Human Rights Institutions

Canada Ombudsperson on responsible enterprises (CORE)

Has jurisdiction over Canadian companies overseas operations

“receives and reviews claims of alleged human rights abuses arising from the operations of Canadian companies abroad in the mining, oil and gas, and garment sectors.”

Commission nationale consultative des droits de l'homme

Renders Consultative Opinions; recommendations; performs examinations and investigations ...

- Avis “Entreprise et droits de l’homme” (2013)
- Declaration 2018

- Avis sur le projet de traité sur les sociétés transnationales et les autres entreprises, et les droits de l’Homme (revised 2019 version)
- Avis sur le projet de traité sur les sociétés transnationales et les autres entreprises, et les droits de l’Homme (2020 version)
Non-judicial remedies

National Human Rights Institutions

Italy?

Several legislative initiatives: none has completed the legislative process
Specific Points

Non-judicial remedies

A BHR Trust Funds for Victims

Large scale impacts originating shared or difficult-to-alloacting responsibilities

- UNCC (Iraq)
- ICC TFV
- WIM (2013)
- CERCLA (1980, domestic)

BHR Treaty Zero Draft 2018 (art. 8)
BHR Treaty Second revised Draft 2020 (art. 15(7)
3. THE REMEDIAL SIDE OF THE ... ‘MOON’ (SDtoP)
Duty to Protect

- Preventive Dimension
  - Obligation to take measures for preventing violations of HR by private actors

- Remedial Dimension
  - Obligation to take measures for remedying violations of HR by private actors
E. THE REMEDIAL SIDE OF THE ... ‘MOON’ (SDtoP)

UNGP 25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

Commentary: Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless.
Environmental hazard associated to corporate conduct

Treatments contrary to human dignity

Right to privacy - employer vs. employee surveillance

Guerra and others vs. Italy, 1998
Fadeyeva vs. Russia, 2005,
Cordella et al. v. Italy, (2019)

Chowdury and Others v. Greece, 2017 (Strawberry pickers case),

Bărbulescu v. Romania, GC, 2017
State responsibility

PRINCIPLE OF LEGALITY AND RULE OF LAW

General goal of State positive obligations in the remedy area...

Avoiding denial of justice
Para. 44 “States parties have the duty to take necessary steps to address these challenges in order to prevent a denial of justice and ensure the right to effective remedy and reparation.”
(General Comment n. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, UN Doc. E/C.12/GC/24, 23 June 2017, para. 44)

where there is a right there is a remedy !
State responsibility

- State Measures
- Elimination of Barriers/Filling the gaps

EU FRA 1/2017 Opinion “Improving access to remedy in the area of business and human rights at the EU level”

Positive obligation to legislate?

Need for a mHRDD legislation

Institute for Research on Innovation and Services for Development - National Research Council of Italy
COVID-19 and BHR

Protection of the right of workers in ‘key’ sectors (Decreto Cura Italia 2020)

Gig economy
COVID-19 and BHR

Human rights along the supply chains

1. Increase of global demand of health devices

Exploitation of the labour force – risks of slavery

Nevsun case – Canada 2020
Conclusions: where are we now in the path towards BHR?

Thanks

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