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RELEVANCE OF BUSINESS RESPONSIBILITY IN THE FIELD OF HUMAN RIGHTS PROTECTION DURING THE PANDEMIC PERIOD

The current processes of development of international relations are influenced not only by states but also by other participants. If until the middle of the last century the actors on the world stage were mostly states, then with the formation of an extensive system of international organizations, the latter began to act not only as regulators but also as “creators” of international relations. The transition of investment resources beyond state borders has led to the fact that states and international organizations in the system of relations’ formation are joined by transnational companies. General global transformations change the meaning of borders, and integration processes lead to the fact that countries transfer part of their powers to supranational structures. Under such conditions, a new question arises: how will the responsibility for human rights respect correspond to these trends, as they remain a cornerstone in the modern legal space. The challenges of the Covid-19 pandemic over the past two years have only complicated the situation.

States that take an obligation under the Universal Declaration of Human Rights (1948) [1] perform tasks in the field of observance, protection, and provision of basic universally recognized human rights. The mechanisms of the state, as a real apparatus for maintaining social order, ensure the implementation of the provisions of the Declaration. In this case, the state, in addition to people (individuals) cooperates with

legal entities. Their creation, registration, peculiarities of activity and other components of functioning are defined as objects of state regulation. It turns out that, as such, the activity of business structures in relation to individuals is under the control of the state. Accordingly, the question may arise whether it would not be more logical to delegate part of the powers in the field of human rights directly to companies that act for them as an employer, supplier of goods, service provider, controlling institution in a particular activity, etc.

Implementation of liability in the field of human rights protection by business today is promoted not only at the national level, but also at the level of international institutions, including the UN. Thus, in June 2011, the UN Human Rights Council approved the Business and Human Rights Guidelines. Defining them as the first document that in some way determines the need for respect for human rights by business, one cannot ignore the fact that it still belongs to the system of “soft law” norms. The Interpretive Guide “The corporate responsibility to respect human rights”, prepared by the Office of the United Nations High Commissioner for Human Rights, states: “Businesses can have an impact on human rights in relation to their own employees, customers, employees in their own supply chains or communities in their area of activity [2, p. 11-12].

In January 2019, the Ministry of Justice of Ukraine began work on their implementation. In order to ensure that the implementation of the Guidelines is justified and based on an analysis of the real situation of human rights in business in Ukraine, its first step was to conduct a National Baseline Assessment on Business and Human Rights [3].

The Directorate for Human Rights, Access to Justice and Legal Awareness of the Ministry of Justice of Ukraine determines the growing influence of business structures on the situation with the protection of human rights. The active development of standards of corporate responsibility both within the regulatory framework and within the practical tools to increase such responsibility confirm this thesis [4].

Business units are recognized as essentially human rights holders. Thus, if previously only the state had to protect human rights, both from violations committed

by itself and by companies operating within its jurisdiction, then in accordance with the latest trends, the responsibility may be borne by the business structure. That is, private companies receive an additional burden of doing business. The state must balance the needs of both parties in this case, because it has the necessary levers for this: administrative, financial, regulatory etc. Replication of responsibility should be based on existing practices, taking into account its shortcomings and strengths.

The United Nations is currently working to develop an international regulatory framework. The draft international convention in the field of business and human rights was developed over 4 years and submitted for consideration in July 2018. The convention will aim to guarantee the protection of human rights by international business structures, to create reserves for compensation and, most importantly, for our opinion, will form a system of measures to prevent violations. Such a human rights review will consist of four main actions on the part of the company:

- identifying the threat,
- preventing its occurrence,
- mitigating the consequences
- and taking into account the experience in further activities [5].

Today enterprises must ensure the right to safe working conditions for their employees from the point of epidemic threat (especially when it is impossible to work remotely), as well as international labor standards; however, in order to respect human rights, businesses must reach out to everyone affected by their activities. Office of the UN High Commissioner for Human Rights advises: “businesses conduct comprehensive human rights analysis to identify, prevent, mitigate, and take into account how they address the negative impact on human rights during a pandemic” [6].

The pandemic is dealing with additional pressure to the business, and therefore to its capabilities. Respect for human rights in this case should be further reflected in the provision of concepts such as the subsistence level and paid sick leave for employees, as well as beyond the official staff, so that all those affected by business policies and practices do not find themselves in vulnerable situations. Potentially, as an incentive for a company to express a desire to develop responsibility for human

rights, the state can use a variety of benefits (including taxation), a system of “bonuses” (receiving additional proposals from the government), reducing administrative pressure, or even public recognition of achievements in this field, etc.

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