

INTERNAL REMEDIATION MECHANISM OF EMPLOYEES DEFINED BY THE ACT ON CORPORATE DUE DILIGENCE OBLIGATIONS IN SUPPLY CHAINS IN GERMANY

UDC 331.45/.46:343.1:[366.1:658.8

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Abstract. *Modern working conditions continuously impose the need for efficiency and productivity of employees, but not at the expense of their occupational safety and health. One of the legal instruments that can be used to prevent potential injuries at work is the internal remediation mechanism. Until now, this legal institute has been available to employees and employers as a possibility. With the adoption of the Act on Corporate Due Diligence Obligations in Supply Chains in Germany, this became one of the legal obligations that apply not only to this country, but also to certain categories of employers and employees in Serbia. The paper analyzes the specific effects of the implementation of this act on the occupational safety and health system in Serbia, with special reference to the remediation mechanism institute.*

Key words: *internal remediation mechanism, Germany, Act on Due Diligence, occupational safety and health.*

1. INTRODUCTION

The fact that safe and efficient employees are the pillars of a company's productivity was recognized in literature and practice long ago. This is the key strategic goal of every country [1]. One of the most important factors in increasing the efficiency and productivity of employees is employers' ability to develop the work environment in which employees perceive the organization's goals as their own and take responsibility, without the need for constant supervision. In order for employers to achieve this goal, they are required to respect employees' needs and ensure their sense of safety, appreciation and respect at work.

Injuries at work are possible in every work organization. One of the modern legal institutes that represents a good preventive measure in the field of occupational safety

Received March 26, 2024 / Accepted April 24, 2024

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and health is the internal remediation mechanism. There are also external complaint mechanisms that involve the inclusion of Labor inspection [2], judicial bodies [3], the Republic Agency for the Peaceful Settlement of Labor Disputes [4], and the Commissioner for the Protection of Equality [5]. Nonetheless, before employees are required to turn to one of these parties, there is a possibility to introduce an internal remediation mechanism for them to exercise their rights.

The introduction of such a mechanism into the legal system of Serbia does not represent a legal obligation, nor is it an obligation prescribed by the Labor Law, Law on Occupational Safety and Health, or another act. Therefore, the internal remediation mechanism is only a legal instrument available to employers as an opportunity to improve the occupational safety and health system. However, the adoption of the German Act on Corporate Due Diligence Obligations in Supply Chains made a difference in this practice.

This paper analyzes the impact of this law on employers and employees in Serbia by examining current scientific literature and relevant legal sources. Even though this is a legal act of another country, some of its provisions apply to individual subjects of the occupational safety and health system in Serbia. Therefore, our subject of interest are specific obligations of Serbian employers and employees pursuant to this act.

2. THE CONCEPT OF CORPORATE SUSTAINABILITY DUE DILIGENCE AND REMEDIATION MECHANISM

In terms of dictionary definitions, due diligence represents the degree of care that is to be reasonably expected or that is legally required, especially of persons giving professional advice, as well as assessment and evaluation conducted with the prudent or necessary care. According to certain dictionaries, due diligence is: in legal terms, it is defined as the care that a reasonable person exercises to avoid harm to other persons or their property; in business terms, it is defined as research and analysis of a company or organization conducted in preparation for a business transaction [6].

The role of due diligence in international law can be viewed from two perspectives. [7]. Firstly, it is important to emphasize that, while due diligence may be a component of a primary rule of international law, this can only be determined by referring back to the relevant primary rule. There is no "general principle of due diligence" in international law, but this principle has to be implemented in some international legal acts. Secondly, states undertake what could be characterized as 'due diligence' activity, some elements of which may be a result of a legal requirement and some of which may not.

Considering these two facts, in 2022 the European Commission adopted a proposal for a Directive on corporate sustainability due diligence [8]. The aim of this Directive is to foster sustainable and responsible corporate behavior and to anchor human rights and environmental considerations in companies' operations and corporate governance. The new rules are to ensure that businesses address the adverse impacts of their actions, both within their value chains inside and outside Europe. They have numerous benefits for citizens, such as better protection of human rights (including labor rights), a healthier environment for present and future generations, increased trust in businesses, more transparency enabling informed choices, etc. Benefits for companies include better risk management and adaptability, better awareness of companies' negative environmental and human rights impacts, greater customer trust and employees' commitment, etc. Benefits for

developing countries are better protection of human rights and the environment, sustainable investment, improved living conditions for people, etc. [9].

This Directive establishes a corporate due diligence duty. The core elements of this duty are identifying, bringing to an end, preventing, mitigating and accounting for negative human rights and environmental impacts in the company's own operations, their subsidiaries and their value chains. Managers are encouraged to contribute to sustainability and climate change mitigation goals.

The Directive also introduces duties for the managers of the EU companies covered. These duties include establishing and monitoring the implementation of the due diligence processes and integrating due diligence into the corporate strategy. In addition, when fulfilling their duty to act in the best interest of the company, managers need to consider the human rights, climate change, and environmental consequences of their decisions.

One of the legal institutes recognized by the proposal of the Directive is the internal remediation mechanism. Companies should provide the possibility for persons and organizations to submit complaints directly to them in case of legitimate concerns regarding actual or potential violations of human rights or negative effects on the environment.. Organizations that could submit such complaints include trade unions and other workers' associations representing individuals employed, as well as civil society organizations operating in areas connected to the value chain in question and possessing knowledge of a potential or actual adverse impact. Companies should establish a procedure for dealing with those complaints and inform workers, trade unions and other workers' representatives about such processes. Recourse to the complaints and remediation mechanism should not prevent the complainant from having recourse to judicial remedies. In accordance with international standards, complaints should be entitled to request the appropriate follow-up from the company regarding the complaint and to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint. This access should not lead to unreasonable solicitations of companies [8].

3. ACT ON CORPORATE DUE DILIGENCE OBLIGATIONS IN SUPPLY CHAINS AND INTERNAL REMEDIATION MECHANISM

The implementation of the Act on Corporate Due Diligence Obligations in Supply Chains, adopted in Germany in 2021, commenced in 2023. It applies to German companies employing more than 3,000 people, and from 2024 to those employing 1,000 people [10]. On the basis of this act, German companies are required by this act to assume responsibility for the actions of their partners that endanger human rights and the environment, whether it is the acquisition of input components that German companies further process or the sale of their final products. Consequently, this act also applies to all Serbian companies that have business cooperation with German companies. It does not apply to exporters of finished products.

Pursuant to this act, German companies are required to establish processes for identifying potential risks to human rights and the environment within their supply chains, conduct their assessment, introduce preventive measures and steps to eliminate the identified risks, and submit reports on the completion of their tasks. These tasks will also involve the companies in the supply chain, which will inevitably have to participate in the entire process of identifying and eliminating risks. Those companies can also introduce some new procedures in their own business processes as a necessary step toward eliminating previously determined risks.

One of the legal institutes incorporated into the Act on Corporate Due Diligence Obligations in Supply Chains is the internal remediation mechanism [10]. Companies are expected to plan and create an internal remediation mechanism at all levels of operation, including companies that work as subcontractors, that is, those companies that are in their supply chain. The idea is to develop a company's internal remediation mechanism that will enable a better understanding of the risks or malpractice and timely react in order to eliminate harmful consequences.

Within the internal remediation mechanism, it is important to define the subject matter of the complaint, such as discrimination or abuse at work, non-compliance with occupational safety regulations, inadequate reaction in the event of an injury at work, unjustified denial of the right to annual leave, etc. Complaints can be signed, but anonymous complaints should also be allowed so as to protect the identity of the complainant. This should ensure the protection of complainants, their families or witnesses [11].

Complaints can be filed by individuals, groups or organizations, and the company is required to give an official response within the established period [11]. The remediation mechanism should be available to those who are applying for a job, employees, regardless of the type of contract, and third parties who are directly or indirectly related to the company (subcontractors, unions, subsidiaries of the company). The complaint should be submitted directly by the person whose right has been violated, or threatens to be violated, another person who is related to the complainant in a certain way (e.g. an heir in the event of the employee's death), a union representative if the complainant is a member of the union, a lawyer if they have the power of attorney. Complaints are filed against actions undertaken or not undertaken by the company, subsidiary companies or subcontractors that violate or endanger human rights. Complaints can be filed against the actions or oversights on the part of employees in the company, as well as against subsidiaries, subcontractors and other legal entities and their employees who are connected to the parent company in some manner. As can be seen, there is a very wide range of both the legal and physical entities that are eligible to receive complaints and the individuals that can be the target of a complaint.

It is important that the company defines the complete procedure, starting from the receipt of the complaint, up to the final decision. This means that the procedure for receiving a complaint, confirming receipt, registering a complaint, examining the complaint, and decision-making, should be defined in several stages. The procedure is expected to be fast and efficient, and the deadlines should be reasonable.

The purpose of such complaints and remediation mechanisms is that individuals, groups, or organizations connected with the company's activity can signal their dissatisfaction with a situation or a decision of the company. Such a procedure should provide an opportunity for the company to timely recognize potential risks and prevent a bad reputation on the market.

4. CONCLUSION

The idea of decent work, as opposed to precarious work, has received considerable attention in recent decades. One of the key components of decent work is occupational safety and health. The concept of due diligence is one of the instruments for achieving a high level of occupational safety and health. This concept describes the steps a company has to take in order to acknowledge, prevent and address adverse human rights impacts [6]. The concept of due diligence plays an important role in international human rights law in defining

the scope of a state's obligations to prevent and respond to infringements of human rights by private actors within its territory or jurisdiction.

In international law, due diligence addresses supplying a standard of care against which malpractice can be assessed. It identifies the extent of states' responsibility, such as infringements of human rights, damage to foreign property and transboundary pollution. It imposes an external, 'objective' standard of conduct to take reasonable precautions to prevent or respond to certain types of harm specified by the rule in question [12].

Large companies have been increasingly implementing due diligence processes as they can provide some competitive advantage in the market. This also responds to the increasing market pressure on companies to act sustainably, which results in avoiding unwanted reputational risks vis-à-vis consumers and investors whose awareness of sustainability is growing [8]. However, these processes are based on voluntary standards and do not result in legal certainty for companies or victims in the event of harm.

Such policy and practice are introduced by adopting and implementing the German Act on Corporate Due Diligence Obligations in Supply Chains. However, the scope of application of this act is limited to companies that have their central administration, principal place of business, administrative headquarters or statutory seat in Germany and normally have at least 1,000 employees in Germany. Also, German companies are responsible for the activities carried out by their partners, with regard to threatening human rights and the environment, whether it is the acquisition of input components that German companies further process or the sale of their final products [10].

One of the important legal institutions within the concept of due diligence is the internal remediation mechanism. It represents a way to protect human rights, especially occupational safety and health. Regarding these procedures, several things should be taken into consideration.

Firstly, the creation of an internal remediation mechanism should be the task of a special expert team that will consider the needs of the company and the need to protect the human rights of all employees. The trade unions should be asked to provide their opinion in order to prevent employee resistance to the introduction of such mechanisms. When creating a complaint mechanism, it should be a multi-level process, that is, one complaint is expected to be reviewed at several levels within the company.

Then, the remediation mechanism is supposed to be developed within large companies that operate in particular fields and then be extended to subsidiary companies, subcontractors and all those companies that are in the supply chain. As internal remediation mechanisms are not identified in the Labor Law in Serbia, they are determined by some general act of the employer, e.g. labor regulations or collective agreement.

Finally, in order for the internal remediation mechanism to produce the intended effects, it is necessary that concerned parties are informed about it, trust it, and know how to use it. Therefore, all the information about the complaint process should be publicly available, procedures should be transparent and the e-mail addresses intended for complaints need to be provided on the website. Also, workers will be encouraged to use internal complaint mechanisms if there is a clear deadline for the implementation of the procedure, the procedures are simple and results are available.

Based on the above, it can be concluded that the adoption of the Act on Corporate Due Diligence Obligations in Supply Chains in Germany can motivate Serbian companies to meet the requirements that refer to human rights protection. The idea of introducing an internal remediation mechanism in case of suspected violation of some human rights in the

company is a legal institute that represents a significant innovation in terms of improving occupational safety and environmental protection.

The protection of employee rights in Serbia does not end with the internal remediation mechanism. If the disputed issue is not successfully resolved by the internal complaint, external mechanisms are available to the employees. External mechanisms involve addressing the Labor inspection [2], the Republic Agency for the Peaceful Settlement of Labor Disputes [4], primary and higher courts [3], as well as the Commissioner for the Protection of Equality [5].

Acknowledgements: *The paper is the result of research funded by the Ministry of Education, Science and Technological Development of the Republic of Serbia. Contract No No 451-03-66/2024-03/ 200148.*

REFERENCES

1. Ilić Petković, A., Stratijev, M. (2023). OSH Strategic Directions in European and National Legislation. Proceedings of the 20th International Conference "Man and Working Environment" – SEMSIE 2023, Niš, pp. 133-136.
2. Labor inspection. Available at: <https://www.minrzs.gov.rs/sr/struktura/organi-uprave-u-sastavu-ministarstva/inspektorat-za-rad>. Accessed on: 1.2.2024.
3. The Law on Organization of Courts, "Official Gazette of the Republic of Serbia", No. 10/2023.
4. The Republic Agency for the Peaceful Settlement of Labor Disputes. Available at: <https://www.ramrrs.gov.rs/sr-cyr>. Accessed on: 1.3.2024.
5. The Law on Prohibition of Discrimination, "Official Gazette of the Republic of Serbia", No. 22/2009, 52/2021.
6. Bonnitcha, J., McCorquodale, R. (2017). The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights. *European Journal of International Law*, 28(3), 899–919.
7. McDonald, N. (2019). The Role of Due Diligence in International Law. *International & Comparative Law*, 68(4), 1041 – 1054.
8. Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937. Available at: https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex_en. Accessed on: 9.1.2024.
9. EU Commission, Corporate Sustainability Due Diligence. Available at: https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en. Accessed on: 1.2.2024.
10. Act on Corporate Due Diligence Obligations in Supply Chains. Available at: <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/supply-chain-act.html>. Accessed on: 6.12.2023.
11. International Labor Organization, (2023), Manual on Grievance Mechanisms, ILO, Geneva.
12. Hanquin, X. (2023). *Transboundary Damage in International Law*, Cambridge University Press, Cambridge.

INTERNI ŽALBENI MEHANIZAM ZAPOSLEHNIH PREMA NAMAČKOM ZAKONU O DUŽNOJ PAŽNJI U LANCIMA SNABDEVANJA

Savremeni uslovi rada sve više nameću potrebu za efikasnošću i produktivnošću zaposlenih, ali ne po cenu njihove bezbednosti i zdravlja na radu. Jedan od pravnih instrumenata kojima se mogu prevenirati potencijalne povrede na radu jeste interni žalbeni mehanizam. Ovaj pravni institut je do sada bio na raspolaganju zaposlenima i poslodavcima kao mogućnost. Ali, donošenjem Zakona o dužnoj pažnji u lancima snabdevanja u Nemačkoj, ovo je postala jedna od zakonskih obaveza koje se odnose, ne samo na ovu državu, već i na određene kategorije poslodavaca i zaposlenih u Srbiji. U radu se analiziraju konkretne reperkusije primene ovog zakona na sistem bezbednosti i zdravlja na radu u našoj državi, sa posebnim osvrtom na institut internog žalbenog mehanizma.

Ključne reči: *interni žalbeni mehanizam, Nemačka, Zakon o dužnoj pažnji, bezbednost i zdravlje na radu.*