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Human rights and business – what follow-up to Committee of Ministers Recommendation CM/Rec(2016)3?

Committee Opinion¹

Committee on Social Affairs, Health and Sustainable Development

Rapporteur: Mr Mikayel MELKUMYAN, Armenia, European Conservatives Group and Democratic Alliance

A. Conclusions of the committee

1. The Committee on Social Affairs, Health and Sustainable Development appreciates the report prepared by Mr Elshad Hasanov (Azerbaijan, NR) for the Committee on Legal Affairs and Human Rights. It concurs with the report's conclusions and strongly supports a call on the Council of Europe member States to step up their action for implementing the United Nations Guiding Principles on Business and Human Rights, as well as the Committee of Ministers Recommendation on human rights and business (CM/Rec(2016)3).

2. At the same time, the committee wishes to stress the importance of the European Social Charter (ETS No. 35 and No. 163) as a major legal reference in this context, notably for addressing problems of child and forced labour in Europe. The committee also considers that migrant workers and victims of human trafficking constitute particularly vulnerable categories of the population which require additional protection. Finally, the committee proposes to consider revising the Recommendation CM/Rec(2016)3 with a view to more explicitly covering vulnerable population groups such as migrant workers, minorities and persons with disabilities, and referring to member States' obligations towards these groups under the European Social Charter. Current work of the Council of Europe on artificial intelligence and on environmental rights may add further reasons for revising this recommendation in 2021.

3. The committee therefore puts forward some amendments to reinforce the text.

B. Proposed amendments

Amendment A (to the draft resolution)

Reformulate paragraph 2 as follows:

“The Assembly notes that trans- or multinational companies are nowadays increasingly influential. They can benefit society and contribute to the realisation of human rights, for example by ensuring values- and principles-based approach to doing business and by operating in ways that meet fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption, as well as by creating employment and paying taxes. They can also, however, be implicated in human rights abuses, such as exploitative or hazardous working conditions, forced and child labour, pollution, employment discrimination and surveillance of employees while at work. Many of the alleged human rights abuses in which businesses are involved occur in third countries, especially outside Europe, making it very difficult for victims to seek remedies. However, for

1. Reference to committee: [Doc. 14377](#), Reference 4330 of 13 October 2017. Reporting committee: Committee on Legal Affairs and Human Rights. See [Doc. 15004](#). Opinion approved by the committee on 3 October 2019.



example, children or foreign nationals (both Europeans and non-Europeans) are also exploited inside Europe (including as victims of trafficking), which requires enhanced vigilance and protection from the relevant national authorities.”

Amendment B (to the draft resolution)

In paragraph 8, replace “calls on” by “urges”.

Amendment C (to the draft resolution)

In paragraph 8.3, after the words “these two instruments,” add:

“as well as the European Social Charter (ETS No. 35 and No. 163),”

Amendment D (to the draft resolution)

In paragraph 8.4.6, before the word “workers” insert “migrant”.

Amendment E (to the draft resolution)

In paragraph 8.4.6, after the words “indigenous people” add “, minorities, persons with disabilities”.

Amendment F (to the draft resolution)

Add a new paragraph 8.5 as follows:

“based on the above-mentioned legal instruments and the European Social Charter, enhance the powers and capacity of labour inspectorates to detect and investigate cases of human rights abuses at national level, with a view to better protecting vulnerable population groups from inhuman and degrading treatment, violence, forced labour and exploitation.”

Amendment G (to the draft recommendation)

Add a new paragraph 1.9 as follows:

“consider revising Recommendation CM/Rec(2016)3 with a view to more explicitly covering gender-based human rights abuses and vulnerable population groups such as migrant workers, minorities and persons with disabilities, and referring to member States’ obligations towards these groups under the European Social Charter.”

C. Explanatory memorandum by Mr Mikayel Melkumyan, rapporteur for opinion

1. As “the aim of the Council of Europe is to achieve a greater unity between its Members” by “facilitating their economic and social progress”,² the importance of human rights standards for all stakeholders and the effectiveness of their protection cannot be underestimated. By adopting Recommendation CM/Rec(2016)3 in March 2016 – at the instigation of the Parliamentary Assembly – the Committee of Ministers reaffirmed the “indivisible, interdependent and interrelated” nature of human rights and recognised that businesses have to respect human rights. Next to the European Convention on Human Rights (“the Convention”, ETS No. 5), the European Social Charter (“the Charter”, ETS No. 35 and No. 163) is highlighted as a major reference in this context.

2. The Assembly views social rights as fundamental human rights. I therefore wish to stress the duty of both States and businesses to protect human rights – including social rights. I do so in the spirit of complementarity to the report by the Committee on Legal Affairs and Human Rights which focuses in detail on the Convention and the United Nations “Guiding Principles on Business and Human Rights: Implementing the United Nations “Respect, Protect and Remedy” Framework” (“the UNGP”) but somewhat less on the Charter. I would have appreciated if the report would have given concrete examples of enterprises either violating human rights or upholding them in light of existing ‘soft law’ instruments and, where appropriate, voluntary commitments as part of corporate social responsibility.

2. Statute of the Council of Europe, Chapter I, Article 1.

3. While it is true that many human rights abuses by enterprises occur outside Europe, we should not turn a blind eye on misdeeds in Europe itself. For example, foreign nationals from both European and non-European countries are exploited through forced labour on our continent as migrant workers, in particular if they are undocumented migrants or victims of trafficking. Moreover, cases of child labour do occur in Europe, and this matter needs to be examined more closely as suggested in the Assembly's [Resolution 1993 \(2014\)](#) on Decent work for all which "stresses the need for better enforcement of a ban on child labour for those under the age of 15, as stipulated in the European Social Charter" (see proposed **Amendment A**). In addition to the reference documents published by international organisations on the responsibility of business regarding human rights (listed in paragraph 15 of the explanatory memorandum), we should mention the General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights by the UN Committee on the Rights of the Child.³
4. Annual conclusions from the European Committee of Social Rights point to multiple failures of countries across Europe to comply with their international legal obligations, notably the European Social Charter, regarding labour rights, the right to safe and healthy working conditions, as well as the right to equal treatment, non-discrimination and dignity at work. Individual recourse concerning an alleged violation of his or her rights under the Charter by either a State or an enterprise is not possible, and the collective complaints procedure is an option only for citizens of a State that has ratified a relevant protocol to the Charter. Moreover, given that most States parties to the Charter have made numerous opt-outs and that information about the national commitments under the Charter is not widely disseminated in the corporate world, *de facto* protection of fundamental work-related rights remains patchy in Europe.
5. I therefore believe that the draft resolution presented – including the measures proposed to Council of Europe member States to implement the UNGP and Recommendation CM/Rec(2016)3 on human rights and business – should also include the reference to the norms set out in the Charter (see proposed **Amendments C, D, E and F**) and convey the sense of urgency for member States to take action (**Amendment B**). Moreover, I find that Recommendation CM/Rec(2016)3 lacks specific mention of the needs for additional protection of minorities and persons with disabilities, as well as for gender-based human rights abuses. These missing important elements should be taken into account through a future revision of this Recommendation (see proposed **Amendment G**). While engaging in the work of the United Nations open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, Council of Europe member States should seek to clarify the term of corporate social responsibility and the ensuing duties that businesses have towards society and the environment.
6. As Mr Nils Muižnieks, former Council of Europe Commissioner for Human Rights, points out in his comment soon after the adoption of Recommendation CM/Rec(2016)3, "some multinational enterprises have become so powerful that they can surpass the financial resources available to middle-sized States"⁴ and thus have considerable impact alongside States – for the better or for worse – on human rights. Their accountability in this field should definitely be strengthened, not least in light of emerging grey areas that blur the limits between States' and businesses' responsibility – as Mr Hasanov rightly observes in his concluding remarks.
7. Based on the current work of the Committee on Social Affairs, Health and Sustainable Development on the platform economy, artificial intelligence versus labour markets and the Sustainable Development Goals (notably as regards climate action and public health protection), I believe that further updates to the Recommendation CM/Rec(2016)3 will be necessary in response to emerging societal challenges with significant impact on our fundamental rights. I am particularly concerned with the need for better respect for privacy and personal data protection in commercial operations of social media networks, digital search engines and platforms.
8. Finally, I believe it is high time for us all to join forces towards ending impunity for environmental crimes committed by enterprises that undermine our health, wellbeing and ultimately – life. In this context, I welcome the stated priority of the forthcoming Georgian chairmanship of the Committee of Ministers of the Council of Europe in seeking to explore more ambitiously the environmental dimension of human rights protection.

3. See document [CRC/C/GC/16](#) (United Nations Convention on the Rights of the Child, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights).

4. For instance, BlackRock – the world's largest investment fund – manages about US\$6.3 trillion which is over two times more than the annual GDP of France. Some 31% of these resources are invested in Europe. The fund's artificial intelligence application Alladin handles US\$18 billion every single day.