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The Concept of Corporate Social Responsibility in the Environment of a Knowledge-Based Economy – Institutional Support by the Council of Europe

Introduction

The goal of the article is to define the mechanisms by means of which the Council of Europe can support the concept of the Corporate Social Responsibility in a knowledge-based economy and to determine how this support can be implemented in practice. This study is theoretical, which is why the method of interpretation of legal acts as well as the descriptive method and critical analysis of literature on the subject and judicial decisions have been used. Nowadays, knowledge besides land, labor and capital is considered one of the factors of production[1]. One of the now classical definitions of CSR says that social responsibility rests on four categories of responsibility: economic, legal, ethical, and philanthropic[2]. Ewa Mazur-Wierzbicka notes the many interpretations of the concept of Corporate Social Responsibility and highlights the definitions regarded as the most complete: "It can now be assumed that the essence of social responsibility has been presented most completely in ISO 2600. It reads that social responsibility is the responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior that:

- contributes to sustainable development including the health and welfare of society;
- takes into account the expectations of stakeholders;

[1] R. Capello, *Knowledge, Innovation, and Regional Performance: Toward Smart Innovation Policies Introductory Remarks to the Special Issue*, "Growth and Change", 2013, vol. 44, No. 2, p. 185, https://doi.org/10.1111/grow.12006

[2] Carroll A.B., *A Three-Dimensional Conceptual Model of Corporate Performance*, "Academy of Management Review", 1979, vol. 4, No. 4, p. 500, https://doi.org/10.5465/amr.1979.4498296.

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- is in compliance with applicable law and consistent with international norms of behavior;
- is integrated throughout the organization and practiced in its relationships (PN-ISO 26000: 2012, 2012)"[3].

Over recent years the CSR concept has gained a new dimension because, without leaving the spheres of practice and scientific considerations, it also spreads to the normative sphere. Moreover, the links of this idea with the protection of human rights are more and more noticeable. The issue here is first of all the restrictions of the right to property encountered by a business entity while conducting its activity, the prohibition – in the wide sense – to discriminate against employees (including mobbing and all forms of molestation), and also one of collective human rights – the right to live in a clean environment.

The CSR Concept in the Legislative Sphere

The Council of Europe's activity regarding CSR refers to *hard law* and *soft law* on the universal scale: The Rio Declaration on Environment and Development, International Labor Organization Declaration on Fundamental Principles and Rights at Work, and the UN Convention against Corruption. The interpretation of these regulations is conducted taking account of the provisions of the Universal Declaration of Human Rights because it contains interpretive guidelines regarding the conduct of business activity in compliance with the principles of ethics. The subsequent *soft law* act is the Guiding Principles on Business and Human Rights. It is significant enough to have been recognized both by the OECD and EU[4]. These guiding principles show that the essence of CSR is to observe human rights as a common international standard (Skadegaard Thorsen, Andreasen, 2011, 131–133)[5]. The UN is a type of universal organization that embraces countries with different legal cultures: therefore it would be difficult to expect its quick legislative actions.

It often happens that the UN sends certain impulses that are received and proceeded on more quickly in regional organizations embracing countries selected according to a specific formula, which are otherwise also UN members: this is what happened with the implementation of the Guiding Principles in the Council of Europe. The Guiding Principles obligated member countries belonging to international organization to prepare policies promoting human rights protection in business. It was not until 2010 that CSR was expressly mentioned in the activities of the Council of Europe's bod-

[3] E. Mazur-Wierzbicka, *Przedsiębiorczość a społeczna odpowiedzialność biznesu*, "Przedsiębiorczość i Zarządzanie" 2017, vol. XVIII, no. 12, Part I, pp. 120–121.

[4] R. Mullerat, *Corporate Social Responsibility: A European Perspective*, "The Jean Monnet/Robert Schuman Paper Series" 2013 (13), No. 6, p. 5.

[5] S.S. Thorsen, S. Andreasen, *Remodeling Responsible Supply Chain Management: The Corporate Responsibility to Respect Human Rights in Supply Chain Relationships*, [in:] *The UN Guiding Principles on Business and Human Rights: Foundations and implementation*, (ed.) R. Mares, 2011, Lund, p. 131–133.

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ies: in Resolution 1757 and Recommendation 1936. Resolution 1757 on human rights and business says that although the duty to respect fundamental human rights and freedoms rests on national authorities, companies are, however, not exempt from the obligation to respect the rights of the individual. The Council of Europe's Parliamentary Assembly also took a stance on the process of the normativization of CSR. It was admitted that over the last several decades, at the international and European levels many legal instruments had been adopted, which tried to define the responsibility of enterprises. Most definitions were based on the social component of responsibility. That is why they are only declarative legal instruments or intra-organizational codes of conduct. As *soft law* norms they are not directly effective and cannot be the basis for the establishment of efficacious judicial mechanisms for the protection of victims of abuse. The Parliamentary Assembly called on the member states to increase the responsibility of enterprises in the area of human rights. The recommended measures intended to achieve the proposed objective were: adopt guiding principles on public procurement and investment of public funds, meant to eliminate companies violating human rights from tender procedures; establish advisory bodies on economics and ethics in executive organs, including the matters concerning investment contracts and public procurement; include the protection of human rights clauses in the contracts concluded by the member countries. The national authorities were also obligated to take legislative measures in order to implement rights and freedoms contained in the European Convention on Human Rights and in the European Social Charter. The two legal acts at least indirectly refer to the selected problems of the CSR question.

The resolution also contains the announcement that the Council of Europe will cooperate in the promotion and development of CSR particularly with the United Nations, European Union, Organization for Economic Co-operation and Development, and International Labor Organization. Of crucial significance is to prepare the catalog of the best practices in human rights protection in any aspect of conducting business activity, and develop the ways of assessing the impact of these practices on the observance of human rights. Moreover, it is important to disseminate all information crucial to businessmen, and to enable the assessment of progress made in the conducted CSR programs.

In Recommendation No. 1936 the Parliamentary Assembly recognized that the Council of Europe's achievements were so significant that the organization's successive actions in CSR area required only certain amendments. The Council of Europe had previously undertaken a series of measures of direct importance for business activity, especially in the field of ownership right, welfare rights, bioethics, information society, as well as combating corruption and money laundering, and in environmental protection. In particular, crucial significance should be accorded to the judicial decisions passed by the European Tribunal of Human Rights and the European Committee of Social Rights. The Parliamentary Assembly highlighted the justifiability of examining the possibility of developing an additional legal instrument such as a convention or an additional protocol to the European Convention on Human Rights, which would comprehensively regulate the issues concerning CSR, thereby securing the implemen-

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tation of the CSR concept by legal sanctions. Regardless of such an instrument, the Parliamentary Assembly suggested strengthening the existing mechanisms based on the revised Social Charter and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. As regards the strengthening of the protection mechanisms applied because of the automatic processing of personal data, the impact of the Council of Europe on law making in the European Union is observable in this field, especially the General Data Protection Regulation, which became effective on 25 May 2018. The example of the EU again shows the effect of the rule according to which the most specialized organization comprising countries that belong to a numerically larger organization (the Council of Europe in this case) takes on the task of preparing and implementing solutions initiated in the other organization with more members. Recommendation No. 1936 suggested opening a register that would comprise volunteering entrepreneurs implementing CSR rules and thereby help consumers to make conscious choices. The register could be maintained by the Council of Europe or by an external entity under its auspices.

In order to prepare in-depth studies on CSR, the Steering Committee for Human Rights (CDDH) was designated for the task. The CDDH was obligated to prepare the political declaration of support for the UN Guiding Principles or to develop a new *soft law* instrument in business and human rights, which could be a kind of code of good practices for entrepreneurs. In the first place, the Draft Preliminary Study on Corporate Social Responsibility in the Field of Human Rights, adopted in 2012, was therefore prepared: an expert study on the potential CSR levels that the Council of Europe should deal with as soon as possible. The study also noted the need to plan solutions protecting children against illegal exploitation by transnational corporations, including measures hindering the purchase of goods from companies that pursue illegal practices towards such persons. A similar treatment was adopted towards cases of exploitation of prisoners and persons deprived of liberty, persons forced to work in mines, as well as cases of keeping employees under surveillance by means of their own mobile devices. The initiatives undertaken so far at the international level should be combined with actions taken by the organizations of entrepreneurs and employers, and first of all with the new initiatives of the Council of Europe. However, the CDDH opposed the adoption by the Council of Europe of a new document in the form of a convention or additional protocol as an inappropriate measure, and suggested a legally unbinding act instead.

The question why this situation was assessed like that has not been fully answered yet as it is usually recognized that the regulation of some issue by a *hard law* document is the best guarantee for the implementation of the planned solutions. However, in international political relations (like in the sphere of business), the role of the costs of activity is of no small importance. To make sure that treaty obligations are discharged, various bodies are usually created and granted controlling powers, which involves costs that have to be covered, whereas the states reluctantly agree to raise their membership fees.

In November 2012, the CDDH adopted the *Feasibility Study on Corporate Social Responsibility in the Field of Human Rights*. It was an extensive study on the respon-

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sible conduct of business, in compliance with the existing standards of the Council of Europe. The paper confirmed the significance of the UN Guiding Principles as the document on whose basis entrepreneurs could build their CSR strategies, and to which the achievements developed by the Council of Europe should be adjusted. To avoid repeating the rules contained in the UN Guiding Principles, the idea of preparing an entirely new and separate instrument, i.e. an international agreement, was eventually abandoned. At the same time it was emphasized that there was an urgent need to implement the CSR concept in such areas as clothing and textile production, Internet management, tourist and transport services, the banking sector, and the participation of children and other *vulnerable* subjects in the process of manufacturing and production. It is in these areas that there are most frequent cases of violation especially of social human rights (including the terms of remuneration and conditions of safe and healthy execution of work). The causes of this state of affairs should be sought not so much in the lack of appropriate legal solutions as in the lack of control and supervision and in the large number of subjects participating in individual stages of manufacture, production, services, and selling taking place at the same time in many member states and outside of their territories.

In April 2014 the Committee of Ministers issued the Declaration on the UN Guiding Principles on Business and Human Rights. It confirmed the Council of Europe's commitment to the respect for social human rights and corporate social responsibility as an intrinsic component of these rights. The document stipulates that one of the duties of business entities is to observe human rights and that in many cases enterprises can have a negative impact on the implementations of these rights at the level of the Council of Europe member states. The effective implementation of the rules contained in the Guiding Principles will translate into the improved state of observance of human rights, particularly in the sphere of the right to live in a clean and ecologically sustainable environment. The Committee of Ministers expressed a desire to contribute to effectively implementing the abovementioned principles at the European level. This should be achieved by identifying the existing problems and suggesting proper solutions within the Council of Europe. The Committee of Ministers requested the member states to take appropriate steps to provide protection against the violation of human rights by business entities and also to formulate and implement policies and support measures that would encourage respect for human rights in connection with the conduct of business activity both within and outside of the domestic jurisdiction of the member states. The Committee also called on the states to take proper measures to make sure that in case of such violations, the wronged parties would be provided with effective legal remedies, and it also requested the member states to prepare national action plans concerning the implementation of the UN Guiding Principles.

The Committee of Ministers expressed its final position on the CSR conception in the Recommendation of 2 March 2016 on Human Rights and Business. It suggested reviewing the legislation and domestic practices. Information on domestic action plans should be placed in the Council of Europe's system and be widely available. The

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Committee allowed five years for implementation from the date of their adoption. The implementation process will however depend on the development of the situation in Europe. Possible conditions that might endanger the security of the member states or public order will require priority treatment, which will push other matters into the background. Under such circumstances the simplest solution in the implementation of support for CSR will be to extend the term set by the Committee of Ministers.

An integral part of the Recommendation is the annex consisting of eight parts. Part One is concerned with the implementation of the UN Guiding Principles by means of general measures and domestic action plans. Part Two contains provisions on the use of measures obligating enterprises to observe human rights both at home and abroad. Details are presented in Part Three. In Part Four of the Recommendation the member states are obligated to take into account the judicial decisions concerning human rights in business. The Committee of Ministers suggested adjusting the existing mechanisms of the Council of Europe's system to the new conditions that take the CSR concept and human rights into consideration. The next four parts of the recommendation are devoted to the subjects particularly vulnerable to violation of their rights by entrepreneurs: workers, children, representatives of indigenous populations. Special assistance should be also granted to human rights defenders contributing to the explanation of pathologies in business transactions. National authorities should prudently conclude trading contracts and investment agreements with third countries, making sure whether human rights are not violated in business as a result of conclusion of contracts. If necessary, clauses protecting human rights should be included in such contracts. Entrepreneurs providing services abroad, particularly in the areas of armed conflict, should receive indispensable assistance. Depending on the specificity of the conducted business, entrepreneurs should be acquainted with ethical codes in particular trades and with codes of good practices.

The Legislative Context of the CSR Concept as a Challenge in the Functioning of Enterprises

People create human capital. This capital comprises two different groups of elements: the personal capital of individual persons and the reserves resulting from the organization and teamwork, i.e. associated with the existence and functioning of the so-called personnel. The value of highly educated employees contributes to the expansion of the company's development. Knowledge has become a decisive factor determining the creation of value in modern business, overshadowing financial capital. Under these circumstances, employees cannot be treated as a cost category like production materials.

The CSR concept ceases slowly but inevitably to be the idea of responsibility in the non-legal sphere exclusively. Owing to the actions taken in the international arena, particularly in the Council of Europe's forum, more and more questions are also becoming the subject of political and legal responsibility, which the states belonging to a regional organization bear actually to one another. Sanctions may be applied such as restrictions of the right to vote in the organization, suspension of membership, and in the

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extreme cases of contravention of international obligations – even exclusion from the organization. First of all, however, an increasingly lead role in shaping today's international relations is played by stakeholders such as non-governmental organizations and transnational corporations. This phenomenon is observable more and more often not only in scientific literature but also in journalistic publications: "Growing social expectations towards transnational companies stem from the fact that corporations increasingly often lay emphasis on social responsibility of business […], thereby taking into account appropriate tools in business strategies and as part of a company's mission and vision. The new kind of relationships now developing in international relations causes the states to slowly cease to be the main actors"[6]. If these stakeholders firmly highlight violations of human rights and of the rules of honest conduct in business activity, such accusations leveled against a country cast a shadow over its image of a democratic state. This state of affairs may arouse fears for the predictability of actions by a given state, and consequently, for the certainty of the established law and stability of business transactions. These fears may, because of the declining investment attractiveness of the country, negatively impact its economy. Corporations with an adequately large scale of operation can therefore have a substantial impact on shaping international political relations, and thereby on the legislative activity of organizations comprising states.

In the coming years the CSR concept will also continue to be endowed with legal sanctions at different levels. Individual states can change their legislation. The practice of administrative and judicial authorities may certainly take into account the interpretive CSR context when applying ratified international agreements. That is why business entities are facing the not entirely voluntary implementation of CSR principles. Some of these enterprises may belong to the circle of stakeholders that pressure international organizations into providing institutional support to CSR. Their approach to the honest conduct of business activity will not change. In contrast, the business entities that have so far passed over, wherever possible, this aspect of business activity owing to the actions of the states on whose territory they operate, will be compelled to take the CSR context into account in their development strategies. It is they that will find the re-orientation of strategies toward CSR a challenge requiring a substantial effort. To meet this challenge will however be an act prescribed by law rather than an autonomous decision of a business entity.

Conclusions

Regulations on conducting business activity in a manner ensuring respect for human rights were developed by the Council of Europe from the establishment of this organization. However, they have so far not been collected in one legal act. The adopted conventions and other documents had a limited influence because of their vertical effectiveness. The support for the CSR concept by supplementing standards with this

[6] A. Antczak, *Państwo i aktorzy niepaństwowi*, „Rzeczpospolita" 03.09.2017 [on line], https://www.rp.pl/Opinie/309039945-Panstwo-i-aktorzy-niepanstwowi.html, accessed: 20 March 2019.

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particular context did not begin systemically until 2010. It ended in 2016 not, as was originally intended, in the signing of an international agreement on CSR or in the formulation of a new additional protocol to the convention operating already within the Council of Europe, but in the enactment of several *soft law* acts. The CSR perspective enables interpretation of the Council of Europe's legal achievements in a new dimension.

Abstract: The Council of Europe has long dealt with different aspects of corporate social responsibility, but it began to support this concept in a more systemic way comparatively recently. Furthermore, the creation of legal instruments has to take into account the specificity of the operation of the Council of Europe as a regional organization as well as the growing role of actors other than states in the international arena.
Keywords: Corporate Social Responsibility, knowledge-based economy, Council of Europe.

Koncepcja społecznej odpowiedzialności biznesu w warunkach gospodarki opartej na wiedzy – instytucjonalne wsparcie Rady Europy

Streszczenie: Rada Europy od dawna zajmuje się różnymi aspektami społecznej odpowiedzialności biznesu, ale stosunkowo niedawno rozpoczęła udzielać wsparcia tej koncepcji w sposób bardziej systemowy. Tworzenie instrumentów prawnych musi uwzględniać przy tym specyfikę działania Rada Europy jako organizacji regionalnej oraz rosnącą na arenie międzynarodowej rolę aktorów innych niż państwa.
Słowa kluczowe: społeczna odpowiedzialność biznesu, gospodarka oparta na wiedzy, Rada Europy.

Концепция корпоративной социальной ответственности в наукоемкой экономике – институциональная поддержка Совета Европы

Аннотация:Совет Европы уже давно занимается различными аспектами корпоративной социальной ответственности, но сравнительно недавно он начал поддерживать эту концепцию более системно. Кроме того, создание правовых документов должно учитывать специфику деятельности Совета Европы в качестве региональной организации, а также растущую роль других участников, помимо государств, на международной арене.
Ключевые слова: корпоративная социальная ответственность, экономика, основанная на знаниях, Совет Европы.

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