

Speech

Human Rights in the Economic Context

Ladies and Gentlemen, esteemed Colleagues of the American Bar Association:

In our today's context it is important to remind ourselves that human rights shape the way we interact with one another.

At first glance, the national and international human rights declarations and treaties are addressed to nations and states, not to companies or other commercial actors.

But in reality, we find human rights violations in the micro and macro level of business activities.

Let us start with few examples in the micro context of companies where mediation is – at least in my country – an appropriate and accepted tool to resolve workplace conflicts.

Bullying as *psychological violence of personality* by repeated harassment by other employees or superiors is regularly a subject in mediation.

Another example from mediation practice in the workplace is *discrimination* in times of increasing immigration and multicultural society with different lifestyles, ethnic bases, languages or religions but also between generations.

What is the impact for mediators if the subject of mediation is related to human rights' violation? What are our assumptions regarding the needs of the parties in such mediation proceedings?

Firstly, the mediation should provide for a protected and learning atmosphere. The keywords could be: empowerment and recognition of background, needs and interests of the parties involved.

Secondly, not efficiency, but transformation will be the goal of such mediation proceedings. This leads to the question how to organize the mediation – as Shuttle Diplomacy in Caucus or in joint sessions where the parties have the opportunity to talk to each for a better understanding.

Thirdly, the mediator must be sensitive and prepared to handle emotions as the result of violated feelings, values, culture or convictions.

On the macro level, companies are increasingly held accountable by legislators worldwide for respecting and protecting human rights.

These challenges are reflected in the UN Guiding Principles on Business and Human Rights from 16 June 2011 with its “Protect, Respect and Remedy” Framework.

According to this Guidelines, to respect human rights is a global standard for all business enterprises, independently of States’ willingness to fulfil human rights obligations. It exists over and above compliance with national laws protecting human rights.

Addressing human rights requires prevention, mitigation and – if necessary – remediation of human rights violation.

According to its Articles 25 to 31, the system of remedies includes not only judicial protection but also out-of-court complaint mechanisms.

Therefore, remedy may include apologies, restitution, or rehabilitation (Art. 25). The Guidelines explicitly refers to mediation as part of a non-

judicial grievance mechanism (commentary to Art. 27).

Moreover, on 24 April 2024 and after a long-lasting discussion, the European Parliament approved the landmark *Corporate Sustainability Due Diligence Directive*. This Directive establishes a corporate duty regarding human rights and environmental impacts in the company's operations and their value chains.

Member states will have to investigate and impose penalties on non-complying firms, including “naming and shaming” and fines.

The Directive now needs to be formally endorsed by the European Council and published in the EU Official Journal. EU Member States will have two years to transpose the new rules into their national laws.

This is accompanied by the *EU Whistleblowing Directive*. This Directive ensures that whistleblowers are legally protected against retaliation from their employers or colleagues. The Directive obliges organizations to set up an internal reporting channel useable for internal or external whistleblowers to report – suspected – misconduct to a responsible body in the company. Such reports could of course refer to human rights violations.

In December 2019, the *German Federal Ministry of Justice and Consumer Protection* commissioned research to develop practice-oriented guidelines for out-of-court complaint mechanisms for human rights violations along global supply chains. The research team developed the *Integrative Grievance System (IGS)*. It provides a combination of mediation, conciliation and arbitration. It is proposed that, if possible, a mediating conciliation procedure should first be carried out locally at the place of production or in the area concerned. If the parties are unable to reach an agreement in the course of mediation, the procedure is transferred to arbitration, in which the complaints are processed quickly and a binding decision is made.

While, for example, in the case of prohibited child labor and the associated violation of the human right to education, a court decision can lead to a penalty, without changing the environment or the personal conditions, the use of mediation enables a deeper understanding of the family situation and can possibly lead to sustainable solutions.

Under the application of these proposed guidelines, the Rana Plaza catastrophe of 2013 with an unofficial death of over 1,000 most female workers in a factory in Bangladesh would have had the chance to be handled in a more interest-based manner. The same is true for a comparable case of catastrophe in Pakistan. In fact, the German textile discount company as the main purchaser of this factory refused any compensation to the parents of a deceased workers. The Higher Regional Court Hamm finally ruled in 2019 that the claims are time barred under the applicable law of Pakistan. The court held that this does not conflict with the German *ordre public* and with the human rights as defined in the German constitution. This decision that did not bring peace and satisfaction, but huge discussion and only a formal consideration of the applicable law.

On the other hand, RINA as an Italian company refused to accept the result of an OECD mediation in 2020 which shows that mediation in itself cannot achieve everything, but requires an appropriate legal framework.

In closing, let us consider that the journey for the acceptance of human rights in commerce is not a sprint, but a marathon. It requires patience and a willingness to confront the associated challenges. But with the principles of mediation, we can find a path for a future where human rights are a tangible reality for all.

Thank you very much for your attention.

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