

The quest for labour rights and social justice

Work in a changing world

Part I edited by Marco Mocella and Elena Sychenko

Part II edited by Valentina Aniballi, Martina Bassotti and Anna Casalino



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The multinational and multidisciplinary composition of the Scientific Board seeks to reflect the intellectual aspirations and interest of the series which should promote a dialogue between labour law and other legal disciplines in order to understand its conceptual development in a European and global context.

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The right to an effective remedy and due diligence legislation in the EU

Vittoria Parroco¹

1. The relevance of the right to effective remedy as a policy instrument

Since the last decades of the past millennium, the emergence of global value chains has been restructuring the priorities of the international and supranational communities, owing to the rising awareness among Western citizens of the side-effects that these transnational organizations produce on human and labour rights worldwide. Especially after the work-related tragedies that occurred between 2012 and 2013 in Southeast Asia, European citizens have become widely aware of the poor labour conditions imposed by European fashion retailers on third-countries' garment workers. Consequently, they have started requesting for urgent actions to be taken by the EU and its Member States to grant the implementation of core labour standards everywhere.

Although the EU has always given prominent relevance to human and social rights, which are indeed conceived as its fundamental values within the TEU and the TFEU², the awakening of the so-called “*consumers' activism*”³ has surely increased its concern over the years: most of the EU's recent policies are aimed at outlining the European strategy for the upcoming future in relation to the creation of a “*fair and prosperous society*” over the world and the development of “*sustainable and inclusive*

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² See: Preamble of the TEU; Artt. 2-3, TEU; Art. 11, TFEU; Title IV, Chapter 1, TFEU; Title IX, TFEU.

³ Kolbe K. (2017), “A Supply Chain Approach to Trade and Labor Provisions”, *Politics and Governance*, 4, p. 64.

*growth*⁴. Foremost examples can be found in the new pieces of legislation imposing due diligence obligations on European companies in order to protect workers' fundamental rights within global value chains, such as the recently enacted "*Corporate Sustainability Due Diligence Directive*" and the "*2017 Regulation on Conflict Minerals*".

Despite playing a fundamental role in the promotion of responsible business conduct worldwide, these laws might nonetheless appear inconsistent if not combined with provisions granting access to remedies in case of infringement⁵.

The rights to an effective remedy and the right to a fair trial are validated as fundamental rights of the EU: they are indeed explicitly positivised in Art. 47 of the EU Charter of Fundamental Rights, whose scope of application comprises "*everyone*" who suffers from a violation of "*rights and freedoms guaranteed by the Union*".

However, whilst EU citizens have easy access to justice, the same cannot be said for third-countries' nationals whose rights have been affected by the economic decisions of EU companies: here, many obstacles – either financial, cultural or strictly legal – obstruct the way to a just redress. Therefore, any piece of legislation seeking to protect the fundamental rights of non-EU citizens must take into account these difficulties and must provide measures for obviating them, otherwise risking to remain ineffective.

1.1. The reports of the EU Agency for Fundamental Rights

To practically understand which obstacles non-EU citizens, namely victims of human and workers' rights abuses, face whenever issuing European courts, it is essential to look at the results of the research conducted by the EU Agency for Fundamental Rights⁶ ("EU-FRA"), which in 2016 was appointed by the European Commission to release a scientific opinion on

⁴ European Commission (2019), *The European Green Deal*, Brussels.

⁵ EU-FRA (2019), *Business-related human rights abuse reported in the EU and available remedies*, Publications Office of the European Union, Wien, available at: fra.europa.eu/en/publication/2019/business-related-human-rights-abuse-reported-eu-and-available-remedies (accessed: 26.11.2024); EU-FRA (2020), *Business And Human Rights – Access To Remedy*, Publications Office of the European Union, Luxembourg, available at: fra.europa.eu/en/publication/2020/business-human-rights-remedies (accessed: 26.11.2024).

⁶ The EU Agency for Fundamental Rights (EU-FRA) was established in 2007, by means of Council Regulation n. 168/2007, with the aim of providing information and data on fundamental rights matter as to enhance the knowledge of, and broader awareness of, fundamental rights issues in the Union.

the topic in order to identify future EU actions. To accomplish the task, the EU-FRA decided to operate through a two-fold report: the first report, issued in 2019, offers a general overview of the grievance mechanisms available to human rights victims; the second one, which came out in 2020, analyses the availability and effectiveness of those grievance mechanisms for granting victims with justice and remedies⁷.

In these reports, the EU-FRA considered due diligence obligations as essential tools in the concrete implementation of the right to an effective remedy, owing to the *onus* they would burden businesses with, in terms of respecting both core labour standards and minimum safety rules throughout their value chains, whilst also avoiding the risks deriving from the “*corporate veil*” mechanisms. Of course, to pose the so-called “*human rights due diligence*” obligations on businesses would eventually mean redefining the rules on the burden of proof as well as those on access to evidence, which nowadays still constitute two of the major obstacles victims face whenever seeking redress, especially in cross-border situations⁸. As a matter of fact, the EU-FRA reports have shown that, in most cases, the burden of proof is truly a “*probatio diabolica*” as it requires victims to prove the direct infringement they suffer from the business’ actions as well as the company’s liability and therefore, in most cases, it imposes a further establishment of the nexus between the parent company and its subsidiaries⁹. Due to these difficulties, victims often refer to Civil Society Organizations (CSOs) for filing legal proceedings. However, CSOs face obstacles as well, mainly due to the onerous conditions set for the recognition of their legal standing and to the frequent urge for the victim to stand on his/her own when claiming a specific damage compensation.

The 2020 report proposed solutions to these challenges, in order to also ensure a proper implementation of the principle of equality of arms: the EU-FRA exhorted Member States to reform evidentiary rules, including reversing the burden of proof in cases of proven violations, and to improve document disclosure for enhancing access to relevant records within value chains¹⁰. The same principle is recalled by the EU-FRA when discussing legal aids: no equality of arms can be granted when the courts’ costs constitute a limitation for continuing the proceedings. The EU-FRA therefore advocated

⁷ EU-FRA (2019), *Business-related human rights abuse reported in the EU and available remedies*, Publications Office of the European Union, Wien.

⁸ *Ibidem*. Other obstacles are: lack of information and of legal knowledge; increased costs and evidential issues.

⁹ EU-FRA (2020), *Business And Human Rights – Access To Remedy*, Luxembourg: Publications Office of the European Union.

¹⁰ *Ibidem*.

for adjustments in legal aid to address litigations' expensive costs and recommended the expanded adoption of Alternative Dispute Resolutions (ADR) systems for human rights-related business disputes, as they offer faster and more affordable outcomes. However, the EU-FRA report stressed the need for proper enforceability of the final decisions as a fundamental step for ensuring A.D.R. effectiveness.

Considering that Strategic Lawsuits Against Public Participation (SLAPPs) pose further obstacles, particularly for civil society organizations (CSOs) supporting victims, the 2020 report recommended financial and legal aid for victims facing SLAPPs and proposed increased legal standing for CSOs, including an opt-out mechanism to automatically include affected individuals in collective human rights actions unless they explicitly renounce.

Additionally, as frequent issues with gaining the status of “*qualified organization*” limit CSOs' advocacy potential, mainly owing to divergent legal standards across Member States, the EU-FRA urged the EU and Member States to streamline standards for CSO legal standing in order to strengthen their role in monitoring business compliance with human rights laws¹¹.

2. The right to effective remedy within EU legislation on global value chains

Following the publication of the EU-FRA reports, the EU legislator has been very propulsive in considering the findings of such research while regulating the side effects of global value chains: on the one hand, new reporting obligations have been settled; on the other, the concept of “*human rights due diligence*” has finally been recognized as the only proper instrument for limiting labour exploitation outside the EU borders.

In this regard, the EU Regulation 2017/821 on Conflict Minerals and the EU Directive 2024/1760 on Corporate Sustainability Due Diligence both represent major steps forward in the campaign against the exploitation of workers worldwide. However, an in-depth analysis of the different means for regulating the right to effective remedies within these two legislative texts leads to the conclusion that such an improvement has been concretely pursued only by one of them, that is by the Directive, and we will now understand why.

¹¹ *Ibidem*.

2.1. The EU Regulation 2017/821 on Conflict Minerals

The EU Regulation 2017/821 on Conflict Minerals came fully into force in 2021, and it explicitly takes into account the need for laying down due diligence obligations within global value chains operating minerals trading in “*politically unstable areas*”¹². The goal of this Regulation is to preserve human and workers’ rights from violation while also holding companies accountable for the negative impact of their business activities.

To this end, EU importers are obliged to introduce due diligence schemes which must include the following measures:

- 1) the introduction and constant updating of a specific supply chains policy;
- 2) the adoption of a risk management model;
- 3) involvement of third parties’ audits;
- 4) document disclosure’s tools.

The exact content of each obligation is fully outlined within the Regulation but for the purposes of this paper, it is important to linger only on the first measure because it expressly comprises the establishment of grievance mechanisms. In this context, the grievance mechanism is defined as an “*early-warning risk-awareness system*”¹³ which can be either company-based or built in collaboration with competent authorities or external organizations: it is thus a sort of a monitoring system, where everybody can “*voice concern*”¹⁴ regarding a law infringement. However, it is clear that providing such a mechanism does not necessarily result in a company’s real effort to halt the harmful situation.

A peculiar focus is posed on the monitoring elements: whilst stakeholders are encouraged to warn companies performing their extracting activities in conflicted areas, the companies themselves have to hire independent third-party auditors to assess their due diligence schemes. For its part, the EU Commission then has to elaborate and keep updated a list of “*global responsible smelters and refiners*”¹⁵.

On the contrary, minimal relevance is given to the aspects of law enforcement and access to justice: no provision in the Regulation clearly

¹² European Commission, *Conflict Minerals Regulation: The regulation explained*, available at: policy.trade.ec.europa.eu/development-and-sustainability/conflict-minerals-regulation/regulation-explained_en (accessed: 25.11.2024).

¹³ Art. 2, par. 1, lett. (p), Regulation (EU) 2017/821.

¹⁴ *Ibidem*.

¹⁵ See: Art. 9, Regulation (EU) 2017/821.

states the consequences of an eventual breach of the law nor the actions to be taken in cases where human rights are undermined by companies' conduct. Everything in these concerns is briefly referred to Member States' national legislation, with the only general application's rule being the issuance of an injunction against the importer with the aim of encouraging its “*remedial action*”¹⁶.

Although the EU's efforts to ensure effective compliance with the Regulation are serious, access to justice and remedies for victims who have suffered damages due to companies' unlawful conduct is completely on another level of action¹⁷. The Regulation surely exhorts Member States and businesses to introduce grievance mechanisms as part of due diligence schemes, however, these suggestions might remain ineffective and result weak in ensuring equality of arms among the parties involved and in granting redress to victims¹⁸.

2.2. The EU Directive 2024/1760 on Corporate Sustainability Due Diligence: a new milestone

The masterpiece of the EU legislator's effort to address the adverse impacts produced by EU companies on workers' rights can be found in the Corporate Sustainability Due Diligence Directive, whose main purpose is:

to ensure that companies active in the internal market contribute to sustainable development and the sustainability transition of economies and societies through the identification, and where necessary, prioritisation, prevention and mitigation, bringing to an end, minimisation and remediation of actual or potential adverse human rights and environmental impacts connected with companies' own operations, operations of their subsidiaries and of their business partners in the chains of activities of the companies, and ensuring that those affected by a failure to respect this duty have access to justice and legal remedies¹⁹.

Prior to its final enactment, many amendments have been made to the original text of the European Commission's Proposal: even though most of

¹⁶ Art. 16, par. 3, Regulation (EU) 2017/821.

¹⁷ Methven O'Brien C., Martin-Ortega O. (2020), *Human Rights Due Diligence Legislation: Monitoring, Enforcement and Access to Justice for Victims*, Brussels: European Parliament – Policy Department for External Relations, available at: [www.europarl.europa.eu/RegData/etudes/BRIE/2020/603505/EXPO_BRI\(2020\)603505_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2020/603505/EXPO_BRI(2020)603505_EN.pdf) (accessed: 26.11.2024).

¹⁸ *Ibidem*.

¹⁹ Recital n. 16, Directive (EU) 2024/1760.

them were proposed by the liberal members of the European Parliament and the EU Council to restrict the actual scope of application of the law, some of these amendments turned out to be notably beneficial, particularly regarding the right to an effective remedy. Indeed, likewise the EU Regulation on “Conflict Minerals”, the Proposal originally contained just a brief reference to such a right, providing only for a grievance mechanism to be used by those who had “*legitimate concern*” about the actual or potential risks which may derived from the negligent conduct of the companies²⁰. Nevertheless, the text of the Proposal did not include any specification on the objective mechanisms for evaluating the merits of the claim, which would give the receiving company full discretion on its assessment. Such a situation would have resulted in a serious infringement of the fundamental principles and values of the rule of law, primarily the principle of legal certainty, alongside the principle of equality of arms and the right to an effective adversarial proceeding.

Fortunately, the European legislator has adopted a fundamentally distinct approach in the formulation of the final text of the Directive, thereby ensuring adequate protection to the right of non-EU citizens to pursue justice or other remedies against unlawful conduct of the companies. Indeed, the Directive incorporates several provisions pertaining to the right of access to remedies in both the Recitals and the Normative Part, while also addressing issues of private international law that had previously obstructed the victims’ right to obtain adequate justice for the violations they have suffered.

The Recital n. 82 of the Directive, for example, provides a clear and unequivocal statement of intent in this regard, emphasizing the EU’s dedication to the gradual reduction and eventual elimination of practical and procedural barriers to justice for victims of adverse impacts²¹.

Another key example is represented by the innovative regulation of the complaints procedure, which within the Directive is structured on systems and criteria capable of ensuring fairness, predictability, publicity, transparency, and accessibility, while also granting the claimants the right to information – on both the reasons why the complaint has been considered founded or unfounded and the actions to be taken in case it actually is founded²². In

²⁰ Art. 9, Proposal of the EU Commission for a Directive on Corporate Sustainability Due Diligence, Brussels, 23 February 2022.

²¹ As already proved by the EU-FRA reports, the main obstacles mentioned by the EU legislator are the following: “*difficulties in accessing evidence, the limited duration of limitation periods, the absence of adequate mechanisms for representative actions, and the prohibitive costs of civil liability proceedings*”.

²² See: art. 14, par. 4, EU Directive 2024/1760. Cfr. art. 9, par. 4, Proposal for a Directive 2022/0051.

addition to that, Art. 14 of the Directive also provides for the establishment of a “*notification system*”, which may be submitted by anyone having information or concerns on the adverse impact caused or which may be caused by the company’s activities. Either way, the EU legislator emphasizes the absence of any mechanism of preconditions between these procedures and the initiation of judicial proceedings related to the same conduct.

It is precisely on the initiation of these proceedings that the Directive introduced the most innovative and significant innovations, solving the problems highlighted by the EU-FRA reports. First of all, the Directive allows national courts to order documents’ disclosure whenever the claimant adequately and reasonably justifies the necessity of such disclosure for supporting the plausibility of the claim. *Ça va sans dire*, for the disclosure order of corporates’ documents to be properly legitimate, it must adhere to the principles of strict necessity and proportionality²³. In the second place, Member States are exhorted to amend their national provisions on legal standing to give any “*alleged injured party*” the possibility to authorize any NGOs or CSOs as well as trade unions to file civil liability claims to uphold victims’ rights. However, Member States can pose limits on such authorizations for example by demanding that these entities operate through a consolidated organization which is neither just temporarily dedicated to the protection of the rights at stake nor a profit-oriented activity²⁴.

The Directive has also strongly affected the sphere of private international law: not only is the limitation period extended *ipso iure* to five years for any claim that may be filed²⁵, but overriding mandatory application is also granted to all the national provisions transposing the civil liability regime enshrined in the Directive²⁶. In this way, the EU legislator solved a juridical debate that emerged during the so-called “*KiK case*”²⁷ in Germany and developed ever since, concerning the potential discriminatory effect of the strict application of the Rome and the Brussels Regulations, which may avoid the operability of the most favourable and guaranteeing regimes of fundamental rights protection provided by the laws of the EU Member States to persons who, although not nationals, have been harmed by companies of that countries. In short, the Directive finally opens up to the possibility of granting extraterritorial extension to the European labour and procedural laws’ protections.

²³ Recital n. 83, and Art. 29, par. 3, lett. (e), EU Directive 2024/1760.

²⁴ Recital n. 84, and Art. 29, par. 3, lett. (d), EU Directive 2024/1760.

²⁵ Recital n. 85, and Art. 29, par. 3, lett. (a), EU Directive 2024/1760.

²⁶ Recital n. 90, and Art. 29, par. 7, EU Directive 2024/1760.

²⁷ *Jabir et al. v. KiK Textilien and Non-Food GmbH*.

3. Conclusions

This brief overview of the EU legislation posing “*due diligence*” obligations on global value chains has shown that in the last decade many improvements have been made to grant effective access to remedies to those victims of human and workers’ rights abuse having a non-EU nationality. The suggestions of the EU-FRA seem to have been eventually considered (and applied) in the development of the newest legislative act and a major relevance has been given to the regulation of the remedial tools available to every person suffering from a violation of the prescribed obligations.

In particular, it can be stated that the Corporate Sustainability Due Diligence Directive has endorsed a totally different approach from the one adopted in the Conflict Minerals Regulation: whilst the latter seems to accord merely secondary importance to the right of access to remedies, failing to perceive the real relevance of this right for the effectiveness of its rules, the new Directive’s provisions could concretely strengthen the recognition of right at stake, thanks to both their extraterritorial reach and indiscriminate application, i.e. regardless of the nationality of the person issuing the remedy. Obviously, it must be taken into account that this is just a *prima facie* assessment as a concrete evaluation of the effectiveness of these measures will only be adequately performed once the Directive comes into full effect and will thus be transposed into the national legislation of the Member States.

Bibliography

- EAAAS (2024), *EU Action Plan on Human Rights and Democracy. 2020-2027*.
- EU-FRA (2019), *Business-related human rights abuse reported in the EU and available remedies*, Publications Office of the European Union, Wien, available at: fra.europa.eu/en/publication/2019/business-related-human-rights-abuse-reported-eu-and-available-remedies (accessed: 26.11.2024).
- EU-FRA (2020), *Business And Human Rights – Access To Remedy*, Publications Office of the European Union, Luxembourg, available at: fra.europa.eu/en/publication/2020/business-human-rights-remedies (accessed: 26.11.2024).
- European Commission (2019), *The European Green Deal*, Brussels.
- European Commission (2022), *Decent work worldwide for a global just transition and a sustainable recovery*.
- European Commission, *Conflict Minerals Regulation: The regulation explained*, available at: policy.trade.ec.europa.eu/development-and-sustainability/conflict-minerals-regulation/regulation-explained_en (accessed: 25.11.2024).
- Kolbe K. (2017), “A Supply Chain Approach to Trade and Labor Provisions”, *Politics and Governance*, 4, 64.

Methven O'Brien C., Martin-Ortega O. (2020), *Human Rights Due Diligence Legislation: Monitoring, Enforcement and Access to Justice for Victims*, European Parliament – Policy Department for External Relations, Brussels, available at: [www.europarl.europa.eu/RegData/etudes/BRIE/2020/603505/EXPO_BRI\(2020\)603505_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2020/603505/EXPO_BRI(2020)603505_EN.pdf) (accessed: 26.11.2024).