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## Business and human rights

Business activities that could negatively affect human rights globally, and the EU's response.

Business activities are the engine of the economy as they contribute to economic and social development through the creation of jobs and the provisions of goods and services. They could at the same time, have adverse impact on human rights including environment, labour and society aspects.

In particular, businesses (through their activities or omissions, and those of their supply chains) can negatively affect the entire spectrum of internationally recognised human rights, such as:

- civil and political rights
- economic and cultural rights
- equality and non-discrimination
- rights of the child
- freedom of expression
- data protection
- rights to a fair trial
- environmental rights and sustainability
- labour rights
- health rights
- consumer protection rights

In order to ensure the positive contribution of businesses and prevent their negative impact, the United Nations (UN), the International Labour Organisation (ILO) and the Organisation for Economic Co-operation and Development (OECD) defined and approach of the global expectations for responsible business. In particular:

The 2011 [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#) are the first globally agreed standards for preventing and addressing risks for human rights linked to business activity.

The OECD Guidelines, adopted in 1976 and [updated in 2011](#), include a chapter on Human Rights, which is aligned with the UNGPs.

The [ILO Tripartite Declaration of Principles](#), concerning Multinational Enterprises and Social Policy (ILO MNE Declaration), was updated in 2017 to include new labour standards, as well as references to the UNGPs and to the 2030 Agenda for Sustainable Development.

In addition, in **2016** the Council of Europe adopted a [Recommendation on business and human rights](#) focused on giving access to legal remedy, with special emphasis on the additional protection needs of workers, children, indigenous people and human rights defenders.

In view of access to remedy, the UNGP provides that countries are expected to take the appropriate steps to ensure access to effective remedy for persons affected by business related abuses. This can be achieved through judicial, administrative, legislative and other appropriate means. The UNGPs also provides that companies, which have caused or contributed to adverse negative impacts by their activities, are expected to address them through remedy.

### EU response

The [European Charter of Fundamental Rights](#) includes several relevant rules, such as those on:

- prohibition of slavery and forced labour (Article 5)
- freedom to conduct a business (Article 16)
- non-discrimination (Article 21)
- rights of the child (Article 24)
- fair and just working conditions (Article 31)
- prohibition of child labour (Article 32)
- health care (Article 35)
- environmental protection (Article 37).
- consumer protection (Article 38)
- right to an effective remedy and a fair trial (Article 47)

The EU has responded to the negative impact of business activities on human rights by doing the following:

2011 – EU strategy stressing commitment to implement the UN Guiding Principles on Business and Human Rights (UNGPs)

2015 – Commission [review of EU progress with UNGPs](#)

2017 – [Fundamental Rights Agency report](#) recommends the creation of an overview of all legal remedies, written in clear language for the general public.

2019 - Commission overview of progress: [Corporate Social Responsibility, Responsible Business conduct, and Business and Human Rights](#) (SWD (2019)143)

2019 - [Fundamental Rights Agency focus report on the business-related human rights abuses reported in the EU and available remedies](#)

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## Business and human rights - Czech Republic

### 1. What kind of judicial protection do I have in your country as a victim of business related human rights violations? Does this protection include compensation?

Victims of business related human rights violations are granted protection at the level of ordinary courts.

Persons whose rights have been violated can seek protection in either civil proceedings or criminal proceedings before ordinary courts; if relevant, subsequently before the Constitutional Court.

In case of violations of a civil nature, you can usually defend yourself by bringing an action for performance, via which the claimant can demand the performance of any legal obligation. Typically, the claimant can demand that the defendant give something to the claimant, that the defendant do something, that the defendant cease and desist from illegal conduct, or that the defendant tolerate certain conduct. The claimant can also seek the performance of the obligation to provide compensation for pecuniary or non-pecuniary damage caused by the defendant's culpable conduct.

Where rights have been violated by an act possessing the features of a crime, as a means of defence a criminal complaint can be lodged with any police authority, with a prosecutor's office or, orally, with a court. Further to the criminal complaint, the prosecutor can bring an action before a court, which then decides on guilt and punishment. In making its decisions the court is independent and only bound by law.

Where the victim has suffered damage to health or pecuniary or non-pecuniary damage due to the offence, or the offender has gained enrichment through the offence at the expense of the victim, the victim can move for the court to impose on the defendant, in its convicting judgment, the obligation to compensate financially the pecuniary or non-pecuniary damage suffered by the victim due to the offence (this is known as the adhesion procedure). [1] The victim must do so not later than before evidence taking during the trial or, at the very latest, during the first hearing on the agreement on guilt and punishment if such an agreement has been reached.

The victim of a human rights violation (referred to as the injured party) has no right to appeal against the court's judgment on grounds of claiming that the operative part (i.e. the decision itself) in the judgment is inaccurate. Nevertheless, the victim can appeal against the judgment's decision on financial compensation for pecuniary or non-pecuniary damage or that on the surrender of unjustified enrichment on the grounds of such decision being inaccurate, if the victim has raised such claim.

## **2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?**

Cases of gross human rights violations are treated as offences under the Criminal Code. When the court determines the sentence it also takes into consideration the nature and gravity of the offences in addition to the offender's situation and the victim's interests protected by law. In general, the Criminal Code lays down more severe punishments and sentences for certain offences, classified therein, that possess a higher level of gravity for society. Such gravity may consist in rather serious danger to or harm to the victim of the offence, in the manner of committing the offence, or in a particular motive. The above may include the intentional commission of an offence or an offence committed by gross negligence, repetitive offending, gaining a considerable benefit or a benefit of a large scale by committing the offence, or causing grievous bodily harm or death.

The Criminal Code contains a separate Title on environmental offences. Besides the fundamental facts constituting these offences, the Criminal Code also lays down certain qualified facts, which reflect a heavier gravity of the offences for society, and prescribes more severe punishments for them. The punishments may even include a prison sentence in the case of natural persons and the dissolution of the entity in the case of legal persons.

The above applies *mutatis mutandis* to labour exploitation. The Criminal Code does not contain the term 'labour exploitation' but slavery and serfdom [2], forced labour and other forms of exploitation [3], which are treated as the offence of trafficking in human beings, can be subsumed under this term. It can also mean particularly exploitative working conditions [4], which are one of the fundamental features of the facts constituting the offence of illegal employment of foreign nationals. Certain qualified facts, the existence of which in a case attracts more severe punishments, are also laid down for these offences.

## **3. I am a victim of human right violations resulting from activities of a European transnational corporation, which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU-citizen or I don't live in the EU? What are the conditions to claim violation of my rights? Where can I find any additional information?**

In general, the answer to Question 1 applies. Czech authorities primarily have the competence to deal with cases that have occurred in the Czech Republic, unless EU law or international treaties lay down otherwise.

## **4. Can Ombudsman Institutions, equality bodies or National Human Rights institutions support victims of business related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU-citizen or I don't live in the EU? Are there other public services (such as a labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?**

Under some of his competences, the Ombudsman can provide support and protection to victims of business related human rights violations. This includes, in particular, providing assistance to EU citizens, investigating complaints about state administration bodies, and providing cooperation and guidance to victims of discrimination. As regards the provision of assistance to EU citizens, all EU citizens can resort to the Ombudsman with applications for assistance in matters concerning their rights as employees and EU citizens. As part of this activity, the Ombudsman provides EU citizens with information about their rights, about the authorities they should contact, and about the steps they can take. The Ombudsman also provides guidance in cases of suspicion of discrimination on grounds of citizenship and in cases of the filing of motions for instituting proceedings on grounds of discrimination. The Ombudsman can communicate with the authorities having a similar role in other EU member states. In addition to the Ombudsman, victims of business related human rights violations can approach the Czech SOLVIT centre. The SOLVIT centre investigates complaints in cases where a public authority of an EU member state fails to proceed in line with European law and is damaging rights of persons [both citizens and businesses].

The Ombudsman also investigates complaints against the state administration bodies that are competent to oversee privately-held entities' performance of obligations (typically inspection and supervisory authorities). However, the Ombudsman cannot examine these privately-held entities' activities as such. Equally importantly, the Ombudsman is authorised as the national body for equal treatment and protection against discrimination. In this respect, the Ombudsman provides cooperation and guidance to victims of discrimination.

The Czech Republic also has national supervisory institutions in each sector of state administration. As a rule, these institutions accept suggestions and complaints from the public. Should they conduct a check and find a breach of the legislation they can impose, in particular, the obligation to remedy the situation, and they can levy fines in case of more serious breaches. These institutions include, without limitation, bodies of Česká obchodní inspekce [the Czech Trade Inspection Authority] covering the provision of goods and services, Státní zemědělská a potravinářská inspekce [the Czech Agriculture and Food Inspection Authority] and Státní veterinární správa [the State Veterinary Administration] for foodstuffs, and regional public health centres for cosmetic products and articles intended to come into contact with food. Furthermore, in respect of labour relations, it is Státní úřad inspekce práce [the State Labour Inspection Office] and regional labour inspection offices; in respect of the environment, Česká inspekce životního prostředí [the Czech Environment Inspection Office] can be contacted. The territorial competence of these institutions is usually limited to the Czech Republic.

## **5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in charge of monitoring these activities in your country? Are there public reports available providing information on the functioning of these systems?**

Czech law does not impose any obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities, or the obligation to monitor these activities. The Czech government has therefore at least recommended to businesses to consider implementing their own in-house due diligence mechanisms for identifying and eliminating human rights risks. [5] The involvement of the stakeholder groups – the employees and the public directly concerned – should be a required part thereof. However, this government recommendation is not legally binding.

## **6. Do I have specific rights if I am a vulnerable victim seeking remedy for business related human rights violations? Can I have access to legal aid and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU-citizen or I don't live in the EU?**

Where a person seeks protection of their rights as a party to civil proceedings they can apply to the court for the appointment of a legal representative. The court appoints a legal representative provided that the party meets the conditions for exemption from the court fees where the appointment of a representative is necessary for protecting the party's interests. At the same time, the court only appoints a solicitor if the protection of the party's interests requires so (in particular in more complicated proceedings), or in case of appointing a representative for proceedings in which representation by a solicitor (notary) is obligatory.

In criminal proceedings, victims of crime are provided with specialist assistance, which includes psychological counselling, social advice, legal aid, provision of legal information, and restorative programmes. The victim also has the right of access to information about the case in which they have become the victim of an offence. As regards legal aid, this includes, without limitation, representation in proceedings before courts and other authorities, provision of legal advice, the drafting of documents, and the preparation of legal analyses.

The victim who has suffered grievous bodily harm caused by an intentional offence and the survivor of a victim whose death was caused by the offence can apply for legal assistance provided free of charge or for a reduced charge. The court affords legal assistance provided free of charge or for a reduced charge if the victim/survivor proves to be lacking the funds for paying the costs incurred in the appointment of an attorney. The court also makes the same decision where the victim/survivor has claimed compensation for damage and representation by an attorney is evidently not superfluous. In addition to the above, free legal aid is provided, on the basis of an application, to particularly vulnerable victims, who include the following: children, very old individuals and disabled individuals, and victims of offences specified in the law, including victims of human trafficking. The above individuals have the right to free specialist assistance in general and also enjoy additional special rights such as the right to the prevention of their contact with the offender and the right to protection when being examined or when filing a submission.

Persons who are in a dispute with a person living or having their registered office outside the Czech Republic, and who lack the funds for paying the costs of the court proceedings, can apply for legal aid in cross-border disputes under [EU Directive](#) on legal aid in cross-border disputes. Such legal aid covers pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings, legal assistance in bringing a case before a court and representation in court and assistance with or exemption from the costs of proceedings.

Individuals who are not EU citizens and do not live in the EU but have become victims of human rights violations related to their business in the Czech Republic have access to legal aid under the same conditions as citizens of the Czech Republic.

[1] Section 43(3) of Act No 141/1961 on criminal proceedings (Code of Criminal Procedure)

[2] Section 168(1) and (2)(d) of the Criminal Code (human trafficking)

[3] Section 168(1) and (2)(e) of the Criminal Code (human trafficking)

[4] Section 342(1) of the Criminal Code (illegal employment of foreign nationals)

[5] National action plan for business and human rights for the period 2017–2022 [*Národní akční plán pro byznys a lidská práva na období 2017–2022*], page 30

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## Business and human rights - Denmark

### 1. What kind of judicial protection I have in your country as victim of business related human rights violations? Does this protection include compensation?

Judicial protection against human rights violations is enshrined in the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and the Constitutional Act of the Kingdom of Denmark (*Danmarks Riges Grundlov*). No distinction is made between business related and non-business related human rights violations.

#### The European Convention on Human Rights

The European Convention on Human Rights was transposed into Danish law by Act No 285 of 29 April 1992. According to Danish case-law, public authorities may be liable to pay compensation for any infringement of the European Convention on Human Rights in respect of financial or non-financial damages. This liability is objective according to Danish case-law, and the general principles of Danish compensation law also apply.

#### The Charter of Fundamental Rights of the European Union

All Danish authorities must respect the Charter of Fundamental Rights of the European Union when they implement EU law. The Danish courts must also provide the requisite access to justice in order to safeguard the effective protection of rights in areas subject to EU law. This includes the Charter of Fundamental Rights of the European Union.

#### The Constitutional Act of the Kingdom of Denmark

Chapters VII and VIII of the Danish Constitution contain a number of freedoms and human rights. The personal freedoms involve protection of personal liberty (§ 71), the home and privacy (§ 72), the right of property (§ 73), freedom of religion, and the right not to be discriminated against (§ 67, § 68 and § 70). The political freedoms relate to freedom of speech (§ 77), freedom of association (§ 78), and freedom of assembly (§ 79). The Constitution also includes a right to free and equal access to trade (§ 74), the right to public assistance (§ 75), and the right to free elementary education and freedom of school choice (§ 76).

In § 73 of the Constitution, a legal basis is laid down for the right to full compensation for expropriation, which is paid out in respect of the financial loss suffered as a result of expropriation.

### 2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?

There are no specific rules for gross human rights violations, either nationally or internationally. The principle of proportionality does, however, play a role in assessing human rights violations, including the grossness of a violation. Judicial protection against human rights violations is enshrined in the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and the Constitutional Act of the Kingdom of Denmark.

### 3. I am a victim of human right violation resulting from activities of a European transnational corporation which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU-citizen or I don't live in the EU? What are the conditions to claim violation of my rights? Where can I find any additional information?

Essentially, all private individuals in Denmark can bring a case before the national courts. This applies both to EU citizens and non-EU citizens. Further information about guidance for bringing a case before the courts is available at <https://domstol.dk>.

### 4. Can Ombudsman Institutions, equality bodies or National Human Rights institutions support victims of business related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen or I don't live in the EU? Are there other public services (such as labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?

The national human rights institute in Denmark, the Danish Institute for Human Rights (*Institut for Menneskerettigheder*), aims to promote and protect human rights, including among other things advising the Danish Parliament (*Folketinget*), the Danish Government, other public authorities and private stakeholders about human rights and managing information about human rights. The Danish Institute for Human Rights may also help victims of discrimination to have their discrimination appeals processed, paying due consideration to the rights of the victims, associations, organisations and other legal persons.

The Danish Parliamentary Ombudsman essentially only deals with complaints about public administration.

There are separate mechanisms in Denmark for processing cases relating to business related human rights violations, including the Danish courts, the Labour Court (*arbejdsretten*), the National Board of Industrial Injuries (*Arbejdsskadestyrelsen*), the Board of Equal Treatment (*Ligebehandlingsnævnet*), the Mediation and Complaints-Handling Institution for Responsible Business Conduct (*Mæglings- og klageinstitutionen for ansvarlig virksomhedsadfærd*) (MKI), and others. In the labour market, confidential conciliation is sometimes entered into between the parties to cases that may be relevant to human rights.

**5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in charge of monitoring of these activities in your country? Are there public reports available providing information on the functioning of system?**

Under Danish law, European transnational corporations are not obliged to establish complaint mechanisms or mediation services for violations resulting from their business activities.

Denmark has established by law the Mediation and Complaints-Handling Institution for Responsible Business Conduct (MKI), which works to create a framework for mediation, dialogue, and conflict resolution.

The MKI is Denmark's national OECD contact point, and it has the task of handling complaints about potential irresponsible conduct, among other things, by Danish companies in Denmark and abroad, for example through a company's business relationships, and of offering mediation between the injured party and the party that is the subject of the complaint. The MKI handles complaints and can offer mediation in cases concerning violations of the OECD Guidelines for Multinational Enterprises, including cases concerning human rights, workers' rights, international environmental standards, and corruption.

The MKI publishes annual reports on its work, including complaints that it has processed and any mediation processes. When it handles a complaint, the MKI may also issue public statements that could, for example, include criticism of a company's conduct.

The MKI is an independent institution that has a mandate to examine cases on its own initiative, but it does not supervise the activities of Danish companies.

**6. Do I have specific rights if I am a vulnerable victim seeking remedy for business related human rights violations? Can I have access to legal aid and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU-citizen or I don't live in the EU?**

People who are victims of a business related human rights violation do not have any specific rights (please see question 1). There are two kinds of State-funded legal aid in Denmark: free proceedings [*fri proces*] and public legal aid [*offentlig retshjælp*]. There is no requirement to be a Danish national or an EU citizen in order to obtain legal aid.

**Free proceedings**

If the applicant's application for free proceedings is upheld, all of the applicant's costs will be covered by the State. It follows that, among other things, one of the conditions for free proceedings is that the applicant's income does not exceed the income limit laid down in § 325(3)-(5) of the Administration of Justice Act (*retsplejeloven*), and that the applicant does not hold a legal-aid insurance policy or other insurance policy that covers the costs of the case. The income limits are increased every year; please see § 328(2) of the Administration of Justice Act. In 2019, therefore, a single applicant's income may not exceed DKK 329 000; for applicants who are part of a couple, the couple's total income may not exceed DKK 418 000.

In addition to this, another condition is essentially that the applicant must be considered to have reasonable grounds for pursuing the case; please see § 328 (2) of the Administration of Justice Act.

Nevertheless, § 327 of the Administration of Justice Act does list a number of special kinds of case where there is no condition for the applicant to have reasonable grounds for pursuing the case. In such cases, free proceedings must be granted whenever the applicant fulfils the financial conditions laid down in § 325. This will not, however, necessarily mean that the applicant will have his/her case upheld; please see § 327(4).

**Public legal aid**

There are three steps for legal aid; please see § 323 of the Administration of Justice Act and Executive Order (*bekendtgørelse*) No 1503 of 18 December 2019 on Public Legal Aid with a Lawyer. Everyone is entitled to very basic (and free) verbal advice on legal matters that are important for a dispute, and on the practical and financial options for pursuing a case (step 1).

People who fulfil the financial conditions for free proceedings are also entitled to some free legal aid in the form of advice and the preparation of individual written enquiries, including applications for free proceedings, etc. (step 2). In the event of a dispute where there is considered to be a prospect of the case being closed through conciliation with the additional assistance of a lawyer, the person in question is also entitled to some free legal aid from a lawyer (step 3).

The fee for legal aid from a lawyer at step 2 was DKK 1 040 (including VAT) in 2019. The State pays 75 % of this amount, but the legal-aid applicant pays the rest. The fee for legal aid from a lawyer at step 3 is DKK 2 390 (including VAT). The State and the legal-aid applicant each pay half. The State does, however, pay the full fee for legal aid connected to an application for free proceedings.

Essentially, however, no subsidy may be sought from the State for legal aid at steps 2 and 3 if it is clear from the outset that the case cannot be dealt with within the limits of the amount of DKK 1 040 or DKK 2 390 respectively. Furthermore, a subsidy from State funds for legal aid at steps 2 and 3 only includes fees that are not covered by a legal-aid insurance policy or other kind of insurance policy.

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**Business and human rights - Germany**

**1. What kind of judicial protection do I have in your country as a victim of business related human rights violations? Does this protection include compensation?**

**a. Civil law**

Anyone who considers that their rights have been infringed by the actions of a German undertaking can take legal action against that undertaking before the German civil courts. The court with jurisdiction is in principle the court in whose judicial district the defendant undertaking has its registered office. The registered office of an undertaking is the seat determined by its statutes, the place where it has its headquarters or principal place of business. This international jurisdiction of German courts is derived from Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast Brussels I Regulation). Further information on this Regulation can be found [here](#).

If the defendant undertaking's registered office is not located in the European Union or in a contracting state to the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 30 October 2007, the international jurisdiction of German courts may derive from German rules of civil procedure, in particular the Code of Civil Procedure (*Zivilprozessordnung – ZPO*). For example, under Section 32 ZPO, a case may be brought before a German court if at least part of the tort/delict was committed in Germany. An action is deemed to have been committed both at the place where the person causing the damage acted (*Handlungsort*) and at the place where the legally protected right of the person sustaining the damage was infringed (*Erfolgsort*). These jurisdictions also apply when actions brought by non-EU citizens who are not resident in the European Union.

The national legal order with jurisdiction for claims arising from a tort/delict is determined by Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II Regulation). It provides that normally the applicable law is the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur (Article 4(1) of the Rome II Regulation). Further information on the applicable law can be found [here](#).

The German rules of civil procedure contain instruments allowing actions brought by different claimants to be dealt with collectively, e.g. the joinder of parties (*Streitgenossenschaft*) (see Section 59 et seq. ZPO). Pursuant to Section 59 ZPO, a number of persons may jointly sue or be sued if they form one legal entity in relation to the subject-matter of the dispute or if they have a right or obligation based on the same factual or legal ground.

In 2018, Germany introduced the application for a test-case declaratory judgment (*Musterfeststellungsklage*) for cases in which the rights of a large number of consumers have been infringed by an action of an undertaking. Specially qualified consumer protection associations may, under certain conditions, lodge an application for a test-case declaratory judgment seeking a court ruling on key issues of fact and law on which the claims of all the consumers are based. An application for a test-case declaratory judgment blocks the time-barring of the individual claims of the consumers entered in the register of applications (the consumers can therefore await the outcome of the application for a test-case declaratory judgment without risking a loss of rights). Consumers can enter their claims in the register of applications free of charge. The declaratory judgment (on the key issues of fact and law) is binding on both the undertaking and the consumers entered in the register. After a declaratory judgment in favour of the consumers, an undertaking will probably be prepared to pay compensation voluntarily. If the undertaking does not pay voluntarily, the consumers entered in the register of applications can enforce their claims in court or out of court on the basis of the test-case declaratory judgment.

#### **b. Law on administrative offences**

Under the Act on Administrative Offences (*Gesetz über Ordnungswidrigkeiten*), fines of up to EUR 10 million can be imposed on undertakings if, for example, a member of an undertaking's management commits a criminal offence. This also applies to business-related human rights violations. A higher fine may be imposed if it also serves to cream off the economic advantage that the undertaking obtained from the offence.

The German Government's coalition agreement for the 19th legislative period makes provision for reform of the law governing penalties on undertakings. Implementation is in the preparatory stage.

#### **2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?**

German law on non-contractual liability does not contain any specific rules concerning gross violations of human rights. However, if a gross violation of human rights causes a violation of a legally protected individual right, general non-contractual liability may come into play. For example, under Section 823(1) of the Civil Code (*Bürgerliches Gesetzbuch*), a person who, intentionally or negligently, harms the life or limb, health, freedom, property or any other right of another person unlawfully is liable to pay damages. Where harm is caused to life or limb, health, freedom, property or any other right, it is not only the person who directly caused the harm who is liable, but also anyone who did not take the necessary and reasonable steps to prevent harm to third parties, if that person has created a source of risk (*Verkehrssicherungspflicht*).

Moreover, in the area of private environmental liability law, there are special strict liability offences for when legally protected rights of individuals are infringed, such as Section 1 et seq. of the Environmental Liability Act (*Umwelthaftungsgesetz*), Section 25 et seq. of the Atomic Energy Act (*Atomgesetz*), Section 32 et seq. of the Genetic Engineering Act (*Gentechnikgesetz*) and Section 89 of the Water Management Act (*Wasserhaushaltsgesetz*).

From the point of view of criminal law, gross violations of human rights are also covered by general criminal offences. Serious forms of labour exploitation are made punishable offences by, for example, Section 233 of the Criminal Code (*Strafgesetzbuch – StGB*) (trafficking of human beings for labour exploitation). In order to maintain decent living conditions, especially for future generations, the environment is also protected under criminal law. In this regard, the provisions of the Criminal Code (Section 324 et seq. StGB) include, as primary criminal law (*Kernstrafrecht*) in Germany, comprehensive protection of water, air and soil as essential elements of the environment. This fundamental protection is supplemented by various provisions of secondary criminal law (*Nebenstrafrecht*) and also provides protection for flora and fauna. At the same time, the extensive requirements of EU law are taken into account in order to be in keeping with environmental protection as a cross-border task.

#### **3. I am a victim of human right violations resulting from the activities of a European transnational corporation, which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU citizen or if I don't live in the EU? What are the conditions to claim violation of my rights? Where can I find any additional information?**

Anyone who considers that their rights have been infringed by the actions of a German undertaking can take legal action against that undertaking before the German civil courts. The court with jurisdiction is in principle the court in whose judicial district the defendant undertaking has its registered office. The registered office of an undertaking is the seat determined by its statutes, the place where it has its headquarters or principal place of business. This international jurisdiction of German courts is derived from Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast Brussels I Regulation). Further information on this regulation can be found [here](#).

If the defendant undertaking's registered office is not located in the European Union or in a contracting state to the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 30 October 2007, the international jurisdiction of German courts may derive from German rules of civil procedure, in particular the Code of Civil Procedure (*Zivilprozessordnung – ZPO*). For example, under Section 32 ZPO, a case may be brought before a German court if at least part of the tort/delict was committed in Germany. An action is deemed to have been committed both at the place where the person causing the damage acted (*Handlungsort*) and at the place where the legally protected right of the person sustaining the damage was infringed (*Erfolgsort*). These jurisdictions also apply to actions brought by non-EU citizens who are not resident in the European Union.

The national legal order with jurisdiction for claims arising from a tort/delict is determined by Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II Regulation). It provides that normally the applicable law is the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur (Article 4(1) of the Rome II Regulation). Further information on the applicable law can be found [here](#).

Further information can be found [here](#).

**4. Can Ombudsman Institutions, equality bodies or National Human Rights institutions support victims of business related human rights violations committed by European transnational corporations outside the European Union? Do I have access to the courts in your country if I am not an EU citizen or if I don't live in the EU? Are there other public services (such as a labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?**

Germany's National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) acts as an out-of-court complaints body. It is based in the Federal Ministry of Economics and Energy and has the task of promoting awareness and effective implementation of the OECD Guidelines. Anyone who can plausibly demonstrate a legitimate interest is able to lodge a complaint with the NCP regarding possible infringements of the OECD Guidelines by a multinational enterprise. The NCP examines the complaints received and, if they are accepted, offers its support to the parties involved in the matter in the form of a conciliation or mediation procedure in order to help them reach agreement on contentious issues. The NCP is responsible for, amongst other things, complaints regarding insufficient respect for human rights and insufficient consideration of human rights in the exercise of corporate due diligence, as defined in the OECD Guidelines. The revised 2011 version of the OECD Guidelines, which include specific recommendations with regard to respect for human rights by undertakings, is expressly based on the United Nations Guiding Principles on Business and Human Rights.

The NCP coordinates its activities and decisions in consultation with the Interministerial Committee (IMC) for the OECD Guidelines. Seven further Federal Ministries are represented in this IMC. The Working Group on the OECD Guidelines provides a further forum for exchange. The members of the Working Group include, in addition to representatives of all the Federal Ministries brought together in the IMC for the OECD Guidelines, representatives of business associations, trade unions and non-governmental organisations.

Further information on the complaint procedure before the NCP (including information on complaints received and the action taken on them) is available online on the website of the German NCP, which can be found [here](#).

**5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in responsible for supervising the establishment of these complaint mechanisms or mediation services? Are there public reports available providing information on the functioning of these systems?**

In the '2016-2020 National Action Plan for Business and Human Rights' (NAP), the Federal Government laid down the expectation that all undertakings are to appropriately integrate human rights due diligence processes into their business activities in Germany and around the world, i.e. also outside the EU. This expectation is not a legal provision. The NAP defines human rights due diligence on the basis of five core elements, one of which is the setting up of a complaint mechanism by undertakings.

In that context, the NAP stresses the important role that non-governmental complaint mechanisms can play and encourages enterprises to participate in or set up such mechanisms. The NAP imposes a number of requirements on the setting up and functioning of non-governmental complaint mechanisms. For example, the complaint mechanism should be structured differently according to the target group. When setting up new mechanisms and making use of existing ones, care should be taken to ensure that they guarantee a fair, balanced and predictable procedure that is accessible to anyone who is potentially affected. The procedure should allow for as much transparency as possible vis-à-vis the parties involved and should be in line with international human rights standards. A number of German undertakings have already set up internal or sectoral complaint mechanisms to enable their employees and people outside the undertaking to claim human rights violations.

The Federal Government is scrutinising the implementation status of human rights due diligence by undertakings by means of a survey conducted annually from 2018 to 2020 in accordance with scientific standards. This survey will provide empirical findings on whether enterprises with more than 500 employees have set up complaint mechanisms and whether those mechanisms are fulfilling their function. The results of the NAP monitoring are also important for the Federal Government's discussion on follow-up measures to the current NAP. If the NAP monitoring shows that fewer than 50% of the undertakings concerned meet the NAP requirements in relation to corporate due diligence, the Federal Government will, according to the NAP, consider taking further steps, including legislative measures. The coalition agreement of the current Federal Government also stipulates that, depending on the outcome of a comprehensive and effective review of the NAP, the Federal Government may take legislative action and lend its support to EU-wide regulation.

The members of the multi-stakeholder Partnership for Sustainable Textiles attach great importance to ensuring effective complaint mechanisms along global value and supply chains. For this reason, information and examples of best practice from various members are exchanged within the framework of the complaint mechanisms expert group. Furthermore, the textiles Partnership has entered into cooperation with the Fair Wear Foundation, which is active in the area of complaint mechanisms in seven textile-producing countries.

German development cooperation is currently supporting projects to improve working conditions in the textile sector in Bangladesh, Myanmar and Pakistan. The activities under the projects also include the development and implementation of strategies for effective complaint mechanisms.

As part of the human rights approach of the Federal Ministry of Economic Cooperation and Development, the governmental organisations implementing Germany's development cooperation initiatives have introduced complaint mechanisms: Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ), as a state-owned undertaking, and KfW Entwicklungsbank as promotional bank and public-law institution, have been setting up human rights complaint mechanisms since 2013. They were followed in 2017 by two higher federal authorities: the Federal Institute for Geosciences and Natural Resources (Bundesanstalt für Geowissenschaften und Rohstoffe – BGR) and the National Metrology Institute (Physikalisch-Technische Bundesanstalt – PTB).

The complaint mechanisms are publicly accessible and also deal with complaints relating to activities outside the European Union. On request, the GIZ, KfW, BGF and PTB provide the Ministry with information on complaints received.

Deutsche Investitions- und Entwicklungsgesellschaft mbH (DEG), a subsidiary of KfW, also set up its own complaint mechanism in 2014.

The following out-of-court dispute resolution mechanisms are available in Germany (for procedures before the National Contact Point for the OECD Guidelines for Multinational Enterprises, see Question 4):

In mediation proceedings, a third party is called in solely for the purpose of mediating in the dispute; he or she does not have any decision-making power. Mediation is an easily accessible conflict resolution method that is not in principle associated with a specific area. It can therefore be applied in all areas in which conflicts may arise.

Germany also offers the possibility of dispute resolution, in which a third party presents the parties with a (non-binding) proposal for a decision. A special form of dispute resolution for consumer contracts is governed by the Act on alternative dispute resolution in consumer matters (*Gesetz über die alternative Streitbeilegung in Verbrauchersachen* – VSBG). This act provides consumers with a convenient and free method of dispute resolution; it also provides undertakings with a mechanism for handling consumer complaints in a way that improves their image and helps to avoid litigation.

There is also the possibility of recourse to (out-of-court) arbitration, if the parties agree to it.

Further information on the possibilities for mediation can be found [here](#).

**6. Do I have specific rights if I am a vulnerable victim seeking remedy for business related human rights violations? Can I have access to legal aid and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?**

German law on civil procedure contains various mechanisms to facilitate access to German civil courts. For example, claimants can apply for legal aid if they cannot afford to pay the costs of the proceedings (Section 114 et seq. ZPO). After the claimant's personal and financial circumstances and the prospects of success of the case have been examined, the court costs and lawyers' fees are covered in part or in full depending on the claimant's need, provided that the action does not appear to be vexatious. Foreign natural persons can also apply for legal aid for court actions in Germany. Legal persons with a registered office in the EU – e.g. victims' associations – can receive legal aid under the conditions laid down in the German Code of Civil Procedure. Directive 2002/8/EC aims to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. Last update: 28/07/2020

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## **Business and human rights - Greece**

### **1. What kind of judicial protection do I have in your country as a victim of business-related human rights violations? Does this protection include compensation?**

In accordance with Article 8 of [Law 4443/2016](#), «1. In the case of failure to comply with the principle of equal treatment in the context of administrative action, in addition to judicial protection, injured parties are also provided protection under Articles 24 to 27 of the Code of Administrative Procedure ([Law 2690/1999](#), Series I, No 45). 2. The termination of the relationship in the context of which the violation was committed does not rule out protection from the violation of the principle of equal treatment. 3. Legal entities, associations or organisations, including social partners and trade unions, which aim – *inter alia* – to ensure compliance with the principle of equal treatment irrespective of race, colour, national or ethnic origin, descent, religious or other convictions, disability or chronic illness, age, family or social status, sexual orientation, gender identity or gender characteristics, may represent injured parties before the courts and before any administrative authority or body, provided that the party concerned has previously given consent by means of a notarial document, where required, or a private document, with authentication of the signature affixed thereto'.

Furthermore, pursuant to Article 11 entitled 'Penalties' of the same law, «1. Any person who, when selling goods or providing services, violates the prohibition under this law of discrimination based on race, colour, national or ethnic origin, descent, religious or other convictions, disability or chronic illness, age, family or social status, sexual orientation, gender identity or gender characteristics, is punished by a term of imprisonment between six (6) months and three (3) years and a fine between one thousand (1 000) and five thousand (5 000) euros. The acts referred to in this paragraph are prosecuted ex officio. 2. Any discrimination – in contravention of the provisions of this Part – based on race, colour, national or ethnic origin, descent, religious or other convictions, disability or chronic illness, age, family or social status, sexual orientation, gender identity or gender characteristics, by a person acting as an employer at any stage of access to labour and employment, upon the entry into or refusal to enter into an employment relationship, or during the term, validity, progress or termination thereof, constitutes a violation of labour law, in which case the Greek Labour Inspectorate (SEPE) imposes administrative penalties under Article 24 of Law 3996/2011 (Series I, [No 170](#))'.

Lastly, in the case of violation of the principle of equal treatment based on race, colour, national or ethnic origin, descent, religious or other convictions, disability or chronic illness, age, family or social status, sexual orientation, gender identity or gender characteristics, the opposing party or administrative authority bears the burden of proving to the court that there were no circumstances constituting a violation of this principle. The injured party is also protected against dismissal or adverse treatment in general in reaction to a complaint or request for legal protection.

### **2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitation?**

Based on Article 78(i) of [Law 4052/2012](#) 'particularly exploitative working conditions are working conditions, including those resulting from gender-based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers, and which, for example, affects workers' health and safety, and which offends against human dignity'. In accordance with Article 89(3), 'in the case of illegal employment of an unaccompanied minor who is a third-country national, the competent public prosecution service takes all necessary steps to determine their identity and nationality, and to establish if they are unaccompanied. It makes every possible effort to promptly locate their family and immediately takes the necessary measures to ensure their legal representation and, if required, their representation in criminal proceedings. The competent public prosecutor for minors or, where there is none, the competent public prosecutor at the Court of First Instance may – if the minor's family has not been located or if the public prosecutor finds that under the current circumstances repatriation does not serve the minor's interests – order that every appropriate measure be taken to ensure protection of the minor until a decision is issued by the court, to which the public prosecutor must submit a request within thirty days, on the appointment of a guardian, in accordance with the provisions of Articles 1532, 1534 and 1592 of the Civil Code. 4. Suitable living conditions are afforded to these persons if they lack adequate resources and if it is deemed necessary by the competent public prosecutor at the Court of First Instance. 5. The competent public prosecution services, judicial authorities and police authorities have the responsibility, as a matter of priority, to protect and safeguard the aforementioned victims, in accordance with the relevant provisions, to provide translation and interpreting services to these persons if they do not speak Greek, to inform them of their legal rights and of the services available to them, and of any necessary legal aid available to them'.

### **3. I am a victim of a human rights violation resulting from activities of a European transnational corporation which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU-citizen or I don't live in the EU? What are the requirements for me to claim violation of my rights? Where can I find any additional information?**

This possibility is not available.

### **4. Can Ombudsman Institutions, equality bodies or national human rights institutions support victims of business-related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU-citizen or I don't live in the EU? Are there other public services (such as labour or environmental inspectorates) in your country that can investigate my case? Where can I find information about my rights?**

This possibility is not available.

### **5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in charge of monitoring of these activities in your country? Are there public reports available providing information on the functioning of the system?**

Greece does not impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities.

### **6. Do I have specific rights if I am a vulnerable victim seeking remedy for human rights violations where businesses are involved? Can I have access to legal aid and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU-citizen or I don't live in the EU?**

Based on Article 78(i) of [Law 4052/2012](#) 'particularly exploitative working conditions are working conditions, including those resulting from gender-based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers, and which, for example,

affects workers' health and safety, and which offends against human dignity'. In accordance with Article 89(3), 'in the case of illegal employment of an unaccompanied minor who is a third-country national, the competent public prosecution service takes all necessary steps to determine their identity and nationality, and to establish if they are unaccompanied. It makes every possible effort to promptly locate their family and immediately takes the necessary measures to ensure their legal representation and, if required, their representation in criminal proceedings. The competent public prosecutor for minors or, where there is none, the competent public prosecutor at the Court of First Instance, may – if the minor's family has not been located or if the public prosecutor finds that under the current circumstances repatriation does not serve the minor's interests – order that every appropriate measure be taken to ensure protection of the minor until a decision is issued by the court, to which the public prosecutor must submit a request within thirty days, on the appointment of a guardian, in accordance with the provisions of Articles 1532, 1534 and 1592 of the Civil Code. 4. Suitable living conditions are afforded to these persons if they lack adequate resources and if it is deemed necessary by the competent first instance public prosecutor. 5. The competent public prosecution services, judicial authorities and police authorities have the responsibility, as a matter of priority, to protect and safeguard the aforementioned victims, in accordance with the relevant provisions, to provide translation and interpreting services to these persons if they do not speak Greek, to inform them of their legal rights and of the services available to them, and of any necessary legal aid available to them'.

The provisions of [Law 3226/2004](#) allow for legal aid to be made available to low-income citizens of EU Member States, as well as to low-income third-country nationals and stateless persons if they are legally domiciled or habitually resident in the EU. Legal aid cannot be provided to third-country nationals and stateless persons if they are not legally domiciled or habitually resident in the EU.

The provision of legal aid means exemption from the obligation to pay part or all of the expenses for the proceedings and, if specifically requested, the appointment of a lawyer, notary and bailiff, under orders to defend the beneficiary, represent them in court and provide them with the assistance needed in order for the necessary actions to be carried out.

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## Business and human rights - Spain

### 1. What kind of judicial protection do I have in your country as a victim of business related human rights violations? Does this protection include compensation?

In Spain, access to judicial redress for human rights violations is available before civil, criminal, administrative and labour courts.

The Law on Civil Procedure (*Ley de Enjuiciamiento Civil*) sets out the obligation to provide certain entitlements; legal rights and circumstances; precautionary measures, and all other types of protection expressly provided for by the law that can affect this kind of abuse.

The Law on Criminal Procedure (*Ley de Enjuiciamiento Criminal*) sets out the judicial mechanisms and remedies that can be used during criminal proceedings. The Criminal Code (*Código Penal*) specifically provides for the criminal liability of legal persons (Article 31 bis *et seq.*) and sets out various crimes that may involve business-related human rights abuses, such as crimes against workers' rights or against public health, environmental crimes, terrorist financing, and so on.

In relation to administrative measures, Law 39/2015 of 1 October 2015 on the common administrative procedure applicable to public administrations and Law 40/2015 of 1 October 2015 on the legal system applicable to the public sector lay down general rules on the disciplinary procedures and State liability of government bodies. These rules are implemented by specific laws on business-related abuses (for example, Law 26/2007 of 23 October 2007 on environmental liability). The remedies set out in Law 29/1998 of 13 July 1998 on administrative judicial review apply in judicial proceedings.

In the sphere of labour, Law 36/2011 of 10 October 2011 regulating the labour courts sets out the judicial procedure applicable to cases where a worker or trade union alleges violations of the right to freedom of association, the right to strike or other fundamental rights and public freedoms, including the prohibition of discriminatory treatment and harassment.

Spanish procedural law establishes the means of redress available for the purpose of obtaining compensation in cases where the actions of a corporation have led to a human rights violation. Article 116 of the Law on Criminal Procedure and Article 116 of the Criminal Code provide that a person who is criminally responsible for a crime is also civilly liable for the crime if the latter results in damage or injury. In the case of legal persons, their criminal liability entails civil liability under the provisions established, jointly and severally with the natural persons sentenced for the same offences.

### 2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?

Yes, the Spanish Criminal Code sets out the human rights violations that constitute criminal offences.

In the sphere of environment, the Criminal Code has a section on 'crimes related to land-use and urban planning, the protection of historical heritage and the environment'. The section criminalises various types of conduct: construction in green zones or areas of ecological interest (Article 319), the emission and transport of waste, discharge, noise, mining or quarrying and so on that may cause substantial harm to air, soil or water quality, or to animals or plants (Articles 325 *et seq.*). These acts are punishable by prison sentences, fines or debarment from certain professions or public offices. The Criminal Code also gives judges and courts the power to order the adoption, at the perpetrator's expense, of the measures necessary to restore the ecological balance disturbed by the act, along with any other precautionary measure required to protect the assets safeguarded by the aforementioned section (Article 339).

Crimes against workers are regulated by Title XV of Book II of the Criminal Code (Articles 311 to 318 of the Criminal Code). The following are punishable by fines or prison sentences: imposition of working conditions or forms of Social Security affiliation that harm, withdraw or restrict workers' rights as recognised in legal provisions, collective agreements or individual contracts (Article 311); simultaneous employment of various workers without registering them with the appropriate Social Security scheme, or without obtaining the relevant work permit (Article 311), or the employment of third-country nationals or children without a work permit (Article 311 bis); illegal trafficking of workers, or recruitment by deception or under false pretences (Article 312); deception, simulating an employment contract to encourage a person to emigrate (Article 313); serious discrimination in public or private employment against any person based on their ideology, religion or beliefs, ethnicity, race or nation of origin, sex, sexual orientation, family circumstances, illness or disability, status as a legal representative or trade union official, relations with other workers in the company, or use of any official language within the Spanish state (Article 314); restriction of freedom of association and the right to strike (Article 315); violation of occupational risk prevention standards, endangering workers' lives, health or physical integrity (Article 316).

If the crime is committed by a legal person, the punishment applies to the directors or persons in charge of the service and also to those persons who had knowledge of the crime and could have taken remedial action but failed to do so.

### 3. I am a victim of human right violations resulting from activities of a European transnational corporation which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU citizen or if I don't live in the EU? What are the conditions to claim violation of my rights? Where can I find any additional information?



Organic Law 6/1985 of 1 July 1985 on the judiciary contains rules that determine the necessary link between a particular act and Spain to establish the jurisdiction of Spanish courts.

In civil and commercial matters, the said law provides that Spanish courts are competent to hear all claims made on Spanish territory in accordance with the provisions of the international treaties and conventions to which Spain is party, European Union regulations and Spanish law (Article 21). Where the claimant does not live in Spain, the Spanish courts have jurisdiction in the following cases (Article 22 quinquies):

In matters of contractual obligations, where the obligation to which the claim relates has been fulfilled or must be fulfilled in Spain.

In matters of extra-contractual obligations, where the harmful act took place on Spanish territory.

In claims related to the activity of a commercial branch, agency or establishment, where it lies on Spanish territory.

In matters relating to contracts entered into by consumers, they can file a claim in Spain if their usual place of residence or that of the other party is on Spanish territory. The other party can only file a claim in Spain if the consumer's usual place of residence is on Spanish territory.

In criminal law, courts can hear cases concerning crimes and offences committed on Spanish territory or on board Spanish vessels or aircraft, without prejudice to the provisions of international treaties to which Spain is a party. Spanish courts also have jurisdiction over crimes committed outside national territory where those held criminally responsible are Spanish or third-country nationals who acquired Spanish nationality subsequent to perpetration of the offence, subject to certain requirements (Article 23).

In labour matters, the Spanish courts have jurisdiction in the following cases (Article 25):

1.º In the sphere of the rights and obligations deriving from employment contracts, where the services have been rendered in Spain or the contract was signed on Spanish territory; when the claimant is domiciled in Spain or has an agency, branch, delegation or any other type of representation in Spain; when the worker and the employer are Spanish nationals, regardless of where the services were rendered or contract signed; in the case of contracts for employment on board ships where the contract derives from an offer received in Spain by a Spanish worker.

2.º In the sphere of reviewing compliance with the law of collective labour agreements signed in Spain and of claims deriving from collective labour disputes taking place on Spanish territory.

3.º In social security claims made against Spanish entities or entities that have their registered address, agency, delegation or any other representation in Spain.

**4. Can Ombudsman Institutions, equality bodies or National Human Rights institutions support victims of business related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen or I don't live in the EU? Are there other public services (such as labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?**

In Spain, the Ombudsman (*Defensor del Pueblo*) is the Office of the High Commissioner of the Spanish Parliament (*Alto Comisionado de las Cortes Generales*), responsible for defending the fundamental rights and public freedoms of citizens by supervising the activity of Spanish government bodies.

Any citizen can request the Ombudsman to take action (which is free of charge) to investigate any alleged irregular act by Spanish government bodies or their agents. The Ombudsman can also intervene of its own motion in cases that come to its knowledge even if no complaint has been made. However, its powers do not extend to the activity of multinational corporations outside the European Union.

The Ombudsman reports to the Spanish Parliament by means of an annual report, and can also publish dedicated reports on matters it considers serious, urgent, or worthy of special attention.

More information on this can be found [here](#).

Labour inspection in Spain is the responsibility of the Labour and Social Security Inspectorate (*Inspección de Trabajo y Seguridad Social*), which reports to the Ministry of Labour, Migration and Social Security (*Ministerio de Trabajo, Migraciones y Seguridad Social*). The administrative powers vested in the Labour and Social Security Inspectorate enable it to monitor compliance with labour regulations and impose the relevant responsibilities, provide advice, and engage in conciliation, mediation and arbitration in labour matters where appropriate.

Anyone who becomes aware of acts that might constitute an infringement in matters falling within the remit of the labour inspectorate (issues related to labour, occupational health and safety, social security, employment, and so on) can call on its services. Complaints can be raised in person (at provincial Labour and Social Security inspectorates); electronically, via the website of the Ministry of Labour, Migration and Social Security; or by post.

More information [here](#).

Environmental inspections are the responsibility of Spain's regional governments, which take action when required to punish conduct that constitutes an infringement in this sphere. Law 26/2007 of 23 October 2007 on environmental liability establishes an obligation on the part of operators engaged in economic activities to remedy any damage caused to the environment. In cases where such activity constitutes a crime, the criminal law referred to in Answer 2 applies. In such cases, the rules set out above relating to compensation and civil liability claims also apply.

**5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in charge of monitoring of these activities in your country? Are there public reports available providing information on the functioning of the system?**

This kind of dispute cannot be resolved by the Spanish civil and commercial mediation system described in Law 5/2012 of 6 July 2012 on mediation in civil and commercial matters, since that regulation excludes from its scope disputes involving rights that are not disposable (Article 2).

The Decision of 1 September 2017 of the Secretariat of State for Foreign Affairs on the publication of the National Action Plan on Business and Human Rights (published in the Official State Gazette on 14 September 2017) is relevant in this respect. The Plan discusses the need to establish effective measures to protect human rights in the business world and regulate judicial, extra-judicial and administrative mechanisms to provide redress where such rights have been violated.

**6. Do I have specific rights if I am a vulnerable victim seeking remedy for business related human rights violations? Can I have access to legal aid and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?**

Article 119 of the Spanish Constitution recognises the right to legal aid where provided for by the law and in all cases where a claimant can prove that they have insufficient resources to take legal action. This constitutional right is implemented in Law 1/1996 of 10 January 1996 on free legal aid. Victims of human rights abuses committed by companies can benefit from legal aid provided their financial resources do not exceed the threshold set in Law 1/1996. This threshold was raised following the amendment of Law 1/1996 in 2015. It also takes into account certain personal circumstances of the applicant, such as family responsibilities, with the aim of increasing the potential number of beneficiaries of legal aid. The aid provided includes legal defence by professional legal representatives, legal assistance, and information from any available extra-judicial resource.

Law 1/1996 also regulates the granting of free legal aid in cross-border legal proceedings. Natural persons who are citizens of the European Union or third-country nationals legally resident in an EU Member State can benefit from the aid.

It is granted only in civil or commercial disputes, and in extra-judicial proceedings in civil or commercial disputes where the law obliges the parties to undertake the proceedings or the court in question chooses to embark on such proceedings.

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## **Business and human rights - Croatia**

### **1. What kind of judicial protection do I have in your country as a victim of business related human rights violations? Does this protection include compensation?**

Victims of human rights violations may seek judicial protection:

in civil proceedings, in which they may be awarded compensation for damages, either material or non-material (non-material in case of personality rights violations [1]);

in **criminal proceedings**, in which an injured party may lodge a claim for damages suffered as a result of the crime committed.

Article 1 of the Civil Procedure Act (*Zakon o parničnom postupku*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia) Nos 53/91, 91/92, 112/99, 129/00, 88/01, 117/03, 88/05, 2/07, 96/08, 84/08, 123/08, 57/11, 25/13, 89/14, and 70/19) provides for that Act to regulate the procedural rules under which courts hear and deliberate in proceedings concerning fundamental human and citizen rights and obligations, personal and family relations of citizens, as well as labour, commercial, property and other civil law proceedings, unless deliberating on some of these under the rules of some other procedure is laid down by law. Furthermore, Article 185 of the Civil Procedure Act provides for civil proceedings to be initiated by filing action.

**In employment-related proceedings, particularly when setting time limits and scheduling hearings, the court always pays special attention to the necessity of resolving employment disputes urgently.**

### **2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?**

Article 43 of the Criminal Procedure Act (*Zakon o kaznenom postupku*, NN Nos 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, and 126/19) provides a general catalogue of the rights of all victims of crime (the right to support services for victims of crime, the right to effective psychological and other expert assistance and support of the authorities, organisations or institutions providing assistance to victims of crime under the law, the right to protection from intimidation and retaliation, the right to protection of the victim's dignity while being interviewed as a witness, the right to be heard without undue delay after filing a criminal complaint, and the right for any further hearings to be carried out only to the extent necessary for criminal proceedings, the right to be accompanied by a trusted person during actions in which the victim is a participant, the right to have medical procedures kept to a minimum and carried out only where strictly necessary for the criminal proceedings, the right to file a motion for prosecution and private action under the provisions of the Criminal Code (*Kazneni zakon*), the right to participate in criminal proceedings as an injured party, the right to be informed of a dismissal of the criminal complaint and of the fact that the public prosecutor (*državni odvjetnik*) has desisted from criminal prosecution, and the right to take over criminal prosecution from the public prosecutor, the right to be notified by the public prosecutor of any actions taken on account of the victim's criminal complaint and to lodge a complaint with a higher public prosecutor, the right to be notified, upon request and without undue delay, of the suspension of the defendant's custody or pre-trial detention and escape, and of the convict's release from serving a prison sentence, as well as of any measures undertaken to protect the victim, the right to be informed, upon request, of any final decision terminating the criminal proceedings and other rights laid down by law).

Article 44 of the Criminal Procedure Act lays down special rights of the victims of human trafficking (which may be committed for the purpose of exploiting someone's work through forced labour or servitude) who, in addition to the rights provided for in Article 43 of the Act, are also entitled to free consultation before being interviewed and to a free representative at the state's expense; to be questioned at the police or the public prosecutor's office (*državno odvjetništvo*) by a person of the same sex, and, if possible, by that same person if the interview is repeated; to not reply to questions that are not related to the crime and concern the victim's private life; to request to be interviewed by audio-visual means; to personal data protection; and to request the exclusion of the public from the proceedings.

Article 43a [of the Criminal Procedure Act] and the Rules on the methods of individual victim assessment (*Pravilnik o načinu provedbe pojedinačne procjene žrtve*, NN No 106/17, hereinafter: the Rules) lay down the procedure of individual victim assessment to determine the need for special protective measures in relation to the victim of a crime, and if such need is found to be necessary, to determine which special protective measures (including procedural protective measures, such as special questioning methods, the use of communication technologies to avoid visual contact with the perpetrator, the exclusion of the public from the proceedings, the questioning by a person of the same sex and, if possible, by that same person if the interview is repeated, being accompanied by a trusted person, personal data protection) should be applied, facilitating free consultation at the state's expense, and other measures provided under the law). The fact that serious crimes include, but are not limited to, *inter alia*, human trafficking and organised crime is taken into account, so they include environmental crimes if committed as part of a criminal association.

The protection of the rights of victims in the Republic of Croatia is guaranteed by criminal justice legislation, as well as by the Croatian Constitution (*Ustav Republike Hrvatske*), and their observance is guaranteed by national courts. Once all legal remedies available at the national level have been exhausted, victims may initiate proceedings before the European Court of Human Rights in Strasbourg as a last resort if they believe that one of their fundamental rights guaranteed by the European Convention on Human Rights has been violated at the national level.

### **3. I am a victim of human rights violations resulting from activities of a European transnational corporation which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU-citizen or I don't live in the EU? What are the conditions to claim violation of my rights? Where can I find any additional information?**

Under Article 27 of the Civil Procedure Act, Croatian courts have jurisdiction to adjudicate in disputes with an international dimensions when such jurisdiction is explicitly laid down by law or by an international treaty.

With regard to jurisdiction in civil and commercial matters, the Private International Law Act (*Zakon o međunarodnom privatnom pravu*, NN No 101/17) expressly provides for the application of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter: the Brussels I Regulation) within its scope and extends its application to situations concerning third countries.

According to the basic rule on jurisdiction of the Brussels I Regulation included in Article 4, persons domiciled in a Member State, whatever their nationality, are to be sued in the courts of their domicile. Article 63 provides for the domicile of legal persons to be their statutory seat, central administration or principal place of business.

Situations in which a defendant may be sued in a Member State other than that in which they are domiciled are set out in Articles 7-9 (special jurisdiction).

Therefore, jurisdiction in non-contractual relations is regulated by Article 7(2), determining that a person domiciled in a Member State may be sued in another Member State in matters relating to tort, delict or quasi-delict, in the courts of the place where a harmful event has occurred or might occur.

Furthermore, Article 58 of the Private International Law Act provides for the necessary jurisdiction as follows: If the application of the provisions of that Act or other Croatian laws or international treaties in force in Croatia does not confer jurisdiction with regard to a defendant domiciled in a non-EU Member State,

and if the proceedings cannot be or cannot reasonably be expected to be conducted abroad, Croatian courts have jurisdiction where the subject matter of the proceedings has a sufficient connection with Croatia to make it appropriate to conduct the proceedings in Croatia.

**4. Can Ombudsman Institutions, equality bodies or National Human Rights institutions support victims of business related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen and I don't live in the EU? Are there other public services (such as labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?**

Under the Ombudsman Act (*Zakon o pučkom pravobranitelju*), the Croatian ombudsman is responsible for considering only the complaints about existing violations of laws and irregularities in the work of national authorities, local and regional self-government units and legal persons with public authority, which consequently means that an investigation of complaints related to violations of laws in the private sector is not allowed. Moreover, under Article 20, anyone who believes that their constitutional or legal rights and freedoms to be threatened or violated as a result of unlawful or irregular conduct by these authorities may bring an action before a competent court. Consequently, a person wishing to lodge a complaint with the Office of the Ombudsman (*Ured pučkog pravobranitelja*) does not have to be an EU citizen, but a precondition for the Ombudsman to address the complaint is that one (or more) of the authorities have committed a human rights violation. However, since the Office of the Ombudsman in Croatia often receives complaints related to the private sector, citizens' experiences and complaints are used both in annual reports and through participation in legal proceedings to advocate for specific measures, without which it would not be possible to achieve a higher degree of law enforcement and citizen protection.

On the other hand, the Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*) is applicable to the conduct of all national authorities, local and regional self-government units, legal persons with public authority, and to the conduct of all legal and natural persons, especially in the areas of labour and working conditions, access to self-employment and dependent activities, including selection criteria, as well as conditions for recruitment and promotion; access to all types of vocational guidance, professional training, and retraining; education, science and sports; social security, including social welfare; pension and health insurance; judiciary and administration, public information and the media; access to and provision of goods and services; membership of and activities in trade unions, civil society organisations, political parties or any other type of organisation, and participation in cultural and artistic creation.

Furthermore, the Office of the Ombudsman, as the central anti-discrimination authority, receives reports by all natural and legal persons and examines individual reports, so it may issue legally non-binding recommendations, opinions, proposals and warnings to address discrimination and protect the rights of the person discriminated against. It may also take part in judicial proceedings as an intervener on the part of the person complaining of discrimination, or may bring a joint legal action for protection against discrimination if it proves the probability that the defendant's conduct has violated the right to equal treatment of a large number of persons because of their connection to the rights and values recognised by the Act (race or ethnicity, skin colour, sex, language, religion, political or other belief, national or social background, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity or expression, or sexual orientation). Also, the person authorised to lodge a complaint of discrimination with the Ombudsman does not have to be an EU citizen.

The new [Whistle Blower Protection Act](#) (*Zakon o zaštiti prijavitelja nepravilnosti*), in force since 1 July 2019, provides for whistle blowers to contact the Ombudsman seeking protection of their rights if a whistle blower shows the probability that they are or might be a victim of harmful events for reporting irregularities. Under that Act, a person wishing to lodge a complaint does not have to be an EU citizen, and the Ombudsman may take action to protect the whistle blower coming from the public or the private sector (Note: the Act defines the 'whistle blower' as *a person who is aware of and has reported irregularities related to the performance of work for the employer, for example violations of laws, regulations, rules, codes of ethics or conduct, or internal acts of companies*). It should be emphasised that the performance of work, in addition to employment, also includes volunteer work, work based on temporary service contracts, student jobs, etc. Also, a whistle blower may be a person who participated in recruitment procedures as a candidate. In addition, as part of responsible business conduct – that is, the protection of human rights, especially labour rights, and environmental protection, the Republic of Croatia, as an acceding country to the OECD Investment Committee, as an impartial supervisory working body, is required to implement the following guidelines: providing information on responsible business conduct on the website; processing queries; mediation in resolving problems resulting from possible irresponsible business conduct and communication with stakeholders to avoid litigation.

Furthermore, Croatia has established a State Inspectorate (*Državni inspektorat*), comprising competent divisions and services (such as the Occupational Safety and Health Supervision Division and the Employment Supervision Division).

More information regarding the scope of work and competences of the State Inspectorate or the abovementioned sectors/divisions can be found at the following links:

[📄 Contacts](#)

[📄 Occupational Safety and Health Supervision Division](#)

[📄 Employment Supervision Division](#)

**5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in charge of monitoring these activities in your country? Are there public reports available providing information on the functioning of the system?**

Croatia does not impose any mandatory mediation schemes addressing business-related human rights violations. For consumer disputes between consumers and traders, mediation is regulated by the Act on Alternative Consumer Dispute Resolution (*Zakon o alternativnom rješavanju potrošačkih sporova*, NN Nos 121/16 and 32/19) transposing EU directives and regulation on consumer dispute resolution. For human rights protection issues and other rights-related disputes, mediation can be proposed before one of the mediation centres in Croatia, where a dispute can be settled based on the interests of the parties.

Please consult relevant subpages to find more information on:

[Mediation in Member States](#)

[Find a mediator](#)

[📄 Alternative consumer dispute resolution](#)

[📄 Mediation centres](#)

Under the Consumer Protection Act (*Zakon o zaštiti potrošača*), the trader is required to provide the consumer with an opportunity to submit a written complaint by post, fax or e-mail.

Under the State Inspectorate Act (*Zakon o državnom inspektoratu*), petitions including the details of the reporting person (name, surname and home address) and indicating conduct which is contrary to regulations may be used as a basis for inspection.

For employees of multinational companies, the Labour Act (*Zakon o radu*) requires an employer with at least twenty employees must appoint a person who is, along with the employer, tasked with receiving and resolving complaints related to the protection of the workers' dignity.

These activities are monitored by the [📄 State Inspectorate](#).

**6. Do I have specific rights if I am a vulnerable victim seeking remedy for business-related human rights violations? Can I have access to legal aid, and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?**

A victim seeking remedy for a business-related human rights violation has the same rights as other victims in criminal proceedings. Please consult the European e-Justice Portal to find more information:

[Rights of victims of crime in criminal proceedings](#)

[Compensation to victims of crime](#)

Under the Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*), the right to free legal aid is granted to:

Croatian citizens;

children who are not Croatian nationals but find themselves in Croatia unaccompanied by an adult responsible by law;

foreigners with temporary residence subject to reciprocity, and foreigners with permanent residence;

foreigners under temporary protection;

foreigners residing illegally and foreigners on a short stay, in the proceedings deciding on expulsion or return;

asylum seekers, persons with asylum status and foreigners with subsidiary protection status and their family members residing legally in Croatia, in the proceedings in which legal assistance is not provided to them under a special law.

The Free Legal Aid Act (NN Nos 143/13 and 98/19) regulates the conditions and the procedure in which less-advantaged persons may exercise their right to legal consultation and access to the courts and other public law bodies in civil and administrative matters.

The Free Legal Aid Act provides for the beneficiaries of free legal aid, other than Croatian citizens, to include:

children who are not Croatian nationals but find themselves in Croatia unaccompanied by an adult responsible by law;

foreigners with temporary residence subject to reciprocity, and foreigners with permanent residence;

foreigners under temporary protection;

foreigners residing illegally and foreigners on a short stay, in the proceedings deciding on expulsion or return;

asylum seekers, persons with asylum status and foreigners with subsidiary protection status and their family members residing legally in Croatia, in the proceedings in which legal assistance is not provided to them under a special law.

The beneficiaries of free legal aid may exercise the right to primary and/or secondary legal aid under the conditions laid down by law.

Primary legal aid covers general legal information, legal advice, submissions to public bodies, the European Court of Human Rights and international organisations in accordance with international treaties and internal rules of procedure, representation in proceedings before public bodies, and legal assistance in out-of-court dispute settlements. It is provided by administrative bodies in the counties and in the City of Zagreb (*Grad Zagreb*) by authorised associations and legal clinics, and it may be provided for any legal matter. The procedure for the exercise of primary legal aid is initiated by contacting directly a primary legal aid provider, which will determine in its discretion whether the requirements for primary legal aid have been met.

Secondary legal aid covers legal advice, submissions in the proceedings for the protection of workers' rights before the employer, submissions and representation in litigation, and legal assistance in amicable dispute settlement. Secondary legal aid is provided by attorneys. Secondary legal aid also covers exemption from payment of litigation costs and court fees.

For secondary legal aid to be granted in the form of submissions and representation in litigation and exemption from payment of court fees, the applicant's financial circumstances must meet the requirements laid down by the Free Legal Aid Act, namely that the total monthly income of the applicants and members of their household does not exceed the tax base amount per member (HRK 3,326.00) and that the total value of assets owned by the applicants and members of their household does not exceed 60 tax base amounts (HRK 199,560.00).

In addition to complying with the financial requirements, secondary legal aid needs to be applied for in one of the following types of procedures relating to:

rights *in rem*, except in land-registry proceedings;

employment relations;

family relations, except in proceedings regarding divorce by mutual consent if the spouses have no common or adopted underage children or children of age under their parental care;

enforcement and security proceedings regarding forced collection or securing of claims arising from the proceedings in which legal aid may be granted under the provisions of the Free Legal Aid Act;

amicable dispute settlement;

by way of exception, in all other administrative and civil judicial proceedings when such need arises from specific life circumstances of the applicants and their household members, in accordance with the fundamental purpose of the Free Legal Aid Act.

The procedure for the grant of secondary legal aid is initiated by applying to the competent administrative body of the county or of the City of Zagreb. The application is submitted in a standard form, including the consent of the applicants and their household members to the accessing of all data on their total income and assets and the applicant's confirmation that the information provided is accurate and complete.

In the procedure for the grant of secondary legal aid to an applicant who meets the legal requirements for exercising the right to secondary legal aid, the competent authority will issue a decision granting secondary legal aid, indicating the type and scope of the legal aid granted. The grant of secondary legal aid refers to full or partial security for the payment of secondary legal aid costs, depending on the amount of the total monthly income of the applicants and their household members. The decision granting secondary legal aid also specifies the lawyer who will provide secondary legal aid.

If the applicant does not meet the requirements for the grant of the right to secondary legal aid, a decision rejecting the application will be issued. The decision rejecting the application may be subject to appeal by the applicant to the Ministry of Justice (*Ministarstvo pravosuđa*). Administrative proceedings may be initiated against the decision of the Ministry of Justice rejecting the appeal.

If the beneficiary of free legal aid is the losing party, that is, unsuccessful in the proceedings for which secondary legal aid has been granted, they are not required to reimburse the costs of legal aid. However, its grant does not mean that the beneficiary of secondary legal aid who is the losing party will be exempt from payment of litigation costs incurred by the opposing party, which will be decided by the court in accordance with the rules governing judicial proceedings.

Free legal aid may also be granted in cross-border disputes. The Free Legal Aid Act defines cross-border disputes as those in which an applicant for legal aid is domiciled or resident in a Member State of the European Union, other than the Member State of the court, or the one in which the judicial decision is to be enforced.

Legal aid in cross-border disputes is granted in civil and commercial matters, mediation proceedings, out-of-court settlements, the enforcement of public instruments and legal advice in such proceedings. The provisions on legal aid in cross-border disputes do not apply in taxation, customs and other administrative proceedings.

Legal aid applicants in cross-border disputes will be granted legal aid if they meet the requirements set out in the Free Legal Aid Act. By way of exception, legal aid may be granted to applicants who do not meet the requirements for the grant of legal aid set out in the Free Legal Aid Act if they prove to be unable to pay the cost of the proceedings due to the incommensurate living costs in the Member State of domicile or habitual residence and living costs in Croatia. In Croatia, applicants or the competent authority of the Member State in which they are domiciled or habitually resident (transmitting authority) are to submit the application for legal aid to the Ministry of Justice (receiving authority). Forms and attached documents must be delivered in Croatian. Otherwise, the application will be rejected.

If a dispute in which the applicant requests legal aid is not a cross-border dispute or if the applicant is not entitled to legal aid in cross-border disputes, the Ministry of Justice will issue a decision rejecting the application. Appeals are not permitted against Ministry of Justice decisions, although administrative proceedings may be initiated.

Free legal aid may be granted to persons who are not resident in the European Union, subject to the provisions of bilateral and multilateral international agreements binding on Croatia.

For information on legal aid in Croatia please refer to the website:

[Legal aid](#)

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[1] Personality rights: the right to life, physical and mental health, reputation, honour, dignity, name, privacy of personal and family life, freedom, etc.

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## Business and human rights - Cyprus

### 1. What kind of judicial protection do I have in your country as a victim of business-related human rights violations? Does this protection include compensation?

Pursuant to the provisions of Law 174/1989 on Employer's Liability (Compulsory Insurance), as amended, employees who are victims of business-related human rights violations are entitled to compensation in the case of an accident in the workplace (death or bodily injury) caused by and during their employment, or in the case of an occupational disease caused by their work. That Law requires all employers to take out an insurance policy against liability for a work accident or occupational disease caused to any employee. This requirement also covers the employment of permanent residents in Cyprus, who are employed abroad and to whom an accident or occupational disease has been caused. The Law specifies the minimum coverage amount for each accident or occupational disease per employee (one hundred and sixty thousand euros, EUR 160 000 00), as well as for each case or series of cases resulting from the same operative event ( EUR 3 415 000 00), including expenses and interest.

In order to ensure the payment of compensation to an employee, which exceeds the compensation provided for under the Law, a relevant action must be lodged with the court.

During the performance of inspections at employer branches / businesses for checking their compliance with the legislation on safety and health at work, the inspectors from the Department of Labour Inspectorate also check if there is a document certifying compulsory employer's liability insurance.

### 2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitation?

See the answer to question 1 above.

### 3. I am a victim of a human rights violation resulting from activities of a European transnational corporation which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU-citizen or I don't live in the EU? What are the requirements for me to claim violation of my rights? Where can I find any additional information?

No, access is not provided. Based on the available information and data, as described in the question, there does not appear to be any connection to establish jurisdiction with the Cypriot courts.

### 4. Can Ombudsman Institutions, equality bodies or national human rights institutions support victims of business-related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU-citizen or I don't live in the EU? Are there other public services (such as labour or environmental inspectorates) in your country that can investigate my case? Where can I find information about my rights?

No. Third-country nationals who claim to be victims of human rights violations are afforded the corresponding protection by independent institutions, provided that the violation was committed in Cyprus.

### 5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in charge of monitoring of these activities in your country? Are there public reports available providing information on the functioning of the system?

Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes requires companies with online stores to provide information on the online dispute resolution platform on their websites.

### 6. Do I have specific rights if I am a vulnerable victim seeking remedy for human rights violations where businesses are involved? Can I have access to legal aid and under which conditions?

Access to legal aid is provided to every natural person whose human rights have been violated if the person resides in the territory of the Republic of Cyprus, regardless of whether they are a citizen of the Republic of Cyprus or an EU-citizen.

#### Which costs will be covered by the legal aid?

Legal aid is provided for:

access to a lawyer,

legal advice and

representation in court.

#### Do I have access to legal aid under the same conditions if I am not an EU-citizen or I don't live in the EU?

No.

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## Business and human rights - Malta

**1. What kind of judicial protection do I have in your country as a victim of business-related human rights violations? Does this protection include compensation?**

Any victim of human rights violations, whether those violations are business-related or not, has the right to take action in court to seek redress and compensation.

**2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitation?**

There are no specific rules for gross human rights violations. All cases involving human rights violations are dealt with in the same manner.

**3. I am a victim of human rights violation resulting from activities of a European transnational corporation which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU citizen and I don't live in the EU? What are the conditions to claim violation of my rights? Where can I find any additional information?**

The law is territorial. An individual must have recourse to private international law to determine the *lex fori*, provided there is no agreement between the parties that prevents the choice of applicable legislation.

**4. Can Ombudsman institutions, equality bodies or National Human Rights institutions support victims of business related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen and I don't live in the EU? Are there other public services (such as labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?**

The mandate of Malta's Ombudsman, in accordance with Article 64A of the Constitution and the articles of the Ombudsman Act, is 'to investigate actions taken by or on behalf of the Government, or by such other authority, body or person as may be provided by law (including an authority, body or office established by this Constitution), being actions taken in the exercise of their administrative functions'.

In accordance with Article 12(1) of the Ombudsman Act, the Ombudsman's jurisdiction is limited to investigating complaints concerning:

- '(a) the Government, including any government department or other authority of the Government, any Minister or Parliamentary Secretary, any public officer and any member or servant of an authority as aforesaid;
- (b) any statutory body, and any partnership or other body in which the Government or any one or more of the said bodies aforesaid or any combination thereof has a controlling interest or over which it has effective control, including any director, member, manager or other officer of such body or partnership or of its controlling body (hereinafter collectively referred to as organisation); and
- (c) local councils and any committee thereof, mayors, councillors and members of staff of all local councils.'

The Ombudsman has no specific and formal mandate to investigate cases involving violation of or threats to fundamental rights or to provide redress or promote or protect citizens' fundamental rights.

However, the functions set down in Article 22(1) of the Ombudsman Act are sufficiently broad as to permit that institution to become involved without restrictions in the area of human rights, by:

- investigating complaints that have a human rights element;
- drawing the attention of the authorities to threats to citizens' rights;
- in the event of a violation, contributing to resolving the situation by making recommendations to settle the issue fairly and effectively in order to avoid legal proceedings.

The Ombudsman's jurisdiction extends to all persons who consider that they have been aggrieved regardless of their nationality or origin, provided that person has a personal interest in the substance of the complaint. 'Person' here includes both natural and legal persons.

The authorities or institutions that are subject to the Ombudsman's jurisdiction are required to protect human rights and ensure the enforcement thereof. Consequently, although the Ombudsman's mandate is limited to the Public Authorities, it is possible to take into consideration situations where the victim of a business-related human-rights violation claims that their rights were violated because that public authority or institution failed to provide the person in question with the protection to which they were entitled.

The Ombudsman can investigate any case even if the person making the complaint is not an EU citizen or does not live in the EU, provided the substance of the complaint falls within the Ombudsman's jurisdiction. Moreover, if the substance of the complaint is subject to the jurisdiction of the Ombudsman or of another local or regulatory authority, legal protection is granted to all victims.

Consequently, the Ombudsman's jurisdiction does not depend on the substance of the case or on whether the aggrieved party lives in Malta, but on the alleged failure on the part of the authority that is subject to the Ombudsman's jurisdiction.

Concerning other public services (e.g. employment or environmental) in Malta, there are other public institutions, such as the Department of Industrial and Employment Relations, the Environment and Resources Authority, the Arbitrer for Financial Services and the National Commission for the Promotion of Equality. However, the National Commission for the Promotion of Equality, as the national equality body, may only investigate cases of discrimination and sexual harassment that occur in Malta.

**5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in charge of monitoring of these activities in your country? Are there public reports available providing information on the functioning of system?**

Malta does not impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from business activities. Mediation in Malta takes place in cases in the Family Court or proceedings before the Rent Regulation Board.

**6. Do I have specific rights if I am a vulnerable victim seeking remedy for business related human rights violations? Can I have access to legal aid and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?**

If you are a victim of a crime as specified in Cap 539, Article 2 of the Laws of Malta (Victims of Crime Act) or a victim of domestic violence as specified in Cap 581 of the Laws of Malta (Gender-Based Violence and Domestic Violence Act), you are entitled to legal aid. Once the Court issues an order granting legal aid, you will be eligible to receive legal counsel and to be represented in the Court. The Court costs and lawyer's fees will be covered. If you are not an EU citizen but have status in Malta, you will still be eligible for legal aid. If you are an EU citizen who lives outside the EU, you will still be eligible to be represented in Court in Malta and for legal aid.

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In the Slovak Republic, every person has the right to equal treatment when exercising their rights and to protection against discrimination. Businesses must respect the principle of equal treatment, not only in the provision of goods and services, but also in relation to employment, both for job seekers and employees themselves.

**1. What kind of judicial protection do I have in your country as a victim of business related human rights violations? Does this protection include compensation?**

One of the fundamental rights enshrined in the Constitution of the Slovak Republic is the **right to judicial protection, to pursue one's rights before independent courts, including the Constitutional Court**, or before another authority of the Slovak Republic, if the law so provides.

The right to judicial protection is exercised by means of an application to initiate proceedings. If there is a violation of or threat to a subjective right, the holder of that right, whether a natural person or a legal person, can exercise their right to judicial protection by applying to initiate proceedings, i.e. by bringing an action. Any natural or legal person is entitled to bring an action. The courts must consider any action.

It must be clear from the action **what the claimant is seeking, i.e. what form of order or remedy is sought**. In the form of order sought (the *petitum*), the claimant defines the case which the court is to hear and decide upon. The court cannot award anything other than what is sought in the form of order.

Depending on the results of the proceedings, the court may of course award less than that which the claimant is seeking; it can only award more where the law establishes a specific form of settlement between the parties or where the proceedings could have been initiated on the court's own motion.

The victim of a human rights violation in a commercial context therefore has the right to judicial protection, and when bringing the action they specify, in the form of order, the matter that is to be heard and decided on and the compensation that they are seeking as a claimant before the court.

In cases involving an unlawful interference with the honour, dignity, health or privacy of a natural person, their family life, etc., the injured person has the right to seek compensation for non-pecuniary damage in court. The amount of non-pecuniary damage is determined in monetary terms mainly with reference to:

the victim, their life up to that point and the environment in which they live and work;

the seriousness of the damage and the circumstances in which it occurred;

the seriousness of the consequences for the victim's private life;

the seriousness of the consequences for the victim's social standing.

**2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?**

The Labour Code prohibits discrimination in employment relationships, thereby directly requiring businesses to respect the principle of equal treatment in their pre-contractual and employment relationships. More detailed measures are provided by the Anti-Discrimination Act, which prohibits discrimination in employment and similar legal relationships on grounds of sex, religion or belief, race, nationality or ethnic group, disability, age, sexual orientation, marital status and family status, skin colour, language, political or other beliefs, national or social origin, property, gender or other status, or because of a report of crime or other anti-social activity.

Under the Occupational Safety and Health Act, businesses must supervise safe working conditions, buildings, roads, machinery and technical equipment, working procedures, work organisation, etc., in order to ensure health and safety at work.

The Constitution of the Slovak Republic provides that no-one may be sent for forced labour or forced service.

Offences involving serious violations of human rights, for example against freedom (such as human trafficking, restriction of personal liberty or restriction of freedom of residence), as well as offences involving a danger to the public and against the environment (e.g. illegal waste disposal, unauthorised discharging of pollutants, violations of water and air protection, unauthorised production and handling of ozone-depleting substances and others) are classified under the Criminal Code as crimes where there is criminal intent, for which this law provides for a maximum term of imprisonment of over five years. Criminal liability for such offences is borne by the perpetrators, who may be natural persons under the Criminal Code or legal persons under the Criminal Liability of Legal Persons Act and the Criminal Code.

It follows from the above that in cases of gross human rights violations, including environmental offences and severe labour exploitation, specific rules apply to the length of the sentence, which will be higher under the Criminal Code in the case of a crime than in the case of a misdemeanour.

**3. I am a victim of human right violations resulting from the activities of a European transnational corporation, which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU-citizen or if I don't live in the EU? What are the conditions to claim violation of my rights? Where can I find any additional information?**

In the case of international law disputes, it must be determined which court will consider and decide on the case, and it is also necessary to determine under which law the facts are to be determined. The Act on International Private and Procedural Law, the purpose of which is to determine which legal system governs civil, commercial, family, labour and other similar relationships with an international element, contains an International Procedural Law part laying down cases where the Slovak courts have jurisdiction, cases where the Slovak courts have exclusive jurisdiction and cases where the parties to the dispute are free to choose the option of a procedure before a Slovak court. It must be emphasised that the Slovak courts always follow Slovak procedural regulations, and if the Slovak judicial authority fails to establish the content of a foreign law within a reasonable period of time or if it would be difficult or impossible to establish the content of a foreign law, Slovak law will be used in the procedure.


In the situation in question, it is usually only the provisions of the Slovak Act on International Private and Procedural Law concerning choice of jurisdiction by mutual agreement that are applied, i.e. both parties to the dispute agree that the case will be heard before the Slovak courts. However, if a jurisdiction agreement would be beneficial to one party only, the party's right to apply to another court remains protected. In matters relating to employment contracts, insurance contracts and consumer contracts, jurisdiction agreements are valid only if they do not preclude the jurisdiction of the courts of the State in which the claimant resides or if they are concluded after the dispute arises.


For more information contact:

 [National Contact Point for Business and Human Rights \(Národné kontaktné miesto pre podnikanie a ľudské práva\)](#)

 [Ministry of Justice of the Slovak Republic](#)

**4. Can Ombudsman Institutions, equality bodies or National Human Rights institutions support victims of business related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU-citizen or I don't live in the EU? Are there other public services (such as a labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?**

The  [Public Defender of Human Rights \(Ombudsman\)](#) is provided for in the Slovak Constitution. The Slovak Ombudsman is appointed by the National Council of the Slovak Republic and may be approached by natural and legal persons if they believe that their fundamental rights or freedoms have been violated by an action, decision or omission of a public authority. This means that a person who does not live in Slovakia or whose rights and freedoms have not been violated by Slovak public authorities may ask the Slovak Ombudsman for advice, but the Ombudsman will not have legal competence to deal with the issue or to act on the matter.

In Slovakia, the  [Slovak National Centre for Human Rights \(Slovenské národné stredisko pre ľudské práva\)](#) operates as the national institution for human rights and also as the national anti-discrimination body. The Centre's main task is to ensure respect for human rights and fundamental freedoms, including the principle of equal treatment in the Slovak Republic. It carries out a wide range of activities to fulfil its mission and provides various services in the field of

protecting and promoting human rights, whilst cooperating closely with international human rights organisations and institutions. In September 2018, the **Slovak National Centre for Human Rights established the National Contact Point for Business and Human Rights**. In accordance with the legislation governing the activities and functioning of the founding entity, it provides, among other things, legal advice on workplace discrimination (including free representation in legal proceedings) and consultation on the protection of human rights and fundamental freedoms to the widest possible extent – from gender equality issues to environmental protection **but only within Slovakia** (in compliance with the Civil Procedure Code, according to which the general court for a natural person is the court within whose territory the natural person lives, and in compliance with the Act on International Private and Procedural Law).

In the area of environmental protection, Slovakia has the **Slovak Environmental Inspectorate** (*Slovenská inšpekcia životného prostredia*) through which the Ministry of the Environment performs State supervision and imposes penalties on natural persons, businesses and other legal persons in accordance with the Act on the Protection of Nature and the Landscape, and the jurisdiction of which covers the **territory of the Slovak Republic, and therefore violations of this Act would have to take place within the territory of the Slovak Republic**.

The Act on Labour Inspections and on Unlawful Labour and Unlawful Employment regulates the **inspection of work in the territory of the Slovak Republic, which means that violations of this Act would have to take place within the territory of the Slovak Republic**.

**It follows from the above that if a person believes that their fundamental human rights and freedoms have been violated but they are not a citizen of a Member State of the European Union and they do not live in the territory of the European Union, they cannot seek effective legal protection from the national authorities that protect fundamental rights and freedoms in the Slovak Republic.**

**5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in charge of monitoring these activities in your country? Are there public reports available providing information on the functioning of these systems?**

**The Slovak Republic does not oblige European multinational corporations to set up complaint mechanisms**, as this obligation is imposed only on authorities of the State and the self-governing territorial units and other bodies of the Slovak Republic in accordance with the Complaints Act. As a Member State of the European Union, the Slovak Republic must implement European legislation.

In Slovakia, multinational companies can contact the National Contact Point for Business and Human Rights, which provides training, consultation and legal advice in this area.

**Mediation is a voluntary process** that serves to relieve the courts of disputes. In Slovakia, mediation is governed by the Mediation Act and provides for the extra-judicial settlement of disputes in the areas of civil law, family law and commercial obligations and employment relationships, as well as for cross-border disputes arising from similar legal relationships between entities resident or ordinarily resident in a Member State of the European Union. According to the Civil Procedure Code, the court should always seek to reach an amicable settlement. The court may propose that the parties reach settlement through mediation, but it cannot be ordered. Mediation requires the voluntary consent of and an active approach by the parties involved.

**6. Do I have specific rights if I am a vulnerable victim seeking remedy for business related human rights violations? Can I have access to legal aid and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU-citizen or I don't live in the EU?**

In Slovakia, the Victims of Crime Act provides the following definition of the term 'victim': particularly vulnerable victims (children, persons over 75 years of age, disabled persons, victims of human trafficking, organised crime, one of the crimes against human dignity, one of the terrorism crimes, victims of crimes of violence or threats of violence because of their sex, sexual orientation, nationality, race or ethnicity, religion or belief, victims of other crimes exposed to a higher risk of repeated victimisation based on an individual assessment of the victim and their personal characteristics, relationship to the perpetrator or dependence on the offender and the type or nature and circumstances of the offence) for the purposes of proceedings under Slovak law.

Law enforcement authorities (prosecutors and police), courts and entities providing assistance to victims must inform victims of their rights in a simple and understandable way. In particular, they will take account of difficulties in understanding or communicating arising from certain types of disability, linguistic knowledge or a victim's limited ability to express themselves. In criminal proceedings, victims will have the status of a party that reported an offence, an injured party or a witness and have the rights and obligations associated with their status under the Criminal Procedure Code. The law enforcement authorities, the courts and the entities providing assistance to victims carry out individual assessments of victims regarding the seriousness of the crime committed in order to determine whether the victim is particularly vulnerable, with a view to preventing repeated victimisation.

Victims are provided with legal assistance in the form of legal information and legal representation in criminal proceedings and civil proceedings and in claiming damages. Legal assistance is provided to victims by the Centre for Legal Assistance (*Centrum právnej pomoci*) under the conditions and within the scope laid down by the Act on Legal Assistance for Persons in Material Need. The Centre for Legal Assistance provides legal assistance to all natural persons involved in national disputes but, in cross-border disputes, only to natural persons resident or ordinarily resident in the territory of a Member State. Under the terms of an international treaty by which the Slovak Republic is bound or on the basis of a reciprocity declared by the Ministry of Justice of the Slovak Republic, legal assistance is also provided for the purpose of proceedings before a court in the Slovak Republic to nationals of a state which is a party to an international treaty or to persons ordinarily resident in the territory of such a state or to persons where the subject of proceedings in a court of the Slovak Republic is directly related to their previous habitual residence in the territory of the Slovak Republic. Representation by a lawyer (or solicitor) under the Legal Profession Act and the Trading Act is not excluded.

Those who are in material need (their income is less than 1.4 times the subsistence level (in Slovakia) or who are receiving benefits in material need (in Slovakia)), and where the dispute is not manifestly without merit and the value of the dispute exceeds the value of the minimum wage laid down by law, are entitled to free legal assistance from the Centre for Legal Assistance.

Applicants are eligible for legal assistance through the Centre for Legal Assistance with a contribution of 20% of the costs of legal representation if they simultaneously meet the following three conditions: the applicant's income exceeds 1.4 times the subsistence minimum (in Slovakia) and at the same time does not exceed 1.6 times that amount, and they cannot secure legal services with their assets, the dispute is not manifestly without merit, and the value of the dispute exceeds the value of the minimum wage laid down by law. The Centre always assesses compliance with these conditions prior to the provision of legal aid.

In other cases, the victims secure their own lawyer (or solicitor) at their own expense.

The protection of whistleblower rights constitutes a special group. The Whistleblowers Protection Act regulates the conditions for providing protection to persons in an employment relationship in connection with the reporting of crimes or other anti-social activities, the rights and obligations of persons when reporting anti-social activities, and the establishment, status and competence of the Office for the Protection of Whistleblowers (*Úrad na ochranu oznamovateľov protispoločenskej činnosti*).

Whistleblowers may request protection when reporting a serious anti-social activity which constitutes a criminal offence or during criminal proceedings. The request is made to a public prosecutor. If a request for whistleblower protection is made to another public authority, it is forwarded to a public prosecutor without delay. If the prosecutor finds that the whistleblower who requested protection has made a qualified notification, they shall provide protection



immediately. Special protection is provided for whistleblowers in order to prevent their victimisation so that the offender cannot victimise the whistleblower through threats, intimidation, coercion or abuses of power, or by taking revenge or otherwise influencing the physical or psychological integrity of the victim. In cases where the victim is complaining about discrimination, protection is provided under the Anti-Discrimination Act, according to which unjustified measures against a complainant are also regarded as a form of discrimination. In discrimination cases, the Slovak National Centre for Human Rights provides legal advice and may also represent the victim in legal proceedings.

It does not take account of the victim's nationality, but protection can be provided only to victims located within the territory of the Slovak Republic.

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## **Business and human rights - Scotland**

### **1. What kind of judicial protection do I have in your country as a victim of business-related human rights violations? Does this protection include compensation?**

The Scotland Act 1998 requires that all legislation passed by the Scottish Parliament and all acts of members of the Scottish Government be compatible with rights contained in the European Convention on Human Rights (ECHR). The Human Rights Act 1998 makes it unlawful for public authorities in Scotland to act incompatibly with the Convention rights. If human rights breaches do occur, the Scottish courts have the power to hear cases and provide remedies.

The Companies Act 2006 sets out the legal basis on which companies are formed and run. The Crown Office and Procurator Fiscal Service (COPFS) is able to initiate proceedings against Scottish businesses in Scottish courts where there is evidence that an offence has been committed.

The Human Trafficking and Exploitation (Scotland) Act 2015 consolidates and strengthens existing UK criminal law against human trafficking and exploitation, and enhances the status of and support for victims.

The Act contains provisions on the creation of a single offence of human trafficking for all types of exploitation of both adults and children; establishes statutory aggravators of human trafficking for use with other crimes; and reframes the previous standalone offence of slavery, servitude and forced or compulsory labour.

Section 4 of the 2015 Act provides for an offence of slavery, servitude and forced or compulsory labour, which must be interpreted in accordance with Article 4 of the ECHR.

Bodies corporate (for example a company), unincorporated associations and partnerships can be guilty of an offence of human trafficking or an offence under section 4 of the 2015 Act. Section 39 of the 2015 Act provides that relevant individuals within such a body (such as a director) can also be guilty of an offence described above.

As required by the 2015 Act, the Lord Advocate has published instructions for prosecutors about the prosecution of suspected or confirmed victims of the offence of human trafficking and the offence under section 4 (slavery, servitude and forced or compulsory labour). The COPFS continues to apply these instructions to ensure that victims are not prosecuted in relation to offences committed as a consequence thereof.

The Scottish Public Services Ombudsman (SPSO) has a wide remit. It is the final stage for complaints about most devolved public services in Scotland. The SPSO also provides an independent review service for the Scottish Welfare Fund, with the power to overturn and substitute decisions made by councils on Community Care and Crisis Grant applications. The SPSO has a very limited role in compensation. Outcomes are usually in the form of recommendations to the public services being complained about. The powers and duties are set out in the Scottish Public Services Ombudsman Act 2002.

Where an individual believes that their human rights have been breached, they may wish to seek independent legal advice.

### **2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?**

The Scottish Land Rights and Responsibilities Statement, published by the Scottish Government as required by the Land Reform (Scotland) Act 2016, sets out six principles to help shape policy around land issues in Scotland. The first of these principles is that: "The overall framework of land rights, responsibilities and public policies should promote, fulfil and respect relevant human rights in relation to land, contribute to public interest and wellbeing, and balance public and private interests. The framework should support sustainable economic development, protect and enhance the environment, help achieve social justice and build a fairer society."

The 2016 Act requires Scottish Ministers to regularly review the Statement and report to Parliament.

The response to question 1 contains information regarding human trafficking and exploitation.

### **3. I am a victim of human rights violations resulting from activities of a European transnational corporation which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU citizen or I don't live in the EU? What are the conditions to claim violation of my rights? Where can I find any additional information?**

The particular judicial remedies available for a breach of a human right will depend on whether the right is provided for by the common law or in statute.

Section 2 of the Human Trafficking and Exploitation (Scotland) Act 2015 provides for the application of the human trafficking offence to conduct in the United Kingdom and elsewhere, reflecting the fact that human trafficking activity may involve activity that is completely or partly outside Scotland.

The 2015 Act also provides that a UK national, a person who at the time of the offence was habitually resident in Scotland, or a body incorporated under the law of a part of the UK, commits an offence of human exploitation regardless of where the relevant action takes place. Whether or not a person is habitually resident in Scotland will be determined in the light of all the facts and circumstances of the case. Any other person commits the offence of human trafficking only if any part of the relevant action takes place in the UK or the relevant action is taken with a view to a person arriving in or entering into, departing from, or travelling within, the UK.

### **4. Can Ombudsman Institutions, equality bodies or National Human Rights institutions support victims of business related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen and I don't live in the EU? Are there other public services (such as a labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?**

The regulatory landscape for business in Scotland is similar in many ways to the rest of the UK and Europe, and a variety of regulators focus on business activities. Their enforcement powers are aimed towards sanctioning the business rather than supporting the victims, however mechanisms would be in place through the police and other government agencies if there is a criminal element related to the activity.

Scotland has two National Human Rights Institutions (NHRIs):

[Scottish Human Rights Commission \(SHRC\)](#)

[Equality and Human Rights Commission \(EHRC\)](#)

The SHRC and EHRC have a shared human rights remit and both play important, though different, roles in promoting and monitoring the implementation of internationally-recognised human rights at the national level. The respective powers of each Commission are described on their websites.

The Scottish Public Services Ombudsman (SPSO) deals with final stage complaints about most devolved public services in Scotland. The Ombudsman is an independent officeholder and, in the exercise of her functions, is not subject to the direction or control of any member of the Scottish Government or Scottish Parliament. The SPSO can consider alleged breaches of human rights as part of its consideration of a complaint. It is unlikely that a European transnational corporation would form one of the listed bodies the SPSO can receive complaints about. The SPSO can look into complaints about services delivered by the private or voluntary sectors if these are delivered on behalf of a body under its jurisdiction.

In addition, section 9 (4) and (5) of the Scottish Public Services Ombudsman Act 2002 covers who can make a complaint to the SPSO. They must be resident in the United Kingdom at the time the complaint was made, or the actions complained about must have taken place while the person was present in the United Kingdom.

**5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in charge of monitoring these activities in your country? Are there public reports available providing information on the functioning of the system?**

The UK has established a National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises, which are a set of recommendations for responsible business conduct covering, among other things, human rights. Part of the Department for International Trade, the UK NCP is responsible for raising awareness of the OECD Guidelines and for implementing the associated complaints mechanism. If a company is breaching the OECD Guidelines, a complaint may be made to the NCP by any interested party, and this includes its employees or their trade unions, and communities affected by the company's activities. The NCP seeks to mediate an agreement between the parties, but where this is not possible, a determination of whether the company has acted inconsistently with the Guidelines is published and made available for public dissemination. Information about making a complaint can be found on the [NCP website](#).

Other sources of advice and mediation services in the UK include [Citizens Advice Bureaux](#) and the [Advisory, Conciliation and Arbitration Service](#).

**6. Do I have specific rights if I am a vulnerable victim seeking remedy for business-related human rights violations? Can I have access to legal aid, and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?**

Publicly funded legal assistance allows people to take action to uphold their rights or pay for their defence when they could not otherwise afford to do so.

There is no requirement to be resident in Scotland when applying for legal assistance under the Legal Aid (Scotland) Act 1986. There are two types of civil legal assistance:

- i. Through advice and assistance, a solicitor can provide advice, make enquiries and correspond with others on behalf of a client. Advice and assistance is available for matters of Scots Law (including UK law that applies in Scotland) but generally cannot be used to progress matters in court.
- ii. Civil legal aid is available for proceedings before the Scottish courts.

Both types of civil legal assistance are subject to statutory eligibility criteria. Advice and assistance is available subject to financial eligibility criteria. The eligibility criteria for those accessing civil legal aid are consistent and transparent, with applications being subject to statutory tests. The first two tests are applied to the legal merits of the application. It must be shown that there is legal basis for the case for which legal aid is sought ('probable cause') and that it is reasonable to use public funds to support the case. The third test is applied to an applicant's financial circumstances.

More information can be found on the [Scottish Legal Aid Board website](#).

Section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015 empowers Scottish Ministers to specify the period during which adults must be provided with support and assistance, where there are reasonable grounds to believe that they are a victim of an offence of human trafficking and exploitation. Regulations that came into force on 1 April 2018 set this period of support at 90 days and include the provision of support and assistance in connection with (but not limited to):

- accommodation
- day to day living
- medical advice and treatment (including psychological assessment and treatment)
- language translation and interpretation
- counselling
- legal advice
- information about other services available to the adult
- repatriation

Section 10 of the 2015 Act contains powers for Scottish Ministers to make regulations about the support and assistance which may be provided to an adult who is, or appears to be, a victim of slavery, servitude and forced or compulsory labour. Regulations came into force on 1 April 2018 setting out that the process of determining whether an adult is a victim of such an offence; the support and assistance provided; and that the period for which it is provided should be identical to that for a victim of an offence of human trafficking and exploitation.

The Scottish Government has funding agreements in place with [Migrant Help](#) (which supports adult victims of trafficking and exploitation, other than female victims of trafficking for the purposes of commercial sexual exploitation) and the [Trafficking Awareness Raising Alliance](#) (which supports female victims of trafficking for the purposes of commercial sexual exploitation). [The Anchor Service](#), which is part of NHS Greater Glasgow and Clyde, is also funded to provide a psychological service to all adult victims of human trafficking and exploitation identified in Scotland.

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