

Constitutional Obligations of Corporations in Europe

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Human rights law and business

- Ruggie's Guiding Principles:
- 12. Business enterprises **should** respect human rights, which means to avoid infringing on the human rights of others and to address adverse human rights impacts they may cause or contribute to.



National legal orders

- Constitutional protections
- National legislation
- Case-law



Constitutional Obligations of Corporations

- Who are the duty bearers of human rights obligations ?
- Corporations as the duty-bearers of constitutional human rights obligations?
- Vertical v. horizontal application of human rights



Horizontal application I

- Horizontal application of constitutional human rights obligations between private actors ?
- Individual and collective nature of human dignity



Constitutional protections

- The International Commission of Jurists has found that “in a number of countries domestic constitutional or human rights provisions do in fact provide for a direct cause of action against a non-state actor, including companies or company officials, alleging that their conduct infringed a protected right”. ICJ, 2008, p. 7



Lüth case, BVerfGE 7, 198 (1 BvR 400/51), 15 January 1958

- The German Constitutional Court noted that the constitutional “system of values, centering on the freedom of the human being to develop in society, must apply as a constitutional axiom throughout the whole legal system: it must direct and inform legislation, administration and judicial decision. It naturally influences private law as well; no rule of private law may conflict with it.”



Horizontal Application II

- Applicability (direct and indirect application)
- Italy, Germany, Spain, Slovenia, Switzerland, Ireland, Poland, Hungary, France and Portugal
- Direct effect of constitutional rights ?



Impact of European Court of Human Rights

- Positive obligations
- State obligations to protect Convention's Rights
- Obligations of conduct



Opinion of A.G. Trstenjak in *Dominguez* (C-282/10) [2012] 2 C.M.L.R. 14.

- 119. The theory that private individuals are bound by fundamental rights as general principles would be supported, not least of all, by the principle of effectiveness (*effet utile*) in EU law and the coherence of the EU legal order. EU law could be helped to become more effective in many areas by the horizontal effect of fundamental rights.



The nature of corporate obligations

- Corporate obligations to respect, protect, fulfill right to human rights?
- Positive v. Negative obligations ?
- Obligations of conduct v. obligations of result?
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Dilemmas

- Extraterritorial application of constitutional obligations of corporations?
- Nature of corporate human rights obligations ?
- Negative v. positive constitutional obligations of corporations?
- Direct effect ?
- Added value of constitutional obligations ?

