

January 23, 2014

Decision

This is a partial decision after case handling step 1; initial assessment.

The complainant

ctr.

The subject of the complaint

The Mediation and Complaints-Handling Institution for Responsible Business Conduct (NCP) received the complaint on December 6, 2013.

The specific circumstances of the case

The complaint regards a matter of whether or not the subject of the complaint, which is a Danish company, through a business relation (a company in Israel) has violated the OECD Guidelines by contributing to gross violations of international law and human rights in Israel. This has been done through the Israeli company's contracts with the Israeli penitentiary as regards the sales of products and services to prisons in Israel as well as the Israeli company's cooperation with private customers in Israel.

The complainant, who is a private person, finds that the subject of the complaint:

- Has not demonstrated the necessary level of due diligence as regards the conditions in the Israeli prisons in which the company conducts its work.
- Has not registered or complained about the violations in the prisons in relation to its work.
- By its cooperation takes part in legitimising the violations and supports a conduct where these can continue, and

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- Violates international law and human rights by cooperating with companies and other private customers in Israeli settlements

In the complaint there are made references to the OECD Guidelines chapter IV on Human Rights, para. 5 and 6, and the commentary to article 5.

The complainant informs:

The complainant informs that subject of the complaint through a company in Israel has contracts with the Israeli penitentiary as regards the sales of products and services in a number of designated prisons in Israel. The complainant informs that in the prisons in question there are Palestinian prisoners who have been transferred from the Palestinian West Bank.

In the complaint it is described that in the prisons there are prisoners who are administratively imprisoned. It is described how it is permitted to detain prisoners indefinitely without presenting evidence in a public trial. According to the NGO Addameer, 178 Palestinians are at present administratively imprisoned.

It is also described that there is documentation on imprisonment of children is taking place at the prisons in question. According to the NGO Addameer, 193 children are at present imprisoned in Israeli prisons.

Finally, it is described that a number of human rights organizations have documented methods resembling torture on the prisoners, for example violence, sleep deprivation and threats. It is described in the complaint that human rights organizations claim that torture in Israeli prisons has led to two cases of deaths in 2013.

Furthermore, the complainant informs that the subject of the complaint through the company in Israel has contracts with private companies, chains of companies and private customers as regards the sales of products and services in the Israeli settlements on the Palestinian West Banks.

The complainant encloses documentation in the form of mail correspondence with the subject of the complaint, an article as well as links to several reports and articles from amongst other the UN and a number of NGOs.

The Danish NCP's initial assessment (case handling step 1):

The Danish NCP handles cases regarding violations of the OECD Guidelines for Multinational Enterprises which have either taken place in Denmark or deals with a private Danish company or the company's business relations, cf. section 3, para. 1 in Danish Act on a Mediation and Complaints-Handling Institution for Responsible Business Conduct. A Danish private company is a company which is domiciled in Denmark, cf. section 3, para. 2 in the Danish Act on a Mediation and Complaints-Handling Institution for Responsible Business Conduct.

The complaint concerns circumstances in Israel and the alleged violations have therefore not been committed in Denmark. The subject of the complaint is part of a global group where the parent company is domiciled in Great Britain. The company in Israel is a subsidiary of the parent company in Great Britain.

The subject of the complaint is a Danish company which exclusively operates within Danish borders and therefore neither has activities in Israel nor in the Palestine areas.

On the basis of the existing information, it is concluded that the subject of the complaint is not supplier, sub-supplier, purchaser, business partner or parent company to the company in Israel. Thus, the Danish company cannot be directly linked with the company and its business activities, products or services and is therefore not considered as the company's business relation as defined in section 3, para. 4 in the Danish Act on a Mediation and Complaints-Handling Institution for Responsible Business Conduct.

On this basis the subject of the complaint is not considered to be the right juridical entity in the global group to complain about, cf. section 3, para. 1 in the Danish Act on a Mediation and Complaints-Handling Institution for Responsible Business Conduct. The complaint should be directed at the parent company in Great Britain and/or the company in Israel.

On this basis the Danish NCP rejects the complaint with reference to section 3, para. 1 in the Danish Act on a Mediation and Complaints-Handling Institution for Responsible Business Conduct.

The complaint complies with the other formal requirements of the initial assessment.

The Danish NCP has subsequently undertaken an assessment of which national contact point who most suitably could handle the complaint.

According to the OECD Guidelines for Multinational Enterprises, the OECD-countries are obliged to establish a National Contact Point (NCP) which should ensure compliance with the guidelines.

According to the OECD Guidelines, the NCP in the country where the complaint is received should contact the NCP where the violation has taken place in order to ensure that the complaint is handled effectively. If several NCPs are involved, these should mutually agree on the handling of the complaint, cf. the OECD Guidelines, commentary 23 and 24 to the chapter on procedural guidance.

Therefore the Danish NCP has entered into dialogue with the British and Israeli NCPs and on this basis assessed that the British NCP is the appropriate NCP to handle the complaint, due to the fact that:

- The parent company is domiciled in Great Britain.
- The parent company has the majority of shares in the company in Israel.
- The parent company determines human rights- and CSR-standards in the subsidiaries.

The Danish NCP's explanation and conclusion:

On the basis of the information available, it is concluded that the subject of the complaint is not supplier, sub-supplier, purchaser, business partner or parent company of the company in Israel. Thus, the Danish company cannot be directly linked with the company and its business activities, products or services and is therefore not considered as the company's business relation in accordance with section 3, para. 4 in Danish Act on a Mediation and Complaints-Handling Institution for Responsible Business Conduct.

On this basis the Danish NCP dismisses the complaint against the subject of the complaint with reference to section 3, para. 1 of the Danish Act on a Mediation and Complaints-Handling Institution for Responsible Business Conduct.

With the rejection, the complainant has been advised to file a complaint to the British NCP which is considered to be the appropriate NCP to handle the case.

On behalf of the Mediation and Complaints-Handling Institution for Responsible Business Conduct (NCP).

Mads Øvlisen
Chairman