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Are companies in Ukraine ready to make human rights part of their corporate culture: a conversation with Darya Nagaivska

Olena Uvarova: Hello, dear listeners. I'm happy to make today's podcast with Daria Nagaivska, my friend, business and human rights expert, research fellow at the Aalto University School of Business, UNDP Project Expert on the business and human rights, and a member of the International Laboratory of Business and Human Rights at the Yaroslav Mudryi National Law University. Hi, Dasha.

Daria Nagaivska: Hi, Olena. I'm so glad. Thank you once again for the invitation.

Foreign business and Ukrainian business: different sense of context

Olena Uvarova: Thank you for accepting it, because, let's be honest, few people in Ukraine and in the region are ready to talk about human rights in the context of business, let alone about what happens in reality, what kind of challenges actually exist. This topic is practical, yet we have another focus, such as the rule of law and corporate actors, and basically, business environment and the rule of law strengthen the call for the business and human rights or, conversely, issues with the rule of law weaken this call. I guess we'll try to discuss this too, but my first question would be about your own experience of dealing with business and human rights and, actually, how willing Ukrainian businesses are to incorporate, so to say, human rights, based on your feelings and your own experience.

Daria Nagaivska: To answer this question, I would consider different groups of businesses, because it's a given that practices of international companies operating in Ukraine, practices of national Ukrainian companies and those of small and medium-sized businesses would be different. Talking about foreign companies whose head offices are located in the US or the EU countries, they would certainly incorporate the policies, practices, procedures that comply with the laws of these countries. Such companies would try to operate according to those standards in Ukraine as well, but at the same time they are unlikely to suggest any innovations, I mean, unfortunately, we can't usually expect such initiatives to support human rights from Ukrainian offices of foreign companies. First of all, such companies pay attention to public demand, and here we can talk about the right to operate, I mean the matter of image or reputation would be a cornerstone for a company to be able to continue its operations in a particular country. And accordingly, when a society shows the demand for gender



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equality, LGBTQ+ support, for instance, these companies will implement initiatives in these areas. At times of a full-scale war, it might be humanitarian aid programmes.

So, when we talk about companies with Ukrainian capital working in Ukraine and exporting their products to foreign countries, such companies would tend to focus more on humanitarian aid-related issues. Now we can see them showing more initiative in implementing certain policies or procedures that aren't covered by any guidelines provided by, like, government, or international organisations, or development partners, or civil society organisations. I mean, these companies tend to be more responsive to public demand, to the context they're operating in, plus they need much less time to make decisions. That's when we compare them with foreign companies operating in Ukraine.

As for small and medium-sized businesses, such entities often simply don't have enough money to implement any extra initiatives, especially during a full-scale war. They often don't even have a company lawyer, they usually outsource these services. Another challenge might be that a company might actually be doing something, its management might actually opt for a socially responsible approach, but the company doesn't know how to communicate it so we might not have enough information about it. International companies that operate in Ukraine, in contrast, are very good at communicating what they do, even if it's something insignificant.

Human rights are not taken seriously

Olena Uvarova: Thanks, it's very interesting. It's a really curious point, by the way, that national businesses make decisions faster and sense the context better, and are somewhat more creative in their approaches to policy-making or implementation of certain practices. That's what I saw from several years of my own communication with companies not only in Ukraine, but in the whole, let's call it post-Soviet region, but I really don't know what you think of such labels. I still don't know how to call our region in principle, because 'post-Soviet' is also a stigma of sorts, but anyway. Businesses often say it like "we're not ready to implement it for real, maybe formally, for a tick, but not for real, because we're operating in a very complicated environment." Like unexpected regulation (it's not just Ukraine I'm talking about), considerable pressure from controlling bodies, high level of corruption and so on. I mean, we can't compare the conditions, under which businesses are operating in the region, with those of mature democracies. From your experience of discussing human rights with companies, how much are they affected by this environment as regards the rule of law?

Daria Nagaivska: I think they are. Of course, when looking at company surveys, we can see that pressure from controlling bodies, corruption and unexpected regulation are the top three problems faced by businesses. Communicating with private businesses is very difficult right now because a lot of them have lost their production capacities, they have no adequate support for business growth from the government at the moment. The money coming to Ukraine have no clear transparent criteria about how such assistance and support should be provided. And here I'd like to draw your attention to the fact that regulation depends on us, voters, and the corruption issue depends on us too. It's also about how we communicate, how we can protect our rights, whether we apply to controlling bodies when there are signs of corruption. I mean, there are certain systems that should ensure protection of human rights and we can influence what's going on. So, it's the context we're shaping as well. Of course, it's a very complex issue, unfortunately. We can see how the pressure from controlling bodies intensifies, despite the challenges of the ongoing full-scale war. At the same time, there are business associations that protect businesses while holding capacity building trainings and sessions to ensure sustainable development, for instance. What I'm talking about is that we can't choose between the

matters of economic growth and the matters of respect of human rights by businesses along this line. It's exactly about responsible business development, about responsible rebuilding and reconstruction, economic recovery. And the cornerstone to me in this context is what we must do to raise awareness of the issues related to business and human rights, advocating that construction, transport and logistics companies are likely to be the most active ones during the recovery period. But those companies, Ukrainian and Polish alike, often don't prepare financial reports, no such reports being published on their corporate websites, they're closed for such dialogue, and from what we see, they hardly implement any initiatives to support vulnerable group and don't engage in a dialogue with representatives of vulnerable groups or local communities. We do know the cases when construction has already started, then people start protesting, but the company alleges they've carried out some consultations on paper. It's yet another indication of the challenges we face when talking about the progress of democratic society and reconciliation mechanisms.

The dilemma of voluntary or mandatory standards of responsible business conduct

Olena Uvarova: Then to continue what you just said, as you may know about this dilemma in the business and human rights, I mean, whether it should be some voluntary steps or mandatory controls. Basically, we see this trend that mandatory controls are being introduced increasingly, but it should also be admitted that such controls are introduced in the countries that have already passed the phase of calls for voluntary actions. In this context, I have a question I don't know an answer to. By and large, Ukraine had not yet experienced the phase of promoting voluntary compliance with the Guiding Principles on Business and Human Rights. The initiatives that have been implemented were no government's initiatives, so they had a limited impact, they were implemented more in academic environment or civil society environment. But now we're facing these recovery-related challenges. So, do we have to skip the phase of encouraging voluntary implementation of the Guiding Principles in the face of these challenges or the government should anyway impose some sort of mandatory control in the recovery context? More specifically, who will get this funding for reconstruction, for instance, for the agricultural sector and other sectors that will be prioritized for the reconstruction? What do you think?

Daria Nagaivska: Yes, I guess the responsible business attitude requirements can be among the criteria for granting financial support. And among the criteria for choosing a company to build an investment portfolio, when talking about investors. I mean, I don't see any willingness right now to adopt some dedicated legislation, for instance. Such initiatives can provoke much resistance from businesses, among others, that are suffering from the full-scale war. I guess we do need such a phase of voluntary encouragement of companies, awareness raising and support. Civil society organisations may be involved here to provide advisory support on what the Guiding Principles on Business and Human Rights actually mean, what due diligence is in business and human rights, how to ensure that a company is not involved in escalation of the armed conflict and has no adverse effect on the conflict and its parties. I mean, I'm totally in for such soft actions to take place as well, and we certainly do remember about the EU Directive and we're aware that the companies operating in this market need to comply with the EU law.

Small and medium-sized business: is it capable of demonstrating the "classical components" of corporate respect for human rights?

Olena Uvarova: Thanks a lot. But what to do with the imbalance you mentioned at the very beginning in terms of small and medium-sized businesses? How can they be included in the competition? If responsible attitude is one of the criteria, but we admit that small and medium-sized businesses lack resources to comply with certain criteria.

Daria Nagaivska: Small and medium-sized businesses are often included in supply chains, value chains of large companies that have much more resources. So, when we, for example, evaluate large companies' activities in the area of business and human rights, we often assess if a company informs its suppliers about certain criteria, certain requirements in securing responsible business attitude, if it offers trainings to its suppliers, information support, probably some assistance in reporting or in designing the criteria. I mean, I'd rather consider it a two-way process in the sense that large companies assume responsibility for their work with supply chain actors, value chain actors, plus there are civil society organisations, international partners that can help small and medium-sized businesses meet those requirements. Plus, when we talk about small and medium-sized businesses, many of them actually meet those requirements, despite rarely being able to communicate it. I mean, especially when it comes to micro and small businesses, they know it based on the Code of Ethics or leadership's moral code, they understand everything, and it's not some extra burden for them. Even more so about labour rights, as they're fully included in Ukrainian laws. Well, of course, some extra things need to be done but most of those fall under the requirements of Ukrainian law that all the companies need to meet, regardless of their size, even individual entrepreneurs and self-employed people. There's still a certain framework that businesses operate within.

Does the oligarchic past influence the responsible present?

Olena Uvarova: Indeed, thanks a lot. There's another ethical dilemma I've got and I used to ask Anita Ramasastry about it, but she answered like an international expert anyway. Basically, she said that it wasn't a question for international experts. It's more of a question for Ukrainian experts, or rather, it's up to Ukrainian society itself. The question is about companies with so-called oligarchic past. We all know such companies still exist, which is basically okay, I guess, and of course they're going to bid for some roles in the country's reconstruction. Even now, at wartime, they play an important role by providing humanitarian aid, implementing other relevant initiatives and so on. But do we have to take their oligarchic past into account when assessing these companies in terms of human rights if they don't admit their prior adverse impact?

Daria Nagaivska: I'm constantly thinking about this question as well in the sense that such companies are mostly ranked as the most profitable ones. They'll definitely be among the top ranked ones. Or, at least when I studied the situation in Ukraine and Poland, such companies are always more profitable. Such companies also have the greatest impact on the country's socioeconomic progress, because they pay taxes and usually create most jobs. Plus their impact on the environment, whether beneficial or adverse, would be the greatest too. And some of such enterprises can be city-forming, like it was before. I mean, people who live in a certain settlement won't have any sources of income if such a company closes.

And that is a real dilemma. How we identify this oligarchic past is a totally different question though. To me, it has this aspect of judgement. We're talking about business, and earning a lot is a good thing in business. It's a sort of commonly acceptable framework. Now we say that money should be earned in a responsible way, at least considering companies' effect on environmental and social performance. The crux here is that the biggest companies can ensure fast results. I mean, if we set ourselves a goal to recover in five years, then it seems more efficient to have this plan implemented by several large companies or even one company. It sounds like something from our Soviet past, but it's really much more difficult to coordinate a system of, say, fifty small, medium-sized and large businesses in different regions of Ukraine as compared to one company that has multiple offices across the country. The crux here is which criterion should be primary.

We can't opt for a large business with such a dubious past, having possible adverse impact on human rights and environment, as a key partner. Of course, that's why the procedure of due diligence needs to be followed when concluding such contracts, with the decision on whether to conclude the contract or not being informed by analysing information on human rights violations. In a nutshell, I think the solution is to make the procedure of human rights due diligence mandatory for the companies bidding for such contracts. If a company passes this procedure, then the contract can be awarded, if not, then no. Naturally, it's also a question of independence of the experts and advisors involved in such assessment.

Olena Uvarova: Yes, how to make sure the experts and advisors are independent is yet another question. Because if they currently are or used to be contracted by such a company, will they ever be able to act as watchdogs, so to say? I mean it may be another separate dilemma or a part of the existing one, especially in the context of business and human rights. That's an eternal question to me as well, whether the same expert organization, or the same individual, can combine the roles of a business critic, let's say, and a supervisor of a business for human rights compliance, while consulting such a business and helping it design policies and so on. Perhaps, appropriate frameworks and regulations should line up here as well to ensure independence in this sense.

Well, I'm grateful for today's discussion, which turned out really interesting. Despite the two of us having been discussing a lot of issues out of the public as well, I heard a lot of new and interesting things today. Thank you, Daria.