

Artículo de investigación**Agrarian business and human rights: International and national level****АГРАРНИЙ БІЗНЕС І ПРАВА ЛЮДИНИ: МІЖНАРОДНИЙ ТА НАЦІОНАЛЬНИЙ РІВЕНЬ**

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The article is devoted to the study of the current state of international and national human rights protection in the context of agricultural business. Methodologically, these issues are related to the tendencies of anthropologization, greening, and socialization of international and national law, which have become a logical response to the challenges of the contradictory process of economic globalization and have raised the relevance of business and human rights issues in their legal context. Under the influence of international and European law and in line with the concept of sustainable development and the practice of interaction between the state, business, and society (public-private partnership), the idea of social responsibility of business, including agribusiness, is spreading. The main acts of global international regulation of business and human rights are identified, among which the Guiding Principles for Business and Human Rights: The Implementation of the UN Framework Concept for Protection, Compliance, and Protection (2011, the so-called Ruggie Principles), which play a special role. This document was the first to establish the obligation of the state to guarantee human rights in the field of business; the obligation of companies to respect human rights; the obligation of organizations to provide access to appeal mechanisms if rights are violated. The role of internationally established standards of corporate

Анотація

Наукова стаття присвячена дослідженню сучасного стану міжнародного та національного забезпечення прав людини у контексті діяльності аграрного бізнесу. Методологічно дана проблематика пов'язана із тенденціями антропологізації, екологізації та соціалізації міжнародного та національного права, що стали логічною відповіддю на виклики суперечливого процесу економічної глобалізації та підвищили актуальність проблематики бізнесу та прав людини у їх правовому контексті. Під впливом міжнародного та європейського права та в руслі концепції сталого розвитку та практики взаємодії держави, бізнесу та суспільства (публічно-приватного партнерства) набуває свого поширення ідея соціальної відповідальності бізнесу, зокрема і агробізнесу. Визначено основні акти глобального міжнародного регулювання питань бізнесу та прав людини, серед яких особливу роль відіграють Керівні принципи підприємницької діяльності в сфері прав людини: здійснення Рамкової концепції ООН "Захист, дотримання і засоби захисту" (2011, так звані «Принципи Раггі»), які вперше встановили обов'язок держави гарантувати права людини у сфері бізнесу; обов'язок компаній поважати права людини; обов'язок організацій надання доступу до механізмів

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social responsibility is emphasized. The European experience of implementation of international human rights standards in the field of business is considered and the European Union plays an active role in the implementation of these Guiding Principles in the national legislation of both EU Member States and Partner Countries. The state of national legislation in the field of agribusiness and human rights is analyzed, the practice of its application is investigated and the features of social responsibility of agribusiness at the present stage are determined.

It is emphasized that the most effective implementation of the proclaimed international human rights standards requires greater cooperation between the state, business, and civil society. It is concluded that by their legal nature the overwhelming majority of agribusiness and human rights instruments are soft law acts since one of the trends in the development of international regulation of business responsibility in the field of human rights is the request (especially by civil society concerned with this issue) for tougher legal regulation. The basic directions of improvement of the legislative basis of public-private partnership in the sphere of realization of the concept of social responsibility of agrarian business and increase of activity of the state in introduction and development of the latter are offered.

Keywords: Human rights, agrarian business, international law, national law, economic globalization, business activity, social responsibility of business.

Introduction

In the last few decades, the development of the economy and law has been under the influence of globalization, one of the consequences of which was the increasing relevance of human rights issues. It should be noted that “international bodies that monitor the implementation of basic human rights treaties have collected overwhelming evidence that peasants' rights around the world are being violated more than other groups of people. This applies above all to the defining rights of peasants, such as land rights, labor and social protection, decent income, food sovereignty,

оскарження, якщо права порушені. Підкреслено роль встановлених на міжнародному рівні стандартів соціальної відповідальності бізнесу. Розглянуто європейський досвід впровадження міжнародних стандартів прав людини у сфері бізнесу та визначено, що Європейський Союз відіграє активну роль у імплементації зазначених Керівних Принципів у національне законодавство як країн-членів ЄС, так і країн-партнерів. Проаналізовано стан національного законодавства в сфері агробізнесу та прав людини, досліджено практику його застосування та визначено особливості соціальної відповідальності агробізнесу на сучасному етапі. Підкреслено, що для найбільш ефективної реалізації проголошених міжнародних стандартів у сфері прав людини необхідним є посилення співпраці між державою, бізнесом та громадянським суспільством. Зроблено висновок, що за своєю правовою природою переважна більшість актів у сфері агробізнесу та прав людини є актами soft law, позаяк однією із тенденцій розвитку міжнародного регулювання відповідальності бізнесу в сфері прав людини є запит (особливо з боку громадянського суспільства, яке опікується даним питанням) на більш «жорстке» правове регулювання. Запропоновано основні напрями вдосконалення законодавчого підґрунтя публічно-приватного партнерства в сфері реалізації концепції соціальної відповідальності аграрного бізнесу та підвищення активності держави у запровадженні та розвитку останньої.

Ключові слова: права людини, аграрний бізнес, міжнародне право, національне право, економічна глобалізація, підприємницька діяльність, соціальна відповідальність бізнесу.

and collective rights of rural communities” (Borodina, Prokopa, & Strizhak, 2018).

The number of cases involving human rights abuses by businesses in international and national courts is increasing. Over the past five years, there has been a growing understanding of the indissoluble link between human rights and business, Justin Nolan concludes. The Economist survey of 853 senior corporate executives in 2014 found that 83% of respondents agreed that human rights were a matter for both business and government. So for some companies, the formulation of the

question has changed from "Are we responsible for solving human rights issues?" to "How do we do it, at what cost, and with whom do we work together to solve existing problems?" (Nolan, 2017).

Thus, the problems of agribusiness and human rights are methodologically linked to the trends of anthropologization, greening and socialization of international and national law, which have become a logical answer to the challenges of the contradictory process of economic globalization and actualized the problems of business and human rights in their legal context. In this context, under the influence of international and European law and in line with the concept of sustainable development and increasing relevance of the practice of interaction between the state, business and society. The «father» of this idea of social responsibility of business are Howard R. Bowen (USA) with his work «Social Responsibility of the businessman» (2013). The impact of globalization and integration processes on the agrarian business leads to a more active movement of foreign capital, on the one hand, and the entry of Ukrainian producers into foreign markets, on the other.

As defined by the international organizations Schwab Foundation for Social Entrepreneurship (Switzerland), Skoll Foundation (USA) and Ashoka Foundation (India), social entrepreneurship is an innovative entrepreneurial activity for social transformation in society and communities (Mazurok, 2015).

Moreover, the Confederation of Employers of Ukraine defines corporate social responsibility as a voluntary initiative of the owners of the company or the founders of the organization to develop and implement certain socially-oriented, non-profitable activities aimed at improving the external environment of the company or organization as a moral and ethical responsibility of business for the the level of service provision, the level of quality of products produced; creating a harmonious environment of relations between employees, partners, consumers and society in general in solving social problems (Gogula, & Kudinova, 2013).

Therefore, the concept of agribusiness social responsibility is based on categories of public interest (even when it conflicts with the private interests of business), which is understood and taken into account by voluntary taking and

implementation of relevant commitments in the production, economic, social and environmental nature of agribusiness entities.

Methodology and analysis of recent research

The authors used different research methods to write this article. To begin with, we should mention the main method of scientific research – the dialectical method. The dialectical method was used to draw conclusions from this scientific study. The analysis method made it possible to study in detail international standards and rules in the field of social responsibility of business. The synthesis method allowed us to determine the impact of international legal acts that regulate human rights in the sphere of social responsibility of business.

Based on the methodology of the study, publications on the general provisions of international legal and national legal support of human rights in the field of business Nolan, J. (2017); Weilert, K. (2009); Petersmann, E.-U. (2014); Robertson, D. (2015); McCorquodale, R. (2015); Vlasyuk, V. (2018); Saprykina, M. (2019), features of social (corporate) responsibility of agricultural enterprises Mazurok, P.S. (2015); Gogula, O.P., & Kudinova, I.P. (2013); Saprykina, M. (2019); Makarenko, P.M. (2015); Zagurskyi, O.M. (2015); Yarova, V.V. (2013); Gagalyuk, T., & Shaft, F. (2016) were analyzed. The importance of research on the results of scientific and practical events on this topic should be emphasized Uvarova, O.O. (2019).

Noting the high level of publications in which the issues of international legal and national regulation of human rights in the field of agrarian business were a part of a more general topic, we should emphasize a small amount of research that would directly address these issues, especially in the field of Ukrainian science (from recent publications, we may distinguish the article of I. Kulchiy (2019)).

Presentation of key research findings

The experience of universal international regulation of big business in the aspect of human rights dates back to the first attempts in the 1970s and 1980s, in particular, to develop a Draft United Nations Code of Conduct on Transnational Corporations, 1983. Further on the following documents were adopted: ILO (International Labour Organization) Declaration on Fundamental Principles and Rights at Work (1998), Tripartite Declaration of Principles on

Multinational Corporations and Social Policy (2017) (1977, amended in 2000; 2006 and 2017), The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (2011).

The major role in the formation and development of "spiritual and cultural" justice belongs to the principles and axioms that express the most important foundations and properties of this type of legal consciousness, which seeks to meet the requirements of spirituality, to create in this direction the legal culture of the person (personality) in general, the legal life of society (Kharytonov, Kharytonova, O., Kharytonova, T., Kolodin, & Tolmachevska, 2019). The importance of internationally developed standards of corporate social responsibility should also be noted. For example, standards, adopted by the International Organization for Standardization (ISO) in 1987 (ISO 8402; ISO 9000; ISO 9001; ISO 9002; ISO 9003; ISO 9004) (2019) which are aimed at protecting the needs of consumers of products and setting requirements for quality management of organizations. Also the ISO 22000: 2005 HACCP standard (International Organization for Standardization, 2019), which increases responsibility for the impact of products on human health and life, ISO 14001: 2004, which mandates the mandatory publicity of an enterprise's environmental policy, SA 8000: 2001 Social Accountability for Employee Compliance work, including labor protection. Finally, International Standard – ISO SR 26000: 2011 “Social Responsibility for Organizations. Requirements” (International Organization for Standardization, 2019), which is complex in nature and relates to environmental protection, economical use of resources and other requirements for the activities of organizations in the main areas of corporate social responsibility. International non-financial reporting standards (for example, ISO 14000, Social Accountability 8000 (SA 8000), Accountability 1000 (AA 1000) and Global Reporting Initiative (GRI)) (International Organization for Standardization, 2019) are of particular importance.

Our country's European integration course necessitates recourse to European legal experience in implementing international human rights standards in the field of business. For example, the Agreement on a Free Trade Area between Ukraine and the European Union (2017) contains a separate section on sustainable development, corporate social responsibility, and trade. According to Article 293 of this Agreement (Trade in favor of sustainable development), in order to facilitate the trade in

goods, the parties must make every effort to comply with the principles of corporate social responsibility. Note that both the European Convention on Human Rights (1950) and the Charter of the European Union on Fundamental Rights from 2004 regulate human rights and business. At the same time, a decisive step in the international legal regulation of social (corporate) responsibility for business in the field of human rights should be considered the approval of the UNHRC Resolution 17/4 of 16 June 2011 on Guiding Principles for Human Rights in Entrepreneurship: Implementation The UN Framework Program on Protection, Compliance and Remedies, also known as the UN Guidelines on Business and Human Rights, or as the Ruggie Principles (in honor of the author of the concept), mentioned earlier in the article. The European Union plays an active role in the implementation of these Guidelines in the national legislation of both EU Member States and Partner countries.

The Directive of the European Parliament and of the Council on the disclosure of non-financial and diversified information by certain large enterprises and groups (2014/95 / EU) (2014), which EU Member States have to adapt to national law and which imposes certain requirements on company accountability, disclosure, in particular, respect for and respect for human rights by businesses, environmental, social and labor aspects of companies. It should also be noted the General Data Protection Regulation (EU) 2016/679 (2016), which imposes strict business requirements on the handling of any data used by businesses in their activities, as well as on compliance and protection individual fundamental rights. Finally, Human Rights and business – Recommendation CM/Rec(2016)3 of the Committee of Ministers to the Member States (2016) and its Explanatory Memorandum (2016) play an important role in the implementation of corporate responsibility in the field of human rights. The relevant documents provide guidance to assist the Member States in preventing and remedying human rights abuses, emphasize the need for measures to encourage businesses to respect human rights standards, provide information on access to judicial remedies based on the experience and legal framework of the Council of Europe. It is envisaged that by 2021, states will be collected and proposed to disseminate best practices in business and human rights. In addition, member states of the Council of Europe should develop, adopt and disseminate National Action Plans on Human Rights and Business (NAPs) (2018) based on the UN Guidelines on

Business and Human Rights (2011). To date, more than twenty states have adopted the NAPs, and quite a few countries are either developing appropriate documents or have committed to do so.

According to experts, in Ukraine, social responsibility of business has different manifestations: depending on the position of the company in the market, the level of competition, the nature of relations with state and local authorities, the presence of election campaigns, etc.

The first form is of a classical nature, which is related to the enterprise policy of implementing a full-fledged social partnership.

The second form of corporate social responsibility may be related to obtaining certain privileges from the state, the possibility of developing and extracting minerals, granting a favorable government contract.

The third form is more coercive when social responsibility is a manifestation of obligatory charity. As a rule, the organization is forced by local authorities to take responsibility for their activities and presence in the locality.

The fourth form of social responsibility is found in town-forming enterprises. Town-forming enterprises are forced to be socially responsible for the smooth operation of enterprises, solving economic problems of the city, mainly due to the self-elimination of the state from solving these problems. Moreover, cooperation with local authorities and civil society is ultimately much more successful (Pahucha, 2016).

Social responsibility of agricultural enterprises, as a rule, develops in two main forms, which have characteristic manifestations. These are internal (carried out directly at the enterprise) and external forms (aimed at the development of the external environment). Internal direction includes the implementation of social projects for workers (social insurance, provision of health and medical treatment), labor security, wage stability, training, and skills development programs (contributing to the reduction of staff turnover and attracting the best specialists), direct provision of services to employees, staff internships and more. The external direction includes charity and sponsorship (grants), environmental protection, the responsibility to consumers of goods and services, interaction with local authorities (partnership projects), participation in crisis management, volunteer activities and more. Social responsibility in the

enterprise management system allows to effectively coordinate the interests of the parties through the use of social investment programs, institutions of public-private partnership and social dialogue, tools of non-financial reporting (Makarenko, 2015).

An effective instrument of social responsibility of agribusiness structures is the use of mechanisms to preserve the social structure of rural communities in the territories of which they operate, through the conclusion of so-called social responsibility agreements, at which the funds are directed mainly to the development of social sphere: educational institutions, medical institutions, socio-cultural objects, places of rest, etc. (Zagurskyi, 2015).

At the same time, experts estimate that the existing system of social responsibility of agrarian business cannot be called harmonious, since most of its institutions did not arise during the evolutionary development of market relations, but were inherited from the Soviet system of social security (retention at the expense of collective agricultural farms, or cultural and social institutions), or have been transformed from more advanced economic systems and due to the traditions of the administrative-command system substantial distortions (ignoring the economic interests of minority shareholders, recombination of land ownership rights, artificial bankruptcies).

In turn, large agro-industrial units often demonstrate rigorous agribusiness practices without taking into account the environmental and social interests of the local population. They are not tied to a particular rural village and accordingly pay taxes at the place of registration, not local (rural) budgets, which also does not contribute to the development of the social sphere in the village (Zagurskyi, 2015).

In addition, the problems of implementation of corporate social responsibility (hereinafter - CSR) at agribusinesses include: not being aware of the essence of the concept of CSR (identified with charity or upgrading the equipment at the enterprise), using CSR only as a means of advertising their company, low awareness of the social concept of society responsibility, low level of cooperation, reluctance of the management of enterprises to publish social reports (Nolan, 2017).

According to V. Yarova, the practice of creating a socially-oriented agrarian business is complicated by the fact that there is no clear idea

of what a social responsibility of a business is and how it influences competitiveness. Secondly, there is no adequate legislative framework in the country that would encourage enterprises to spend money on social projects and charity (Yarova, 2013).

It should be emphasized that the most effective implementation of the proclaimed international human rights standards requires greater cooperation between the state, business, and civil society. Here is another example of the latter's activity at the international and national level, relevant to agribusiness and human rights. Given the increasing economic marginalization of rural populations in the world as a result of economic and social transformations and the impact of climate change, peasants are forced to seek solutions to their highest level by discussing the possibility of using a powerful international human rights instrument. To this end, in the early 2000s, the LaViaCampesina International Peasant Movement, representing over 200 million peasants from different countries and continents, initiated the United Nations Declaration on the Rights of Peasants and Other Rural People terrain. For the countries of Eastern Europe, in particular for Ukraine, where a large part of the population lives and works in rural areas, protection of peasants' rights is essential. The draft Declaration is currently under discussion in a specially created open-ended Intergovernmental Working Group (OEiWG) that is part of the UN Human Rights Council in Geneva. It is envisaged that the adoption of the Declaration will promote the creation of international legal instruments that will help protect the rights of peasants and other people working in rural areas, and will draw attention to such issues as discrimination against this category of population. Ukraine and other Eastern European countries are united by common problems of peasants and villagers, and they have the opportunity to jointly support the adoption of the Declaration while protecting the rights of those who underpin sustainable development. Representatives of Ukrainian civil society supported the draft Declaration and called on the highest authorities in Ukraine to promote its adoption by the United Nations. The adoption of the Declaration will be a significant institutional basis for the implementation of the Government's course on the formation of a European standard farm model in Ukraine and for the protection of the rights of Ukrainian citizens who, as labor migrants, work in agriculture of foreign countries (Towards a UN Declaration on the Rights of Peasants and Other Rural People, 2018).

Conclusions

The intensification of agricultural production and the growth of its export potential occur against the background of social disparities, the decline of social infrastructure and the system of social services, unemployment, and deterioration of living conditions of rural population, depopulation and labor migration. Globalization and integration processes in the agrarian sector not only exacerbate the issues of competitiveness of agribusiness and food security but also pose a challenge to the state's ability to secure a number of socio-economic human rights, in particular for individual peasants. Therefore, one of the tendencies in the development of legal science is the actualization and conceptualization of the problems of agribusiness and human rights, one of the directions of which is the issue of introduction of social responsibility of the latter. We believe that the concept of agribusiness social responsibility is based on the categories of public interest (even when it conflicts with the private interests of business), which is understood and taken into account by voluntary taking and implementation of relevant commitments in the production, economic, social and environmental nature of agribusiness entities.

The analysis made it possible to conclude that by the legal nature the overwhelming majority of acts in the field of human rights and business in general and agribusiness in particular are soft law acts, since one of the tendencies in the development of international regulation of business responsibility in the field of human rights is the request (especially from the civil society that is concerned with this issue) to more "rigid" legal regulation, which predetermines a number of issues of both theoretical and practical nature and needs further investigation.

Concerning the national legal support of human rights and agribusiness, the conducted research shows the need to improve the legal basis of public-private partnership in the field of implementation of the concept of social responsibility of agricultural business and, accordingly, more active use and realization of the stimulating function of the state in the introduction and development of social responsibility of agribusiness. Generalization and systematization of opinions and suggestions reflected in the scientific literature, indicates the need to borrow relevant European experience and consolidation at the legal level of the basic provisions for the mechanism of development of social responsibility of agricultural business, which should include the following elements:

information (advocacy, public formation opinions, explanations of the value and benefits of social responsibility of agricultural business); normative (developing a unified approach to the definition and basic forms of social responsibility of agricultural businesses; uniform national standards of social responsibility of agricultural enterprises, taking into account existing international standards; introducing mandatory social reporting); organizational and methodological (providing methodological assistance to agrarian enterprises in the implementation of projects, systems and programs of social responsibility, training of personnel, assistance in participation in international events and programs of social responsibility); stimulating (privileges, measures of material and moral encouragement of participation of agrarian business in programs of social responsibility).

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