

Introduction

In this video, we are going to talk to you about the concept of duty of care and how it would be a factor of responsible consumption. In fact, today, consumers are more and more concerned about the conditions in which the products they buy are manufactured. And the duty of care law allows consumers to both obtain more information about these products and prevent human rights violations.

1. Why have a duty of care ?

Currently, we are observing impunity for multinationals in the world. And the reason is that legal reality does not go hand and hand with economic reality, which today is based on the existence of these groups of companies, and people have been shocked by the Erika oil spill, the health effects of the Bhopal disaster, the Rana Plaza collapse, and even the victims of worker abuse for the World Cup in Qatar. Therefore, there is a need for regulations to make these multinationals aware of their responsibilities. And a duty of care law would allow both prevention and amends. Since 2001, Sherpa has been a pioneer in these issues regarding the liability of parent companies for the activities of their subsidiaries and their overseas contractors.

We have also impelled the authorities and policymakers to adapt the legislative framework for economic activities. And we have also taken action against multinationals by filing complaints. For example, we have filed a complaint against Vinci for forced labour in Qatar, against Auchan for its involvement in the tragedy at Rana Plaza in Bangladesh and, finally, against Samsung for using child labour in China. However, for the time being, French law still does not allow victims to receive compensation. Therefore, we need a law, such as this one for duty of care.

2. What is the duty of care bill ?

The duty of care bill would allow multinationals, their subsidiaries and their overseas subcontractors to be held liable. It would thus allow the negative impacts of their activities to be identified and prevented. Human rights would also be respected through plans for vigilance. It would also, in a second article, enable liability in the event of non-compliance to be returned to common law.

3. According to Sherpa, what are the limitations of this bill ?

This bill on duty of care, which is so disparaged by employer organisations, is still not a panacea for the victims. And, in fact, today these victims still have to prove that it is actually the company who has made a mistake and prove that this mistake has caused harm, thereby proving the causal link. But they do not have the means to do so, taking into account the complexity of the value chains. Therefore, it is necessary to reverse the burden of proof and make it so the company has to prove that it is not responsible.

The second criticism that we could advance about this bill is that few companies would be affected—only around 130 or 150— because the thresholds determined in this bill do not take the most recent tragedies into account: only companies with more than five thousand employees in France or ten thousand employees overseas would be affected. Therefore, companies who have been involved in the Rana Plaza tragedy would actually get away with it, as well as companies from the extraction sector, which is a risk area.

4. Would this law be an opportunity or an impediment ?

Companies tell us that this duty of care would be an obstacle to competitiveness, but companies cannot base their economic development on human rights violations. A second argument in favour of this duty of care law is that it is an opportunity for companies, according to Kenneth Arrow—winner of the Nobel Memorial Prize in Economics—, because there is a virtuous link between the good practices of companies and their growth. Finally, companies tell us that these measures would be too restrictive, but these are reasonable measures to be put in place, as the bill says, in relation to the means of the company. And moreover, some companies already claim to implement such measures in their ethical commitments, so this would not be a revolution for them.

Consumers and citizens are increasingly informed and attentive to workers' conditions and companies' commitments to human rights. Therefore, the duty of care law would allow for a traceability regarding the origin of the products that they consume. In fact, three out of four French people think that French multinationals must be held liable before the courts in the event of an accident. And 95% declare that these types of humanitarian and environmental disasters could be prevented if multinational companies took more precautions (CSA survey, January 2015). The duty of care law should thus assure consumers that the products that they buy are made responsibly.

5. What must France do ?

The text of the bill on the duty of care was passed by the National Assembly on 30 March 2015, then rejected by the Senate on 18 November 2015. So, the text is returning to the National Assembly and needs a second reading so that the text can be voted on. Politicians and companies justify their reticence about this text by saying that the bill is an initiative particular to France. But France is not alone; on the contrary, many European countries and the UN are also working on this issue.

Conclusion

Thus, France has a major role to play within the European Union and the UN to bring about the acknowledgement of a duty of care on the part of multinational companies.