Business and human rights – access to remedy

Finland - Country report

2019

FRANET contractor: Institute for Human Rights, Åbo Akademi University

Authors: Kristiina Vainio and Maija Mustaniemi-Laakso

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1. Introduction

The Finnish FRANET team conducted four individual face to face interviews. Three of the interviews were conducted in English, and one in Finnish. The interviewees were provided with the interview questions and background materials (such as FRA opinion of 2017) well in advance of the interview.

Identifying practising lawyers with direct experience and knowledge of business and human rights related remedies in Finland proved to be somewhat challenging; the interviewees were chosen to represent sectoral specific knowledge and general expertise in BHR. Three of the interviewees come from the academia. One of them is a researcher and an activist (FI/3), another one a legal expert and consultant with long experience in BHR issues (FI/1), and the third one has a background as academic lecturer and researcher specialised in consumer law (FI/2). The fourth interviewee (FI/4) is a member of an Alternative Dispute Resolution (ADR) body who also has experience of working as a lawyer and as a legal adviser at an interest organisation. Two of the interviews (FI/2, FI/4) focused on remedies related to consumers' rights, as specifically requested by FRA, one focused generally on remedy questions related to BHR (FI/1), and one concentrated on violations related to mining industries with a particular focus on indigenous peoples' rights and environmental rights (FI/3).

2. General assessment of remedies in business related human rights abuses

A general opinion/assessment expressed by two of the interviewees is that the Finnish discussion around business related human rights abuses has not reached the "remedy stage" yet (FI/1, FI/3). "We are not there yet", as one of the interviewees phrased it (FI/1). According to this interviewee, the discussion is still very much focused on due diligence and the question of what the thereto related obligations are, and hasn't reached the "remedy stage", that is, the third pillar of the UNGPs. This, in the interviewee's opinion, concerns both companies and the general discussion and developments concerning businesses' human rights responsibility.

The National Contact Point (NCP) for the complaint mechanism based on the OECD Guidelines on multinational enterprises was identified **as the only available business and human rights specific mechanism** (FI/1). The Committee on Corporate Social Responsibility (*Yhteiskunta- ja yritysvastuun neuvottelukunta/delegationen för samhälls- och företagsansvar*) attached to the Ministry of Economic Affairs and Employment (*Työ- ja elinkeinoministeriö/arbets- och näringsministeriet*) serves together with the Ministry as the Finnish National Contact Point, of which the aim is, e.g., to oversee the implementation of the OECD guidelines and to settle disputes.[1] Upon Ministry's request, the Committee may give its opinion on whether the enterprise has operated according to the Guidelines. The mechanism has been used only twice. Therefore, and because people do not seem to be aware of the mechanism, one interviewee stated that it can hardly be considered a very effective remedy (FI/1).

[1] For more details, please see Section 1 of Government Decree on Committee on Corporate Social Responsibility (591/2008), Valtioneuvoston asetus yhteiskunta- ja yritysvastuun neuvottelukunnasta (591/2008).

In the absence of state-based business specific remedies/mechanisms, **ordinary courts** remain the main channel to pursue business related human rights claims, at least in principle, as noted by all interviewees. Labour related discrimination cases were referred to as an example of such claims by an expert in BHR (FI/1), according to whom **most of the business related violations concern labour rights**. The expert identified restaurants, small ethnic restaurants, in particular, the construction sector, berry picking businesses and the cleaning sector as the most human rights risky sectors in Finland.

While the ordinary courts are available in all business related grievances and the courts are considered to work well as such, all the interviewees, however, pointed to the **high threshold for private individuals for resorting to formal judicial mechanisms**. In Finland there is no tradition to sue and problems are mainly solved by negotiation outside the courts instead, noted one interviewee (FI/3), adding that a culture of human rights strategic litigation is missing also. The **costs risks**, especially if you lose the case and have to cover the costs of the winning party, were referred to as a major deterrent by several interviewees (FI/1, FI/2, FI/3). "Real disputes" are avoided also because of reputational risks involved, noted another interviewee (F/1). In courts, there have only been a few severe cases, and court cases are very reluctantly filed in less severe cases, the interviewee added. The court system is not flexible and low threshold enough, according to another interviewee (FI/1); filing a court case usually means that the victim needs legal assistance for advice and representation. One interviewee (FI/3) was uncertain of what the possibilities to get public legal aid for filing business related cases were, if any. In the interviewee's opinion, public legal aid offices do not necessarily have the needed expertise either, since they usually deal with different types of cases. Absence of a tradition of *pro bono* litigation in Finland was observed by two experts (FI/1, FI/3). Another interviewee (FI/3) noted that there are areas where not that many [effective] remedies are available, such as climate change-related issues. There is, e.g., very little environmental damage related criminal case law that could be used as a basis to build litigation on. The interviewee also pointed out that to be able to file a complaint under administrative law you first need to have a decision by an authority. Complaints based directly on constitutional rights are not accepted, nor is *actio popularis* possible, the interviewee noted.

Concerning the **role of NGOs in facilitating access to justice** the interviewees' answers varied somewhat. One interviewee (FI/3) observed that NGOs are not very active in human rights litigation, stressing (in context of Sámi rights litigation) that effective human rights litigation requires strong support groups, such as legal experts and/or NGOs. Another interviewee (FI/1) was not aware of any NGOs active in facilitating access to justice in cases of business related human rights abuses. The interviewee referred to one organisation as the key organisation active in the field of business and human rights, but noted that the organisation focuses on Finnish companies' extraterritorial responsibilities, in particular, in developing country contexts, and that it operates with very limited resources. Trade union members, of course, have the backing/assistance of their unions also in court cases (in principle), but there have not been many such cases, the interviewee added. A consumer rights expert's opinion (FI/2) was that organisations do not play a role in the settlement of individual disputes in the Nordic countries, except maybe for their members. They have a role in giving advice but not in solving disputes, and there seems to be no need for that given the state based system that functions well, according to the interviewee.

As regards **state based non-judicial or quasi-judicial mechanisms**, the consumer rights experts (FI/2, FI/4) highlighted the Consumer Disputes Board as an example of a particularly well-functioning and easily accessible (low threshold) **alternative dispute resolution (ADR) mechanism**. In another interviewee's (FI/3) opinion, complaints to **ombudspersons, and the Chancellor of Justice** are quite effective mechanisms, through which even businesses can be made indirectly responsible, e.g. in relation to mine related emissions of dust, or similar type of environment and health related cases. The Parliamentary Ombudsman and the Chancellor of Justice are the supreme overseers of legality of the actions of public officials and authorities in Finland. Private actors, such as companies, performing public tasks also fall within their remit. Both the Ombudsman and the Chancellor of Justice also have an express fundamental and human rights mandate. Their main method of supervision is handling complaints. The decisions on complaints are not legally binding, however. In addition to the Parliamentary Ombudsman, there are four special ombudsmen, whose competencies vary to some extent. For example, the Non-discrimination Ombudsman and the Ombudsman for Equality may act on petitions submitted to them and refer them further to the Non-Discrimination and Equality Tribunal, whereas the Ombudsman for Children only has promotional competencies. The Data Protection Ombudsman has all the competencies required by the EU General Data Protection Regulation (GDPR), including handling complaints, and may issue fines to enhance the enforcement of its decisions.

None of the interviewees was aware of the existence of any **company based operational level grievance mechanisms**, not even in the riskiest (labour rights) sectors that were referred to above by one interviewee (FI/1). The same interviewee's understanding was, however, that companies have started discussing operational level grievance mechanisms, but such mechanisms have not materialised yet.

As regards opinions on whether there exists **adequate and accessible information on the available remedies**, the answers varied. The consumer rights experts (FI/2, FI/4) found information on consumer rights related remedies to be particularly well and easily available. In contrast to this, one interviewee (FI/1) stated that the state is not very forthcoming in providing information on available remedies and pointed to the OECD guidelines mechanism as an example of a mechanism about which there is scarce information available. The interviewee was of the opinion that because victims in general are not aware of what type of mechanisms there are, they are left on their own, and have to consult lawyers. Lawyers, again, the interviewee noted, may not be aware of the non-judicial mechanisms. One interviewee (FI/1) pointed to certain groups whose access to information may be impaired, such as older persons, immigrants and people who do not master ICT. Another interviewee (FI/3) noted with reference to access to justice of indigenous Sámi communities that people may lack information on access to international human rights supervisory organs and how to use them.

3. Major obstacles for victims of related human rights abuses

As regards taking BHR cases to courts overall, the **threshold for resorting to state-based judicial mechanisms was, as noted above, assessed to be high, and practical and procedural barriers were found to exist** (FI/1). For

the victims the threshold for filing a court case/resorting to formal judicial mechanisms was said to be high in general in Finland ("real disputes" are avoided), e.g. in discrimination cases against the employer, because of reputational risks involved and victims being afraid of potential harmful consequences (FI/1). Further, all of the interviewees (FI/2, FI/3 and FI/4) referred to the cost risk in the case of losing as an impediment to taking disputes to courts. The non-availability of affordable court procedures was therefore pointed to as a weakness in the court-based system of protecting consumers' rights by one interviewee (FI/2). **To further improve access to justice**, **the introduction of simplified court procedures** used in common law countries and nowadays also in Denmark and Norway **was suggested** as a solution (FI/2). This would mean that the ordinary court procedure would be simplified so that an ordinary layman is able to present his case without having to hire a lawyer. This would require more information to be offered to the plaintiffs, e.g. on how to start a procedure, as well as a more active role taken from the part of the judges and other staff, e.g. asking questions about proof. The simplified procedure would, according to the interviewee, also require the application of a no-costs rule, so that when losing the case you would not have to pay for the costs of the other party. All cases below a certain threshold could automatically go to the simplified procedure, the interviewee suggested, following the practice in most common law countries (e.g. in the UK in all civil cases where the size of the interest is below 5,000 pounds.)

According to an expert in consumer protection (FI/2), **a problem with the efficiency of court proceedings in the area of consumer protection is that in Finland the Market Court, which is a special court handling market law and competition law cases, can only impose an injunction order, no fines.** In Norway and Sweden there is a competition law-based market disruption fee, which makes it possible for the market court to issue monetary sanctions.[2] From the point of view of protecting consumers' collective interests more effectively, the interviewee **suggested that a** similar **system with monetary sanctions should be introduced in all Nordic countries as a deterrent**.

In one interviewee's opinion (FI/3) **taking Sámi rights-related claims to courts requires a lot of expertise, expert support and resources that individual Sámi or Sámi communities**, not necessarily even the Sámi parliament (*Saamelaiskäräjät*), **may not have, which impairs their access to their rights**. The issue with the resources of the Sámi Parliament has been noted also by the Human Rights Centre (*Ihmisoikeuskeskus*), according to which the resources of the Sámi Parliament, especially human resources, do not allow full participation in all the processes to monitor the rights of the Sámi as an indigenous people. Many processes also require specialised expertise, which presumably makes it necessary to employ outside expertise, it is noted in the opinion by the Centre on proposed amendments to the Act on the Sámi Parliament. The interviewee (FI/3) stated that **public legal aid offices may not have the necessary expertise in the field of business and human rights** either and public legal aid for filing business related cases may therefore not be available. Support may, in the interviewee's opinion, be available by NGOs or a pro bono lawyer. Given, however, that the human rights culture in this regard is young in Finland, there are according to the interviewee not many lawyers specialized in

[2] Rather high fines may be issued, up to 10% of the annual turnover of the company for infringements of competition law. The ceiling for the fine is rather low, though, in Sweden at about 500 000 euros (FI/2).

human rights litigation and the researchers or NGOs are not very active in contributing to litigation either (FI/3). *Pro bono* assistance is largely not available, either (not a tradition in Finland) (FI/1). The Sámi communities may also lack information on available access to human rights supervisory organs and on how to use them (FI/3). The interviewee (FI/3) noted that **as individuals need support in human rights and business litigation, this should be better taken into consideration in the rules on evidence and burden of proof** [see, e.g. below under 'Burden of Proof' on the time frame for appeal and challenges related to the availability and accessibility of supporting documentation and expert opinions].

In other words, **even if the court system as such is considered to work well in Finland, the practical possibilities to use it are not always there,** which was seen, by one interviewee, to impair access to justice in relation to business related human rights abuses (FI/4). This was also found to be a more general problem in Finland: formal structures usually are in place, but they are not necessarily very functional and accessible from the victim's point of view, one interviewee states (FI/1). **Making more broad use of the ADR mechanisms was referred to as one of the solutions to this** (FI/4). According to one interviewee (FI/1), however, the state has not been very forthcoming in providing information on the available mechanisms (this applies, according to the interviewee, also in general, not only in BHR cases). The interviewee stated that people/victims (in particular those with limited IT literacy or access to information, limited networks, or limited knowledge of how the Finnish systems works) are largely left on their own and have to consult lawyers. Lawyers, on the other hand, are not necessarily aware of the available non-judicial mechanisms (FI/1). Another interviewee (FI/3) noted that sometimes [local] authorities do not know what their responsibilities are and who should take action and intervene in environmental matters. **More information about the available mechanisms would be needed, as well as lower threshold mechanisms**, one interviewee stated (FI/1). The interviewee (FI/1) suggested that information about the different mechanisms should be more easily available and accessible, also in terms of the language used; human rights legal language and terminology may be difficult for both the victims and the business sector. A **suggestion to provide more information on the BHR remedy questions to companies as a preventive mechanism** was brought up by two interviewees (FI/1, FI/3), in particular in relation to small and medium sized companies (FI/1).

As regards ADR processes, the numbers of complaints filed at the Consumer Disputes Board have been on the increase (FI/2, FI/4). The ensuing delays and the **excessive length of the ADR proceedings** were referred to as a problem by one interviewee (FI/2) and there has been pressure on speeding up the proceedings.[3] As to the question whether there is something that could be improved to facilitate this, one interviewee (FI/2) **suggested adding to the resources available to the Consumer Disputes Board and setting a more realistic timeframe for processing the cases** (for example 6 months instead of the 3-month rule included in the ADR Directive). Another interviewee (FI/4) noted that simply adding resources may not be helpful. All in all, the interviewee considered the procedure to be predominantly well-functioning and adequate, despite the length of the delays. Considering that legal certainty requires that the

[3] On the delays, see e.g. Decision of the Parliamentary Ombudsman of Finland, EOAK/4079/2017, calling for action to shorten the length of the proceedings.

complaints are handled carefully, the procedure could hardly be much speedier, the interviewee stated. That the procedure is written can of course be regarded as a weakness but introducing an oral procedure would require considerably larger resources (FI/4).

The **non-binding nature of the decisions issued by the ADR mechanisms was considered a further problem** by one interviewee (FI/2). To make access to justice more effective in the area of consumer rights, the decisions of the Consumer Disputes Board should, in the interviewee's opinion, have more "teeth". While the average compliance rate with the Board's decisions is rather high (up to 80%, see below in Section 4), within some sectors, such as car repairs, the compliance rate is, according to the interviewee, considerably lower. In Norway, the interviewee noted, the Board decision comes enforceable, if it is not taken to court in four weeks. In conclusion, the interviewee noted, **enforcement and sanctions are needed**.

Concern was expressed by one interviewee (FI/3) relating to **the issue of outside court arbitration** that in the interviewee's opinion **should undergo critical evaluation** and discussion both in Finland and in the EU, to contemplate upon whether and under which conditions arbitration should be used in countries where functioning court systems exist. The interviewee pointed out that these mechanisms were originally designed for contexts where the courts are not functioning, such as developing countries. Now, the case may be that claims, e.g. against Canadian companies operating in Finland are arbitrated in Switzerland, thus circumventing having to take, for example, Sámi rights in consideration. The interviewee noted: "Arbitration vs courts and remedies, the whole architecture should be discussed in Finland, but also in the EU and in global sense, that **how is it possible that foreign companies can just circumvent human rights and the local legislation by making agreements?**" (FI/3)

Since only a few cases have been processed through the **OECD national contact point mechanism** and people seem not to be aware of its existence, it **can't be considered a very efficient remedy**, according to one interviewee (FI/1). The mechanism is formally there but is not being widely used, neither is the state very forthcoming in providing information about it (FI/1). According to the interviewee, **the first step to improve the situation would be to make all relevant stakeholders aware of the existence of this mechanism**, since in some other countries these mechanisms seem to be working fine.

As regards preventive remedies, one interviewee (FI/3) expressed concern in relation to the **impact assessments relating to activities in the Sámi homeland** and noted that such assessments on the impact of the exploratory activities on the Sámi community **are not always adequate**. The interviewee referred to a case, where negotiations/impact[4] assessment was limited to a meeting conducted with a few Sámi persons that were not living in the area in question. The interviewee also stated that when the case was taken to court, the court attached, in the interviewee's opinion, higher weight to the statements by the Finnish Safety and Chemicals Agency (*Turvallisuus- ja kemikaalivirasto*, Tukes) and the Geological Survey of Finland (*Geologian tutkimuskeskus,* GTK) than to the documentation and expert opinions submitted by the claimants by

[4] According to Chapter 1 Section 1 of the Mining Act (621/2011), mining activities conducted in the Sámi homeland shall be adapted, so as to secure the rights of the Sámi as an indigenous people. A Sámi rights impact assessment is required for permits, according to Chapter 5, Section 38.

several experts (including an expert in Sámi and fundamental rights), even though, the interviewee pointed out, Tukes does not have any experts specialized in Sámi rights.

4. Good practices

Complaints to ombudsmen,[5] and to the Chancellor of Justice were viewed as quite effective mechanisms, through which even businesses can be made indirectly responsible, e.g. in relation to mine-related emissions of dust, or similar type of cases (FI/3). The role of ombudsmen was highlighted as a positive and well-functioning practice also in relation to consumer protection, as regards the protection of collective consumer interests (FI/2). With regard to the protection of individual consumers' rights, **consumer advisory services** were referred (FI/2) to as a good practice. Through the consumer advisory services, consumers get free of charge information and mediation in disputes. If this fails, the consumer can take the case to the Consumer disputes board.

According to an expert in consumer protection (FI/4), the **Consumer Disputes Board** system functions very well in Finland. It is, according to the interviewee, easily accessible and easily available to all, advice is available, and the procedure is free of costs. No lawyer is needed either, so, it is a very low threshold mechanism, the interviewee said. In addition, as compared to ordinary courts, a positive feature in the system is that the applicants get advice from the Board. Information about the possibility to file a complaint to the Board is also easily available either by phone call, email or on internet, the interviewee noted. There is, according to the interviewee, a 75–80 % compliance with the Board's decisions. The interviewee also suggested that **ADR mechanisms could be more broadly used in different matters/contexts** in Finland, referring, as an example, to housing corporations related disputes that have been on the increase.

A black list on companies that do not comply with the Board's decisions, published in the *Kuluttaja* (Consumer) magazine [by an association affiliated to the Consumers' Union working to advance consumer awareness (*Kuluttajatietoisuuden edistämisyhdistys,* Kery)] was referred to as a further positive practice by one interviewee (FI/4). The interviewee suggested that **raising awareness about the existence of the Black List should be enhanced**, which then could contribute to even higher compliance with the Board's recommendations.

Facilitation of dialogue between parties and mediation were referred to as positive practices in relation to indigenous people related environmental matters (FI/3). Consultation mechanisms, such as applying the Akwe: Kon guidelines is a good example according to an interviewee (FI/3).

The role of **consumers' interest organisations** in accessing justice was seen to be very important in presenting new ideas, delivering statements, sharing information, and taking a stand and interfering where weaknesses are spotted (FI/4). As a positive example was mentioned (FI/4) the Consumers' Union's

[5] The ombudsman supervises the observance of the Consumer Protection Act and other relevant legislation. The ombudsman doesn't resolve individual disputes but may refer group complaints to the Consumer Disputes Board, or initiate class actions.

efforts to broaden the standing to initiate class actions to comprise interest organisations.

With regard to consumer rights, there is a working group set by the Ministry of Justice currently contemplating upon whether the existing system should be changed so that economic sanctions could be introduced in the protection of consumers' collective interests (FI/2).[6] The deadline for the committee's work was originally set for May 2019 but has now been extended until 31 March 2020.

5. Burden of proof

The **main rule in civil cases is that the claimant has to bear the burden of proof**, as noted by one interviewee (FI/1) (Please, see Code of Judicial Procedure 4/1734 (*Oikeudenkäymiskaari*), Chapter 17, Section 1[1]). There are some exceptions to this, however. The burden of proving causation is relaxed for the benefit of the victims as regards liability for environmental damage according to Act on Compensation for Environmental Damage (*Ympäristövahinkolaki* 737/1994), Section 1, which requires a probable causal link between the activities and the loss referred to, and similarly according to the Patient Injury Act, Section 2 (*Potilasvahinkolaki* 585/1986).

One interviewee (FI/3) pointed to the **short time frame at the appeal stage**, that is, 30 days, in which you have to submit the case/evidence to the court, which makes it very difficult even for experienced experts to manage to prepare the case in time. The interviewee expressed doubts as to whether private individuals, like ordinary Sámi lay people, without networks and expert support would succeed in doing it, this might not be realistic to expect. Authorities, such as the Centres for Economic Development, Transport and the Environment (ELY-keskus) or Syke and Luke, on the other hand, are very successful in environmental complaints, according to the interviewee.

The same interviewee noted **that supporting documentation and expert opinions may not be easily available and accessible**. In a Sámi-related case the complainants had tried to obtain supporting expert opinions from environmental authorities [Finnish Environment Institute (*Suomen ympäristökeskus*, Syke), and Natural Resources Institute Finland (*Luonnonvarakeskus*, Luke)], which, however, refused the request on grounds that the administrative court might request their opinion at a later stage of the proceedings. An interviewee also shared their own experience of a case where locating certain Supreme Administrative Court case files had not been possible despite extensive inquiries to several authorities, including the Supreme Administrative Court itself.

[6] A working group was set up to prepare legislative changes concerning consumer rights relating to delays and defects in personal services, to implement EU regulation 2017/2394 (Regulation [EU] 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation [EC] No 2006/2004) and other necessary provisions to ensure the effectiveness of consumer authorities actions and legal protection of traders rights [own, unofficial translation]. Introduction of economic sanctions is one of the matters included in the working group's agenda.

Another interviewee (FI/1) made reference to the public outcry around the abuse and neglect cases that were recently revealed in older people's private care homes and stressed that there is a need to make it very clear that no non-disclosure agreements can be used to forbid the care homes personnel to report alleged abuses. This type of clauses are illegal, the interviewee stressed, and it falls under the state responsibility to protect to provide the information that makes this clear to all relevant stakeholders. Cross sectoral (administrative) co-operation and coordination should also be strengthened to make it sure that this type of responsibilities do not fall in between the administrative silos, according to this expert.

Both consumer rights experts assessed the burden of proof-related rules in the field of consumer protection to work well and to the benefit of the consumer (FI/2, FI/4). In Finland, **the burden of proof is reverse as concerns the protection of collective interests** and that works well, noted one of the interviewees (FI/2). In individual disputes, the rule is that the consumer/plaintiff has to be able to prove that the service was defective at the time of the delivery (Consumer Protection Act (*Kuluttajansuojalaki* [38/1978]), Chapter 5, Section 16 and Product Liability Act (*Tuotevastuulaki* [694/1990], Section 4[a]). There are a few exceptions to this, however; there is the six months rule, where the burden of proof is reverse, that is, if the product gets broken in less than 6 months, the seller has to show that it was not defective, and the same applies during a guarantee period (Consumer Protection Act, Chapter 5, Sections 15 and 15[a]).

As to the question whether there are practical and legal obstacles in obtaining necessary documents, the interviewee (FI/2) remarked that according to the code of court procedures rules, if the other party has relevant documents, the court may order those to be presented, but they need to be identified. The interviewee made reference to a tobacco litigation case, where it was known that the company was aware of its products' harmful consequences. The interviewee thus noted that this rule has relevance only when you know about the existence of the documents; an obligation imposed on a company to present all relevant materials would not be possible, according to the interviewee.

In the product safety area, concerning consumers' collective interests, Tukes has the right to make inspections to companies' premises to obtain relevant documents.

6. Collective redress

Collective redress is available only in relation to consumer rights violations (class actions, group complaints). Act on Class Actions was adopted in 2007 (*Ryhmäkannelaki* 444/2007) and has thus been in force for more than ten years. **The possibility of filing class actions, however, has never been used**.

One interviewee (FI/2) noted that **group actions for compensation have been available in the Nordic countries for the last 10 – 15 years**. There are some differences, though, the interviewee remarked. **In other Nordic countries such actions are available in all kinds of cases**, **in Finland only in mass consumer disputes, and the consumer ombudsman is the only person who**

has the right to take legal action in this regard in Finland. The latter point is, according to the interviewee, one explanation to why there is no case law in Finland. In Sweden, the large majority of the cases have been initiated by private actors, only a few by the ombudsman.

In consumer disputes, group action is not necessarily a good solution, according to one interviewee (FI/2). Firstly, because the expenses are high, rising up to hundreds of thousands of euros. The ombudsman, thus, can't take the risk to lose, because in that case, the state would have to pay the legal expenses. This is one reason for why there have not been any cases, the interviewee states. Secondly, the long duration of the proceedings is a problem (in Sweden they have, according to the interviewee, taken "years and years"). And finally, group action may not work in consumer disputes because of the low value of the individual claims in consumer disputes, usually only some hundreds or thousands of euros. The interviewee suggested an alternative idea, along the lines of the Cy-près doctrine, namely that the compensation would not be shared, but used for purposes promoting consumers' collective interests. The interviewee referred to the Nokian tyres case, where the individual losses that were caused to customers by misleading advertising were estimated to 100 euro per plaintiff/customer, amounting to 10 million euro total compensation, if the number of customers were 100,000. The essential, according to the interviewee, would not be to distribute the 100 euros back to each customer, but rather to see to it that the trader has to pay for the wrongful act.

Another interviewee, an expert in consumer protection, (FI/4) pondered upon the reasons for **why class actions have not been used**. The interviewee referred to the **costs risks as one possible explanation, but also noted that preparatory work for class actions is very resource consuming**, which might be another explaining factor. Another reason could be, the expert suggested, that maybe individual complaints are considered to work rather well and class actions are therefore not felt to be needed. In the interviewee's opinion, though, class actions could be beneficial, for example, in matters related to real estate purchases, purchases of newly built houses/apartments, or in terms of contract related matters, such as tele contracts, that are made in masses, or concerning travel delay related interests. When compared to group complaints, the advantages could be that the threshold for filing a case would be lower, and it would be easier to join the group, the interviewee noted. That way the membership could be much larger than in group complaints, which could enhance the effects of decisions, through a stronger steering effect, the expert observed. As far as the potential disadvantages of class actions or their misuse are considered, the interviewee did not find it likely that those would materialize in Finland, since ordering punitive damages is not possible. The interviewee held that widening the standing to allow, for example, the Consumers' Union to initiate class action proceedings would be desirable.

Another interviewee (FI/3) made reference to **the right to take action in public interest and the right to appeal that is granted to local environmental organisations in environmental cases** [Environmental Protection Act (*Ympäristönsuojelulaki* 527/2014), Chapter 18, Section 186(2) and Chapter 19, Section 191(2)] which the interviewee observed to be useful and also much used. How effectively small local NGOs can use their right of appeal, however, depends ultimately on their expertise and resources, the interviewee noted: even the

relatively low fee (260 euro at the appeal stage) involved may be too much for a small NGO to be able to proceed (FI/3).

7. Cross border liability

The discussions were focused on **third party/country liability for abuses caused inside the EU** (as per the original FRA instructions) in the context of mining-related activities (see also the attached case study) and consumer protection, especially internet based purchases, where particular problems were identified.

One interviewee (FI/2) observed that pursuing cross border claims normally always creates new problems, more costs, higher expenses, jurisdictional issues, and issues concerning the applicable law and enforcement of foreign judgements.

Another interviewee (FI/4) noted that from the consumers' point of view it makes no difference, whether a company is a domestic or a third country company, as long as the third country company pursues activities in Finland. In that case, Finnish legislation is applied. As far as **net based purchases** are concerned, the situation is, however, different; disputes are settled in the country where the trader is based. The interviewee noted in relation to this that **the question of the forum is something that consumers do not seem to understand or think about, nor is there enough information available for them on this**; there is a need for more reliable information in this regard. When asked how the forum problems related to internet-based purchases from third countries could possibly be addressed through regulatory measures, the interviewee assessed it to be difficult to see how to get third parties to commit themselves to this type of regulation. Sometimes people contact Consumers' Union seeking advice in this type of cases, the interviewee told.

Another interviewee (FI/2) had no first-hand experience of individual cross border liability cases but noted that these normally become a reality in cross border e-commerce. The interviewee feels that the **delays and the unenforceable nature of the ADR procedures may be a disincentive for the consumers to use them in cross-border disputes within the EU** and mentioned that there may not be sufficient information available to the customers on the ODR Regulation. Further, the interviewee noted that there are no statistics on the practice of the Brussels Convention, which has been in force for over 50 years. Personally, the interviewee "does not trust the conventions" but always advises to start the proceedings in the trader's home country or where the trader has property.

One interviewee (FI/3) referred to the issue of **outside court arbitration that in the interviewee's opinion should undergo critical evaluation and discussion both in Finland and in the EU**, considering whether and under which conditions arbitration should be used in countries where functioning court systems exist. Pointing out that such mechanisms were originally designed for contexts where the courts are not functioning, such as developing countries, the interviewee noted that now the case may be that claims, e.g. against Canadian companies operating in Finland are arbitrated in Switzerland, thus circumventing having to take e.g. Sámi rights in consideration. Through such mechanisms, the interviewee noted, **national legislation is put aside by agreements**.

The interviewee also proposed strengthening human rights related information provision to (foreign) companies in order to strengthen their knowledge in human rights relevant to their field of operation, such as the Sámi rights in Finnish Lapland and the possibility of claims related to their rights. This could, in the interviewee's opinion, have a preventive effect on abuses.

Reference was made to foreign (third country) mining companies operating in Lapland and damages related to their activities, noting that they have been environmental-specific in the first hand, in Finland, at least. Health and property rights were identified as human rights most often at stake in these contexts, at least indirectly. Reference was also made to the Talvivaara nickel mine disaster, as the most well-known one of these types of cases. [The Talvivaara case is a notorious case which has been described as "the biggest environmental crime" in Finland. The Talvivaara nickel mine caused large scale environmental damage by leaking huge amounts of waste water into the surrounding environment. There were several large leakages and the matter developed into a national level scandal. A criminal trial of the executives for aggravated environmental degradation in Rovaniemi appeals court ended in March 2018. Two ex-CEOs, both of whom were found guilty, were granted partial leave to appeal from the Supreme Court in November 2018. Besides the criminal trial, handling of part of the claims for damages (several dozen out of the original 142 claims) was started in a reconciliation process in the Kainuu district court in 2016. The process was discontinued in December 2017, however, due to the company's insolvency and lack of funds for reparation. The state, which had interfered at different stages in order to save workplaces and to diminish environmental degradation bought the business in 2015 and the mine has continued operating under the name Terrafame. According to a Ministry of Finance report (Overview of Central Government Risks and Liabilities, Spring 2017), the total amount of the losses effectuated to the Finnish state in these rescue operations comes up to 320 million euro.]

A **campaign for due diligence legislation** is being advanced by the civil society in Finland. The initiative is welcomed as such by an expert in business and human rights (FI/1), but the interviewee criticises the initiative for its scope which is limited to supply chains outside of Finland. In the interviewee's understanding no drafts for the legislation have been prepared. Whether remedies are included in this initiative or not was not known to the interviewees. According to the information obtained from one of them (FI/1), the initiative focuses on supply chains in extraterritorial situations only. One interviewee (FI/1) is of the opinion that this initiative should rather be taken at the EU level, than the national one, for the sake of a level playing field, and because in Finland EU legislation is typically duly implemented.

8. Conclusions and ways forward

The general assessment of two BHR experts (FI/1, F/I3) was that **the discussion and developments on businesses' human rights responsibility in Finland have not reached the "remedy stage" yet**, that is, the third pillar of the UNGPs. Instead, the focus is still on due diligence and the question of what the thereto related obligations are. This concerns both companies and the general discussion, according to the interviewees. Their conclusion seems to be supported

by the fact that **no corporate human rights specific mechanisms were identified** by the interviewees, except for the OECD guidelines national contact point mechanism, which only concerns extraterritorial disputes. **Nor** did the interviewees have knowledge of **any operational-level grievance mechanisms** established by companies that are active in Finland.

In the absence of BHR specific mechanisms, **ordinary courts remain the main channel to access justice in business related human rights abuses**, as was pointed out by several interviewees. Courts were assessed to be open and accessible for all, in all types of cases, and to work well as such. **No legal/regulatory barriers were identified** in terms of access to courts. **Instead, barriers of practical, procedural and financial nature** were found to exist. All interviewees emphasised that there is a **high threshold for private individuals to resort to courts**. The costs risks, not the court fees as such, but having to cover the costs of the winning party, if you lose, and having to hire a lawyer, were found to be a major deterrent. The complexity of the procedure was brought up by one interviewee (FI/2) relating to production of evidence in consumer group complaints. Challenges that ordinary people with no expert support face in producing evidence in e.g. Sámi rights and environmental rights related matters, was referred to by another interviewee (FI/3). It may be noted that the length of proceedings was not brought up as a particular problem, except by one interviewee concerning the Consumer Disputes Board (despite the fact that over a half of the ECtHR judgments received by Finland over the years 1990 – 2018 concern Article 6 of the ECHR, either length of the proceedings or other elements of the right to a fair trial). All in all, the interviewees found Finns to favour negotiations and settlements, and to avoid open disputes/conflicts. It was noted that in Finland, there is "no tradition to sue". Neither is there a tradition of *pro bono* or strategic litigation. In addition, the human rights culture in this regards was found to be still young.

As an example of a particularly well-functioning, accessible and low threshold mechanism, the consumer rights experts referred to the Nordic system of consumer protection and consumer advice services, in particular **the ADR mechanisms, that is, the Consumer Disputes Boards**. This is a model that according to the two consumer rights experts **should be exported to other EU member states by means of EU regulatory action**. What could yet be improved in Finland in this area was to expand the scope of the ADR procedures and to introduce monetary sanctions for non-compliance with the Board's decisions. **Simplified procedures** to improve access to courts in general should, in turn, be **imported from common law countries** and applied to all civil cases (in Finland, especially), suggested one consumer rights expert (FI/2).

A specific proposal for action at the EU level was the recommendation to introduce **harmonised BHR due diligence legislation that would also include remedial elements** (FI/1, FI/3). This would serve both preventive and protecting aims, it was found. An initiative to adopt such legislation is currently driven by NGOs. The campaign seems to have reached its goal (at least partly) since the new government policy programme of 3 June 2019 sets as one of its aims to make Finland "a forerunner of corporate social responsibility". This entails adopting a law on corporate social responsibility which is to impose due diligence responsibilities on companies operations in- and outside the country, as well as promoting the same aims in the EU. According to one interviewee (FI/1), this is, indeed, an issue that should be regulated at the EU level for the sake of efficiency

and in order to level the playing field. One interviewee (FI/3) suggested **strengthening the existing EU regulation in relevant areas from human rights responsibility point of view**. Drawing upon useful/parallel principles from environmental law, such as **'polluter pays' and 'do not harm'** was recommended by the same interviewee, who also proposed remedies related to environmental damage, including climate change, to be strengthened and criminal case law to be actively developed, especially in Finland (FI/3). Introducing preventive legislation, such as human rights impact assessments, similar to environmental impact assessment was also suggested (FI3).

Outside court arbitration is another issue that would be very important to address at the EU level, stressed one interviewee (FI/3). The interviewee regarded it to be **unacceptable that national legislation can be set aside by agreements**, not respecting, for example, the rights of the Sámi in mining activities carried out in the Sámi homeland. On the other hand, **facilitation of dialogue between parties and mediation** (such as Akwe: Kon guidelines) were referred to as positive practices in relation to environmental matters related to indigenous people (FI/3).

Enhanced information provision on the existing mechanisms was recommended by one interviewee (FI/1) who mentioned the OECD guidelines mechanism as an example of a mechanism on which there is scarce information available in Finland. The interviewee suggested that information should be made more available and accessible, also in terms of the language used, since human rights language and terminology may be difficult for both the victims and the business sector. A suggestion to **provide more information on the BHR remedy questions to companies as a preventive mechanism** was brought up by two interviewees (FI/1, FI/2), in particular in relation to small and medium sized companies (FI/1). Whereas information in consumer rights related mechanisms was found to be readily available and accessible in Finland, one interviewee (FI/2) drew attention to **lack of information and awareness of the ODR mechanism**.