



NATIONAL CONTACT POINT FOR OECD GUIDELINES

Specific instance submitted to the Italian NCP on the 25th September 2016 by an individual against an Italian bank, one President of tribunal one Judge of tribunal ,one clerk of tribunal, a lawyers' Association, one Attorney in charge of the selling of a real estate, one Advisor for sale of real estate, and one Buyer of real estate.

INITIAL ASSESSMENT¹

Summary

On the 25th September 2016 one individual (hereinafter, Complainant) notified a specific instance to the Italian National Contact Point, complaining about an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter, Guidelines) by a bank (hereinafter, the Bank) and also against one President of tribunal one Judge of tribunal ,one clerk of tribunal, a lawyers' Association, one Attorney in charge of the selling of real estate, one Advisor for sale of real estate, and one Buyer of real estate.

The Complainant claims to have suffered and continue to suffer serious moral damages, material and existential because of a violation of several Italian laws and regulation and many articles of the European Convention on Human Rights (ECHR), of the Universal Declaration of Human Rights (UDHR), of the Law 881/77, Law 848/55 and Law 364/89, caused by the addressees of the instance. Such a violation would have been made through serious omissions by the Bank, as well as through repeated vexatious actions by the other addressees of the instance. These actions would ultimately lead to the foreclosure and the following forced sale of the first and only house owned by the Complainant, because of a non-payment of credits claimed by the Bank.

The alleged violations are attributable not only to an enterprise (the Bank), but also to individuals and institutions that are involved not as enterprises, but as owner of judicial offices and as consultants and individuals involved in a transaction for the selling of the house, being the object of the specific instance.

After a careful assessment of both the specific instance and the documents attached, the Italian NCP concludes that the issue raised does not merit further examination because of the following reasons:

- The issue raised, including the alleged expropriation of the Complainant's house, has been and is still pending in judicial proceedings of various kinds. This makes very difficult to imagine, on the one hand, a intervention of the NCP that does not constitute an interference with the exercise of judicial offices and with their impartiality, independence and autonomy and, on the other hand, to imagine any room of maneuver for an agreed solution and / or recommendations to the parties.
- With regards to the people other than the Bank, the instance is inadmissible because they are not covered by the scope of the Guidelines.

¹ The official version of this act id in Italian language



- From the documentation attached to the specific instance it has not been possible to find support elements which could show the truthfulness, relevance and pertinence of the alleged facts.

What mentioned above suggests that further examination of the issue raised would not contribute in any way to the purposes and effectiveness of the Guidelines.

On 19 October 2016 the NCP has communicated to the Complainant and to the Bank the outcomes of the initial assessment, giving them 20 days to submit comments. Neither the Complainant nor the Bank has submitted any observation.

Given the non-materiality of the issue, the NCP decided not to publish the names of the Complainant and of the other parties.

Submission of the instance and complains of the complainant

1. On the 25th September 2016 one individual (hereinafter, Complainant) notified a specific instance to the Italian National Points of Contact, complaining about an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter, Guidelines) by a bank (hereinafter, the Bank) and against one President of tribunal one Judge of Tribunal ,one Clerk of Tribunal, a lawyers' Association,, one Attorney in charge of the selling of real estate, one Advisor for sale of real estate, and one buyer of real estate.
2. With the specific instance the Complainant asks the NCP to intervene against the Bank and against the above-mentioned other people, since he assumes that the judge of an Italian Tribunal decided to foreclose the first and only home of his own property, allegedly in violation of several Italian laws and regulations, including laws n. 881/77, 848/55 and 364/89, and of many articles of the European Convention on Human Rights (ECHR), of the Universal Declaration of Human Rights (UDHR), and in spite of many serious omissions form the Bank.

Involved chapters of the OECD Guidelines

3. The complainant pointed out that the following chapters of the OECD Guidelines are affected by the issue raised:
 - a) Disclosure;
 - b) Human rights;
 - c) Consumer interests;
 - d) Taxation.

OECD Guidelines for multinational enterprises

4. The Guidelines are recommendations addressed by signatory Governments of the OECD Declaration of the 25th May 2011 to multinational enterprises, providing for voluntary principles and standards for responsible business conduct. They aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.



5. The Guidelines provide for the “specific instance” mechanism, which starts with the submission from one party. This mechanism gives to the NCP the chance to offer its “good offices” to both the complainant and the enterprise, in order to achieve an agreed resolution of the dispute.
6. The offering of good offices depends on the initial assessment, which is aimed to appraise whether the issue raised by the complainant merits further examination. The NCP will thus have to verify whether the issue is *bona fide* and relevant to the implementation of the Guidelines. In this context, the NCP will take into account:
 - a) the identity of the party concerned and its interest in the matter;
 - b) whether the issue is material and substantiated;
 - c) whether there seems to be a link between the enterprise’s activities and the issue raised in the specific instance;
 - d) the relevance of applicable law and procedures, including court rulings;
 - e) how similar issues have been, or are being, treated in other domestic or international proceedings;
 - f) whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

a) The identity of the party concerned and its interest in the matter

7. Indubitably, the Complainant seems to have a relevant interest in the matter. Yet, as it will be clarified further ahead that’s an interest that does not fall within the competence of this NCP, given its nature, its functions and the *ratio* of the Guidelines.

b) Whether the issue is material and substantiated

8. In the specific instance, after indicating the sections of the Guidelines linked to the issue, the Complainant alleges the “really serious and documented omissions” from the Bank. These complaints are integrated in a wider section in which he contests what has been appraised or is still being verified in the competent jurisdictional Courts where the issue had been already brought (an Italian Tribunal in 2011 and another Italian Tribunal in 2016).
9. First of all, it should be noted that any questions on the legitimate exercise of the judicial function by national or international courts falls outside the proceedings before the NCP, since the Guidelines consist of recommendations addressed to the multinational enterprises in order to encourage them to adopt a responsible conduct.
10. With regards to the alleged violations of the Guidelines made by the Bank, the Complainant argues that since 2011 the Bank would have committed against him and his family “multiple violations of human rights, through phone calls, mails, visits to his home, by internet asking for payments, threats and fraudulent claims, with a broad disclosure of personal data and a clear violation of the privacy”. All of this happened damaging the “right to a decent life [...], the honor, the public respectability and the economic possibility to realize his own projects and aspirations”. In this regard the Complainant filed a complaint before a Court.
11. The way how the facts have been reported – as can be inferred by the declarations made by the Complainant before the involved jurisdictional Courts, as reported in the specific



instance's documentation - – lacks the supporting elements that would be necessary and sufficient to recognize the alleged violations and to justify the continuance of the procedure.

c) Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance

12. In the description of the facts the Complainant refers to actions of stalking made by the Bank without providing any other element/documentation/circumstances from which it can be clearly inferred the existence of a plausible link between the activities of the Bank and the issue raised in the specific instance.

d) The relevance of applicable law and procedures, including court rulings

13. It's worth repeating that, as it can be inferred by the instance, the dispute has been already decided by a jurisdictional Court and it is still pending before national Courts. Then, the dispute will be decided through jurisdictional judgments.

f) Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

14. The issue raised in the instance doesn't seem to be relevant to the implementation of the Guidelines because it is not functional to the purposes and to the effectiveness of them. The aims of the Guidelines essentially consist in encouraging a responsible business conduct, with particular regard to multinationals. NCP's "good offices" are aimed at ensuring an effective implementation of the Guidelines in concrete cases, through the research of an agreed resolution of the dispute, based on the responsible business conduct described in the Guidelines.
15. Then, in this specific case, we are in front of an old and complex situation – dating from 2011 - with regards to which it has not been possible to find any room for mediation, room that has not been indicated neither by the Complainant nor found in the specific instance documentation. That was caused by the fact that the dispute, started in 2011, has been debated in courts with documented results and, as it can be inferred, all the parties' opinions are clear, well-defined and sharp and the dispute is still pending before a Court, as the Complainant said.
16. Above all, with the present instance the Complainant asks the NCP to intervene not only against the Bank, but also against seven other people to which the Guidelines are not applicable since they are not business actors, and have been involved in the instance because of their functions, tasks and roles in the jurisdictional proceedings.
17. It must also be underlined that the NCP is not allowed to interfere with the legitimate exercise of the jurisdictional functions, since they are characterized by impartiality, autonomy and independence.
18. For all these reasons, the issue is not relevant to the implementation and does not contribute to the purpose of the effective implementation of the Guidelines.



Conclusions

19. In the light of the above considerations, since there are not the necessary and sufficient elements to offer its good offices, the NCP concludes this initial assessment considering that the issue raised does not merit further examination.

The President of the National Contact Point
Stefano Firpo