

Bresser's conduct in last year's relocation of the Zeynel Bey Tomb did not comply with OECD Guidelines

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Summary

The Dutch NCP for the OECD Guidelines has concluded that Bresser, a small to medium-size Dutch enterprise, has not fully met the expectations and satisfied the due diligence criteria of the OECD Guidelines.” in the project to relocate the Zeynel Bey Tomb, in Hasankeyf, in Southeastern Turkey. The tomb is a late-15th-century monument of extraordinary cultural value and a symbol of the rich cultural heritage of the region. Its relocation impacts the human right to culture of the affected people. Companies of all sizes are expected to consider and minimize the potential impact of their activities on human rights.



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The NCP notes that Bresser made some effort to carry out due diligence with regard to the involvement of the local community, but recommends that Bresser adopt a more structural approach before engaging into a project, in order to avoid contributing to adverse human rights impacts. In order to avoid a violation of the human right to culture, a broad consultation with all stakeholders, including the local community, should have been conducted prior to the removal of the Zeynel Bey Tomb. The NCP's statement also confirms that under the Guidelines, companies of all sizes, regardless of their location in the supply chain, are responsible for conducting adequate due diligence in order to prevent adverse impacts to human rights, including the right to culture/the right to cultural heritage and its conservation.

Introduction

On August 20, the Dutch National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises ("the Guidelines") published its final statement concerning the notification about Bresser. The final statement notes that the parties did not reach an agreement through a mediated dialogue. In its final statement, the NCP recommends changes in Bresser's behaviour. The notification was filed by the Initiative to Keep

Hasankeyf Alive (Turkey), Hasankeyf Matters (Turkey), and the Association for International Water Studies (FIVAS, Norway).

Bresser, working as a sub-contractor to the Turkish firm Er-Bu İnşaat, supplied the technology and skills essential to the relocation of the Zeynel Bey Tomb. The monument was built as the burial place of an Akkuyunlu prince killed in battle against the Ottomans in 1473. The tomb was relocated on May 12, 2017, under the protection of armed security forces, as part of the controversial Ilisu Dam project, which is expected to flood the ancient city of Hasankeyf and large parts of the Tigris River Valley.

Plaintiffs urge Bresser to cease work in Hasankeyf

The organizations that filed the complaint have asked Bresser to cease all activity in Hasankeyf until a proper human rights assessment and the attendant due diligence are carried out. The plaintiffs maintain that Bresser's contribution to moving the Tomb without the involvement and consent of the local population and other stakeholders makes the company responsible for a violation of the human right to culture. A sufficient due diligence would have made it possible for the company to identify and mitigate the adverse impacts. By moving the monument without consultation and infringing upon human rights, the project is also in breach of both Council of Europe Convention for the Protection of the Architectural Heritage of Europe (CETS 121) as well as what is considered best practice for a European structural relocation company.

The NCP's recommendations

The NCP states that that Bresser should have used its leverage "as a supplier of essential technical knowledge and experience" and should have "ensured more thoroughly with the main contractor [Er-Bu İnşaat] and/or DSI, that procedures are in place providing sufficient opportunities for stakeholders to participate in project development and implementation." The NCP states that this case shows that Bresser has not fully carried out the due diligence necessary to satisfy the expectations of the criteria of the OECD guidelines. The NCP further notes that Bresser did some efforts to carry out due diligence, but these measures were not adequate to meet fully the expectations established by the Guidelines.

The NCP recommends that the company adopt a more structured approach and show a clearer inclusion of risks external to the company in their risk management system.

All companies have a responsibility to conduct due diligence

This decision is noteworthy for the international business community, as it affirms that all companies, including SMEs, have a responsibility to conduct risk-based due diligence under the Guidelines. The NCP acknowledges that “the size of the enterprise does not affect its responsibility to conduct due diligence, but may affect its manner of carrying out due diligence.”

It is also worth noting that the Dutch NCP confirms that cultural rights are part of human rights, meaning that international businesses of all sizes and status in supply chains should include the potential adverse impacts on cultural rights and the right to cultural heritage and its conservation as part of human rights risk-based due diligence processes.

The project continues to deny the right to stakeholder consultation

It is alarming to observe that Bresser continues to assist Er-Bu and the DSI in the removal of select architectural elements. On August 6, the historic hamam (bath) was relocated using techniques similar to those used in removing the tomb, but now with even less transparency/public disclosure. The project continues to exclude a broad cross-section of relevant stakeholders, including the local community and independent experts in cultural heritage conservation, from the selection of monuments, the manner of removal, and their future location.

While the final statement makes clear that Bresser’s actions and policies have not fully met the expectations established in the Guidelines, the fact that Bresser continues to participate in the removal of Hasankeyf monuments, with virtually no change in its behavior, raises questions about how the OECD Guidelines can help commercial enterprises to identify potential synergies between ethical corporate behavior and the creation of economic value.

We call upon Bresser to halt all work in Hasankeyf until the cultural heritage conservation project is conducted in a way that meets the

expectations established in the Guidelines.

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