

BACKGROUND _____

The safety business: TÜV SÜD's role in the Brumadinho dam failure in Brazil

Q&A on the legal background

Why have those affected, ECCHR and MISEREOR filed complaints in Germany?

Four months before the B1 dam near Brumadinho failed, German certification company TÜV SÜD (AG), headquartered in Munich, confirmed the dam's stability. TÜV SÜD has subsidiaries worldwide, including Bureau de Projetos e Consultoria Ltda in Belo Horizonte (Brazil). Engineers from the Brazilian subsidiary declared the dam stable. In addition, witnesses reported that a TÜV SÜD employee from Munich regularly visited Brazil.

German companies are responsible for their direct business dealings, as well as the activities of their transnational subsidiaries. The case falls under German jurisdiction because German citizens and a German company are presumed to be jointly responsible for the dam failure in Brazil. On 15 October 2019, five of those affected together with [ECCHR](#) and [MISEREOR](#), supported by the Brazilian organization [Associação Jangada](#), filed a law infringement complaint with the public prosecutor's office in Munich against TÜV SÜD and a criminal complaint against one of its employees.

The aim of the complaints is to legally investigate the dam failure's structural causes in Germany and Brazil. This is the only way to prevent human-made catastrophes, such as the Brumadinho dam breach, from recurring. The German complaint against TÜV SÜD is not intended to release Brazilian mine operator Vale S.A. from liability, but to fully address all actors' responsibility.

What is TÜV SÜD accused of?

In the complaints, five of those affected by the dam failure, ECCHR and MISEREOR accuse TÜV SÜD of having contributed to the dam breach. Despite obvious safety risks, TÜV SÜD issued the necessary stability declaration. The complaints accuse a TÜV SÜD employee of negligence in causing a flood, negligent homicide and private bribery. The company as such is also accused of violating its supervisory duties – TÜV SÜD had a duty to prevent crimes from being committed within the company.

What role do certification companies like TÜV SÜD play in global supply chains?

Companies in high-risk industries such as mining often outsource safety standard verification to external companies. These certifiers are paid directly by the companies they audit – an inevitable conflict of interest. In the case of the B1 dam, the Brazilian public prosecutor's office stated that the mining company Vale regularly withdrew orders from certification companies that issued results against Vale's interests. Certification companies' and their test results' reliability are particularly crucial in Brazil. Mine operators are responsible for the safety of their dams; state authorities rely on certifiers' reports and usually intervene when they consider it necessary. If TÜV SÜD had not deemed the B1 dam stable, it would have been a warning to Vale and the Brazilian authorities, who could have initiated safety measures. This system leads to gaps in accountability – companies involved, such as Vale and TÜV SÜD, can blame each other.

Why did the B1 dam near Brumadinho burst?

The B1 dam should have retained the toxic sludge produced by mining iron ore. The dam was built using the so called upstream method. The top layer of sludge forms the foundation for additional sludge, without the use of any stabilization materials like cement. Upstream dams are therefore cheaper than other processes, but are banned in many countries because they are considered too unstable. They remain widespread in Brazil. A dam near Mariana, about 130 kilometers from Brumadinho, was also built using the upstream method. It broke in November 2015 with devastating consequences for people and the environment.

In the Brumadinho case, TÜV SÜD's Brazilian subsidiary reported dam drainage problems in March 2018. The mine operator Vale failed to implement the auditor's recommendations, or only did so partially. As a result, water in the dam continued to rise, pressure on the walls increased, and the otherwise solidified sludge liquefied until the dam finally broke in January 2019.

Why did TÜV SÜD confirm the dam's stability?

Why the auditor issued the necessary stability declaration is largely speculation. What is certain is that TÜV SÜD and its Brazilian subsidiary were aware of the dam's defects. In addition, mine operators in Brazil put certification companies under constant pressure. According to the Brazilian public prosecutor's office, Vale terminated contracts with external certifiers if they issued test results that went against the company's interests. Certification companies such as TÜV SÜD are therefore vested in presenting mining companies with results they expect.

How did TÜV SÜD react after the dam burst?

TÜV SÜD expressed its condolences to those affected by the dam burst, but did not offer any compensation or accept responsibility. The Brazilian public prosecutor's office has frozen approximately 13 million euros of TÜV SÜD's assets in order to settle possible compensation claims. TÜV SÜD asserts that its subsidiary inspected the dam in accordance with Brazilian

law, and informed Vale of safety deficiencies in a timely manner. Nonetheless, since the B1 dam burst, TÜV SÜD's Brazilian subsidiary has reassessed some of the dams it had deemed safe, issuing new safety warnings.

Is Brazil investigating?

In the Brazilian state of Minas Gerais, a public prosecutor task force is investigating the roles of Vale and TÜV SÜD's Brazilian subsidiary in the dam breach. Vale has already been required to pay compensation for the deaths and environmental damage. The mine operator has joint responsibility for the dam failure, even if TÜV SÜD is convicted in Germany. The lawsuit against TÜV SÜD does not relieve Vale of its responsibility, but rather ensures that structural causes are fully addressed.

Why does ECCHR support a German human rights due diligence law in addition to pursuing the case against TÜV SÜD?

Companies and employees who commit crimes are liable. This is why those affected, ECCHR and MISEREOR have filed complaints against TÜV SÜD.

The case also shows that Germany needs a [human rights due diligence law](#). On the one hand, such a law would make it easier for those affected to file civil lawsuits against companies like TÜV SÜD. On the other hand, a future law should have a preventive effect: companies would be legally obliged to conduct human rights due diligence and take measures to protect people and the environment along their entire supply chain, from extracting raw materials to waste disposal. This would also affect companies that only participate in the second or third stage of a production cycle, such as TÜV SÜD in the Brumadinho case.

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