

QUESTIONS AND ANSWERS _____

Paying the price for disasters: The Baldia factory fire and the role of German clothing retailer KiK

Why the lawsuit against KiK?

258 dead and 32 injured: in the fire on the 11 September 2012, the employees of the Ali Enterprises textile factory in Karachi paid the ultimate price for KiK's clothing. Up to that day, they had been working for a pittance under inhumane conditions.

The survivors and relatives are still suffering from the consequences of the factory fire. They want justice – and demand that KiK, a German clothing retailer and by its own admission the factory's main customer, should be held accountable for its share of responsibility. And they want to show that as survivors and relatives, they are not merely passive victims of the fire; they are actively fighting for their rights.

The plaintiffs in the case against KiK refuse to accept a scenario in which corporations profit from the exploitation of their employees in South Asia, but ultimately do not have to take any responsibility for their safety. The lawsuit against KiK in Germany was also a signal to other textile corporations around the world: transnational corporations bear responsibility for the working conditions in their subsidiary and supplier companies abroad. More and more of people affected by these conditions and other organizations are willing to go to court to pursue this aim.

How did KiK react after the fire at Ali Enterprises?

Shortly after the fire, KiK paid US\$1 million in immediate relief to the survivors and relatives. An independent commission, established at the High Court of Sindh in Pakistan, distributed this money to those affected by the fire. Both ECCHR and

KiK received a list of the persons included in the scheme and the respective sums paid by the High Court of Sindh.

Since December 2012, negotiations have been ongoing between KiK, the Pakistani organization PILER and the Clean Clothes Campaign (CCC) regarding long-term compensation. A reparation package for *all* those affected was discussed. The goal was compensation for the loss of income of the main breadwinner in many families. The families demanded payments equivalent to the Pakistani minimum wage for three years. Additionally, KiK was to accept joint responsibility for the fire safety deficiencies.

How did negotiations on compensation proceed?

KiK stalled talks with the relatives and the survivors of the factory fire and more than a year later, in December 2014, made an inadequate offer. The company indicated that there would be no damages for pain and suffering. Those affected were to initially get a payment of US\$1,000 which is approximately a year's income for a textile worker in Pakistan.

The company was not willing to make an agreement concerning the planning of an extensive compensation process based on the principles of the International Labour Organization (ILO Convention 121 concerning benefits in the case of employment injury). In addition, KiK would not commit to a certain percentage rate to contribute to the compensation. The retailer was not even willing to commit to a single-digit rate. In conversations with the plaintiffs' lawyer Dr. Remo Klinger and ECCHR in January 2015, KiK refused to improve its offer.

The Ali Enterprises Factory Fire Affectees Association (AEFFAA), a self-organized group of those affected by the fire, rejected this offer in February 2015. At this plenary meeting in Karachi, the organization also appointed the four people – one survivor and four relatives – who were to file a civil suit in March 2015 at the Regional Court in Dortmund, Germany. They each demanded €30,000 damages for pain and suffering as well as for KiK to officially acknowledge its share of the responsibility for the fire and its consequences.

In September 2016, KiK announced in the course of a dialogue moderated by ILO that the company was prepared to pay US\$5.15 million in pecuniary damages to those impacted by the fire. In May 2018, the first payments were made. The civil suit in Germany played a key role in the ILO negotiations. However, KiK still refuses to admit responsibility for the fire.

What was the legal basis of the lawsuit in Germany?

In claims for compensation that are not based on contractual obligations, the Rome II regulation determines what law applies in cross-border litigation. If, for example, a German person causes a car accident in France and the French victim sues the German for damages in the latter's domicile in Germany, then this regulation controls which law applies. Usually, the applicable law is the law of the country in which the damage occurred – in this example that would be France. The courts in the home country of the defendant have jurisdiction – in this case Germany. This means that the French victim could sue the German in Germany for damages arising from the car accident. The German court would apply French law.

Rome II is a gateway into German law in the KiK case: for the Ali Enterprises factory fire, Pakistani law applies. The Pakistani legal system is part of the common law legal system, a system found in many English-language countries and former British colonies, which is based not only on codified laws but also on past judgments – which set a precedent – and is also developed further by judicial interpretation. Pakistani courts generally see themselves as bound by Indian and British case law. That is why it is appropriate to base this lawsuit on claims based on the common law as developed in the UK and India.

These claims are comparable to the compensation provisions of the German Civil Code (BGB §§823, 813). The German Civil Code also provides for liability for employees (in this case the textile workers) and nominally “freelance” employees who are essentially employees by another name (in this case Ali Enterprises), but this liability is broader under common law than in Germany.

The lawsuit was based on recent developments in the common law that have been solidified by Pakistani, Indian and British courts. These court judgments increasingly take account of modern economic structures; the courts impose liability for buyer companies where there was a sufficiently close relationship between the buyer and the supplier. Since the Pakistani factory produced for KiK almost exclusively and as KiK has repeatedly stressed its regular visits to oversee all their suppliers, the business ties between KiK and the Pakistani factory are to be seen as strong and sufficiently close to hold KiK accountable for the fire safety issues.

What happened since the lawsuit was filed in 2015?

In August 2016, the Regional Court in Dortmund declared that it had jurisdiction over the case and granted legal aid to the claimants to cover the costs. This decision was an initial step towards addressing, in German courts, human rights violations committed by German companies abroad.

KiK evaded its share of responsibility and due diligence for the 258 persons who died in its supply factory by pointing to a statutory limitation under Pakistani law. ECCHR and its partner lawyer Dr. Remo Klinger who represented the Pakistani plaintiffs disagree with this view. According to German law, the legal complaints are clearly not statute barred. In 2014, KiK agreed to waive any possible statutory limitation, but two years after the civil suit was filed in Germany reneged on this agreement.

What caused the fire on 11 September 2012?

Immediately after the fire, Pakistani authorities prepared three expert reports on the cause of the fire. Two of the three reports ruled out arson as the cause of the fire, one did not comment on this question. In March 2015, a hearsay witness appeared who was interrogated by the Pakistani investigating authorities for other serious crimes. This witness testified that he had heard a third party claim that he had set fire to the Ali Enterprises factory. Investigations are continuing in Pakistan into arson related to local extortion.

However, the cause of the fire was irrelevant to the civil suit as effective fire safety measures must be in place even if the fire was started deliberately. The lawsuit did accuse the factory owners or KiK of having caused the fire. The lawsuit accused KiK of failing to ensure that a long-standing, economically dependent supplier company had adequate fire safety measures in place.

What was the impact of the fire safety deficiencies?

A few more exits, accessible stairways and clearly signposted escape routes: a couple of changes would have been enough to save many lives in the fire that destroyed the Ali Enterprises factory. However, inadequate fire safety measures led to the horrific deaths of 258 factory workers. This is demonstrated in a

computer simulation project by Forensic Architecture at Goldsmiths, University of London. In January 2018 this [simulation](#) was submitted to the Regional Court in Dortmund, Germany, where the legal action against KiK is ongoing.

The 18-minute video details the lack of stairs, emergency exits, fire extinguishers and fire alarms in the factory. Using photos, videos and witness testimonies, the forensic experts reconstructed the exact dimensions, architecture and layout of the building and simulated the events on the night of the fire. In consultation with international fire safety experts they also simulated how the fire would have progressed if better safety measures had been in place. Based on this information and analysis, the Forensic Architecture team comes to a clear conclusion: small changes in fire safety precautions would have drastically reduced the impact of the fire.

KiK knew or should have known about the structural details if, as they claim, their representatives visited the factory several times. As the supplier's main client, KiK could have easily demanded improvements to fire safety measures. Clearly they did not do this. As a result, KiK bears part of the responsibility for the 258 deaths and other consequences of the factory fire.

Information correct as of: January 2019

European Center for Constitutional and Human Rights (ECCHR) e.V.

www.ecchr.eu