

QUESTIONS AND ANSWERS \_\_\_\_\_

**The Baldia factory fire and the role of the German clothing retailer KiK**

**Why the lawsuit against KiK?**

Two hundred and fifty eight dead and 32 injured. Ali Enterprises textile factory employees paid the ultimate price for KiK's clothing in the 11 September 2012 fire in Karachi. Prior to that, they had worked for a pittance under inhumane conditions.

Survivors and relatives are still suffering from the consequences of the factory fire. They want justice and demand that the German retailer KiK – by its own admission the factory's main customer – be held accountable. That is why Muhammad Hanif, Muhammad Jabbar, Abdul Aziz Khan Yousuf Zai and Saeeda Khatoon filed a compensation claim against KiK at the Regional Court in Dortmund in March 2015. The four plaintiffs – one survivor and three bereaved – belong to the Ali Enterprises Factory Fire Affecteds Association. They sought 30,000 euros each in damages from KiK and were represented in court by ECCHR partner lawyer Remo Klinger.

The plaintiffs did not want to accept a scenario in which corporations profit from the exploitation of employees in South Asia, but ultimately do not have to take any responsibility for their safety. The lawsuit against KiK in Germany was a signal to other companies around the world: transnational corporations bear responsibility for the working conditions in their subsidiaries and suppliers abroad.

In January 2019, the court dismissed the lawsuit filed by the four affected parties against KiK on the grounds that had exceeded the statute of limitations. KiK initially agreed to waive statutory limitations, but later rescinded its offer. The case was decided on procedural grounds rather than merit. The crucial questions about corporate liability remain unanswered. In February 2019, the plaintiffs filed an

application for legal aid to appeal the case at the Higher Regional Court of Hamm. The court rejected the application in May 2019.

The lawsuit, which ECCHR initiated and [medico international](#) supported, was the first of its kind in Germany.

---

## **How did KiK react after the fire at Ali Enterprises?**

Shortly after the fire, KiK paid one million US dollars in immediate relief to survivors and relatives. KiK, the Pakistani organization PILER and the Clean Clothes Campaign began negotiating long-term compensation in December 2012. A compensation package for *all* of those affected was discussed. The goal was to compensate families for the lost income of the main breadwinner in many cases. Additionally, KiK was to accept joint responsibility for the lacking fire safety in the factory.

KiK stalled talks with those affected by the factory fire and more than a year later, in December 2014, made an inadequate offer. The company offered no damages for pain and suffering. Those affected were to initially receive a payment of 1000 US dollars, approximately a year's income for a textile worker in Pakistan.

The company was not willing to agree to an extensive compensation process based on the principles of the International Labour Organization (ILO Convention 121 concerning employee injury benefits). KiK also refused to compensate only a certain percentage. The retailer was not even willing to commit to a single-digit percentage.

Since KiK did not meet the demands those affected, the Ali Enterprises Factory Fire Affectees Association rejected its offer in a plenary meeting in February 2015. At this meeting in Karachi, the organization appointed the four people – one survivor and four relatives – who later filed the civil lawsuit against KiK for human rights violations in its supply chain in March 2015 at the Regional Court in Dortmund, Germany. In September 2016, KiK announced in the course of a dialogue moderated by ILO that the company was prepared to pay 5.15 million US dollars in pecuniary damages to those impacted by the fire. In May 2018, the first payments were made.

---

## **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, France. The courts in the defendant's home country 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, which is found in many English-language countries and former British colonies. It is not based 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 (Article 823 and 813). The German Civil Code also provides for liability for employees (in this case, 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 almost exclusively for KiK and as KiK has repeatedly stressed its regular visits to oversee all its suppliers, the business ties between KiK and the Pakistani factory are strong and close enough to hold KiK accountable for the fire safety issues.

---

## What was the impact of the fire safety deficiencies?

A few more exits, accessible stairways and clearly marked escape routes: a few changes would have been enough to save many lives. 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.

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 clearly concludes: 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 employees visited the factory several times. As the supplier's main client, KiK could have easily demanded fire safety improvements. Clearly it did not do so. As a result, KiK bears joint responsibility for the 258 deaths and other consequences of the factory fire.

---

**Last updated: January 2021**

European Center for Constitutional and Human Rights

[www.ecchr.eu](http://www.ecchr.eu)