

BACKGROUND _____

Paying the price for catastrophes: Survivors of Pakistani factory fire sue German clothing retailer KiK

Why the lawsuit?

260 dead and 32 injured: In the fire disaster on the 11th of September 2012, the employees of the Ali Enterprises textile factory in Karachi paid the ultimate price for KiK's clothing. Before the fire they had been working for a pittance under inhumane conditions. This is the true price of textile production for the western market – not just in Pakistan but also in Bangladesh, Myanmar and in other South-East-Asian countries.

The survivors and relatives still suffer from the consequences of the fire disaster today. They are demanding justice from KiK – the principal buyer of the goods produced at the factory. And they want to show that, as survivors and relatives, they are not merely “poor victims” of the fire but are becoming actively engaged.

The plaintiffs 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. Therefore the lawsuit against KiK in Germany acts as a signal to other textile corporations worldwide: transnational corporations are also responsible for the working conditions of their subsidiaries and suppliers. More and more of those affected and organizations are willing to go to court to make this a reality.

How did KiK react after the fire at Ali Enterprises?

Shortly after the catastrophe KiK paid US\$ 1 million in immediate relief to the survivors and relatives. An independent commission in Pakistan distributed this money to victims and their families.

Since December 2012, there have been negotiations 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. Those affected demanded payment of the Pakistani minimum wage for

three years. Additionally, KiK was to accept joint responsibility for the fire safety deficiencies.

But KiK stalled on talks with the relatives and the survivors of the catastrophe in Karachi and then, in December 2014, made an inadequate offer. The company indicated that there will be no damages for pain and suffering. Those affected were to initially get a payment of \$1,000. But the company did not want to commit to concrete figures regarding long-term compensation. It rejected any responsibility for those killed and injured in Karachi.

The Baldia Factory Fire Affectees Association, a self-organized group of those affected, rejected this offer on 8 February 2015. At the meeting in Karachi, the organization also appointed the four people that were to file the lawsuit. The group came to this decision after extensive preparation and consideration.

How did negotiations on compensation proceed?

The plaintiffs have filed a legal action for damages. They demand € 30,000 compensation per victim. They base this on the fact that KiK bears (joint) responsibility for the fire safety deficiencies in the Pakistani factory and, therefore, should also bear liability for the damages that resulted from the fire disaster.

Why were negotiations in February 2015 unsuccessful?

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 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 domicile of the defendant have jurisdiction – in this case Germany. This means that the French victim could sue the German for damages that occurred in the car accident in the German's home country. The German court would apply French law.

Rome II is a gateway into German law in the KiK case: regarding the fire in Ali Enterprises, Pakistani law applies. The Pakistani legal system is part of the common law legal system. Pakistani courts generally see themselves as bound by

Indian and British precedent. 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 but this liability is broader under the common law than in Germany.

We are basing the lawsuit on current developments in the common law that have been consolidated by Pakistani, Indian and British courts. These court judgments increasingly take account of modern economic structures: The courts see it as appropriate to impose liability for buyer companies where there was a sufficiently close relationship between the buyer and the producer company. Since the Pakistani factory produced for KiK almost exclusively and because KiK has repeatedly made assurances that they regularly visit all their suppliers and control them personally, the business ties between KiK and the Pakistani factory are to be seen as strong and sufficiently close.

In September 2016, KiK announced in the course of a dialogue moderated by the International Labour Organization that the company was prepared to pay 5.15 million US dollars in pecuniary damages to those impacted by the fire. However, KiK continued to refuse to pay damages for pain and suffering or to officially acknowledge its share of the responsibility, as called for by those affected in the lawsuit they filed in Germany.

What role is ECCHR playing in the lawsuit?

As an organization, we count on the “usability” of the law. We use the law to change unjust conditions.

We want to take action against the system of “organized ir-responsibility” in the global supply chains. We fight to ensure that our justice system is attuned to global economic structures. This means that for instance that in cases of factory disasters like this one, buyer companies profiting from the production conditions must be held accountable.

The UN Guiding Principles on Business and Human Rights establish a corporation’s responsibility for its entire supply chain. This international standard, which reflects the consensus of the international community of states, has to be applied in national courts. We need fundamental legal reforms so that the victims of corporate human rights violations can also sue in those countries

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where the parent companies are based. To achieve our goal, we pursue several legal avenues with our partner organizations.

For the past two years, ECCHR has been supporting the lawsuit by working with various Pakistani partner organizations and 190 affected family members on the legal action arising from the fire in Ali Enterprises. During several research trips, ECCHR staff members have documented the reports of survivors, relatives and witnesses of the fire disaster. The statements of those affected and ECCHR's legal expertise form the basis of the lawsuit before the German courts.

ECCHR has also submitted an amicus brief to the High Court of Sindh in Karachi in the criminal complaint against the owner of the Ali Enterprises textile factory. The amicus brief advocates broadening the investigation. In it, ECCHR and our partner organizations request that the Pakistani state broaden the scope of the investigation and examine the role of the two European corporations KiK and the certification company RINA. In Italy, we are also providing legal expertise in the preliminary proceedings against RINA. A few weeks prior to the fire, RINA issued an SA 8000 certificate to the Ali Enterprises factory attesting to high fire safety standards.

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