

Human rights violations committed overseas: European companies liable for subsidiaries

The Danzer, Nestlé and Lahmeyer cases

Any corporation conducting business activities overseas, whether acting independently or through a subsidiary, must take into account its responsibility for human rights violations. National and European laws on labor, the environment and consumers' rights provide comprehensive protection for human rights within Europe. Outside of the EU such protection can be lacking. Protection mechanisms are often absent while local authorities may be lax when it comes to enforcing existing laws. In some states trade unions and other organizations face violent oppression. In such countries workers and others affected by corporate crimes have great difficulty enforcing their rights against state authorities and economic powers. Under such circumstances, European corporations – through their subsidiaries – run the risk of violating human rights or indirectly facilitating rights violations by cooperating with authoritarian regimes or paramilitary groups.

Liability in weak or authoritarian states

European corporations must bear responsibility for injustices caused by their international business activities, even when operating in conflict regions with weak public infrastructures or authoritarian regimes that offer little scope to conduct business within the rule of law. Internationally recognized standards such as the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the OECD Risk Awareness Tool set down clear standards on how corporations should deal with the risk that their subsidiaries might violate human rights in conflict regions and weak or authoritarian states.

While these rules are not binding, they are considered part of international soft law. They represent a consensus of the international community of states and denote trade standards that conscientious business people and corporations must adhere to.

Due diligence, instruction and monitoring

Management of international corporations must undertake regular human rights risk analyses for all of their business operations. This is the only way to clearly identify and effectively counter potential risks for corporations and their

subsidiaries. International codes of practice must form part of company policy. Employees who may come into contact with human rights violations should be made aware of the potential risks and given instruction on the applicable due diligence standards. Management must give clear instructions on how to deal with the various risks and must monitor adherence to these instructions. This is particularly important for business activities that carry an increased risk of contributing to cases of sexualized violence.

ECCHR's work

Since 2012 ECCHR's work in this area has focused on establishing the liability of corporations and individual managers who do not meet their international due diligence obligations. We apply existing liability provisions in national (criminal) law and read legal terms such as due diligence, duty of care and guarantor duty as encompassing international standards such as the UN Guiding Principles on Business and Human Rights. Three current ECCHR cases exemplify this approach:

In regions where police and military forces are known to be particularly prone to violence, including sexualized violence, corporations must monitor their subsidiaries in the region and ensure that subsidiaries do not give cause for police operations (Danzer case).

In regions of armed conflict, such as Colombia, a parent company has a responsibility to prevent management at its subsidiaries from cooperating with parties to the conflict and endangering human life (Nestlé case).

Companies involved in projects in 'weak' states such as the construction of a dam in Sudan must not rely solely on national authorities to safeguard operations but must itself ensure for instance that the resettlement of the population is fully completed before building is completed and further villages are flooded (Lahmeyer case).

Need for legal reform

The due diligence obligations of European corporations for their foreign subsidiaries have to date been set out on a case by case basis. As a result, the current legal situation fails to offer adequate certainty for companies and victims. There is a need for legislative action and clear guidelines on the scope of corporate due diligence obligations within a globally active corporate group. There is also a need for clarification of the structural relationship between various management positions within a firm and the question of which obligations on the monitoring of human rights risks in foreign subsidiaries may or may not be delegated. The German government and other EU governments must offer a clear definition of due diligence and firmly establish it as an

obligation under national and European law so that it may be relied upon before the courts by victims of human rights violations.

The Danzer case

A subsidiary of the German-Swiss company Danzer assisted in a violent police operation against a village community in the Democratic Republic of Congo by providing authorities with vehicles and petrol and paying the soldiers and police officers involved. Congolese security forces subjected more than twenty inhabitants of the village to abuse and rape. A senior manager at Danzer Group Germany is accused of failing to prevent managers of the Congolese subsidiary from supporting police and military forces involved the operation. The case has been under examination by public prosecution authorities in Tübingen since April 2013.

The Nestlé case

Trade unionists in Colombia face brutal repression by state and paramilitary forces. In 2005 trade union leader Luciano Romero, a former employee of a Nestlé subsidiary, was murdered by paramilitaries. Prior to the murder, local management at the Nestlé subsidiary had claimed that Romero was a member of the guerrilla, a move which in those circumstances effectively represents a death sentence. Nestlé and its Swiss management are accused of breaching their due diligence obligations and negligently failing to take all possible measures to prevent the murder of Romero. The case is currently pending before the Swiss Federal Supreme Court.

The Lahmeyer case

Engineering firm Lahmeyer International planned and directed the construction of the Merowe dam in Northern Sudan. Despite the fact that resettlement of the residents of the region to be flooded had not yet been completed, Lahmeyer proceeded with construction. 4,700 families were forced to leave their homes due to the resulting rising water levels. The corporation claims that it was the obligation of the Sudanese state to organize the resettlement. Public prosecution authorities in Frankfurt Main are currently investigating whether three managers at the company may be criminally liable for the displacement of the families.
