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Business and human rights

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Germany

Germany



1. What kind of judicial protection do I have in your country as a victim of business- related human rights violations? Does this protection include compensation?

a. Civil law

Anyone who considers that their rights have been infringed by the actions of a German undertaking can take legal action against that undertaking before the German civil courts. The court with jurisdiction is in principle the court in whose judicial district the defendant undertaking has its registered office. The registered office of an undertaking is the seat determined by its statutes, the place where it has its headquarters or principal place of business. This international jurisdiction of German courts is derived from Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast Brussels I Regulation). Further information on this Regulation can be found [here](#).

If the defendant undertaking's registered office is not located in the European Union or in a contracting state to the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 30 October 2007, the international jurisdiction of German courts may derive from German rules of civil procedure, in particular the Code of Civil Procedure (*Zivilprozessordnung* - ZPO). For example, under Section 32 ZPO, a case may be brought before a German court if at least part of the tort/delict was committed in Germany. An action is deemed to have been committed both at the place where the person causing the damage acted (*Handlungsort*) and at the place where the legally protected right of the person sustaining the damage was infringed (*Erfolgsort*).

These jurisdictions also apply when actions brought by non-EU citizens who are not resident in the European Union.

The national legal order with jurisdiction for claims arising from a tort/delict is determined by Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II Regulation). It provides that normally the applicable law is the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur (Article 4(1) of the Rome II Regulation). Further information on the applicable law can be found [here](#).

The German rules of civil procedure contain instruments allowing actions brought by different claimants to be dealt with collectively, e.g. the joinder of parties (*Streitgenossenschaft*) (see Section 59 et seq. ZPO). Pursuant to Section 59 ZPO, a number of persons may jointly sue or be sued if they form one legal entity in relation to the subject-matter of the dispute or if they have a right or obligation based on the same factual or legal ground.

In 2018, Germany introduced the application for a test-case declaratory judgment (*Musterfeststellungsklage*) for cases in which the rights of a large number of consumers have been infringed by an action of an undertaking. Specially qualified consumer protection associations may, under certain conditions, lodge an application for a test-case declaratory judgment seeking a court ruling on key issues of fact and law on which the claims of all the

consumers are based. An application for a test-case declaratory judgment blocks the time-barring of the individual claims of the consumers entered in the register of applications (the consumers can therefore await the outcome of the application for a test-case declaratory judgment without risking a loss of rights). Consumers can enter their claims in the register of applications free of charge. The declaratory judgment (on the key issues of fact and law) is binding on both the undertaking and the consumers entered in the register. After a declaratory judgment in favour of the consumers, an undertaking will probably be prepared to pay compensation voluntarily. If the undertaking does not pay voluntarily, the consumers entered in the register of applications can enforce their claims in court or out of court on the basis of the test-case declaratory judgment.

b. Law on administrative offences

Under the Act on Administrative Offences (*Gesetz über Ordnungswidrigkeiten*), fines of up to EUR 10 million can be imposed on undertakings if, for example, a member of an undertaking's management commits a criminal offence. This also applies to business-related human rights violations. A higher fine may be imposed if it also serves to cream off the economic advantage that the undertaking obtained from the offence.

The German Government's coalition agreement for the 19th legislative period makes provision for reform of the law governing penalties on undertakings. Implementation is in the preparatory stage.

2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?

German law on non-contractual liability does not contain any specific rules concerning gross violations of human rights. However, if a gross violation of human rights causes a violation of a legally protected individual right, general non-contractual liability may come into play. For example, under Section 823(1) of the Civil Code (*Bürgerliches Gesetzbuch*), a person who, intentionally or negligently, harms the life or limb, health, freedom, property or any other right of another person unlawfully is liable to pay damages. Where harm is caused to life or limb, health, freedom, property or any other right, it is not only the person who directly caused the harm who is liable, but also anyone who did not take the necessary and reasonable steps to prevent harm to third parties, if that person has created a source of risk (*Verkehrssicherungspflicht*).

Moreover, in the area of private environmental liability law, there are special strict liability offences for when legally protected rights of individuals are infringed, such as Section 1 et seq. of the Environmental Liability Act (*Umwelthaftungsgesetz*), Section 25 et seq. of the Atomic Energy Act (*Atomgesetz*), Section 32 et seq. of the Genetic Engineering Act (*Gentechnikgesetz*) and Section 89 of the Water Management Act (*Wasserhaushaltsgesetz*).

From the point of view of criminal law, gross violations of human rights are also covered by general criminal offences. Serious forms of labour exploitation are made punishable offences by, for example, Section 233 of the Criminal Code (*Strafgesetzbuch* – StGB) (trafficking of human beings for labour exploitation).

In order to maintain decent living conditions, especially for future generations, the environment is also protected under criminal law. In this regard, the provisions of the Criminal Code (Section 324 et seq. StGB) include, as primary criminal law (*Kernstrafrecht*) in Germany, comprehensive protection of water, air and soil as essential elements of the environment. This fundamental protection is supplemented by various provisions of secondary criminal law (*Nebenstrafrecht*) and also provides protection for flora and fauna. At the same time, the extensive requirements of EU law are taken into account in order to be in keeping with environmental protection as a cross-border task.

3. I am the victim of a human rights violation resulting from activities carried out outside the European Union by a European transnational corporation. Do I have access to the courts in your country if I am not an EU citizen or I don't live in the EU? Under what conditions can I claim a

violation of my rights? Where can I find additional information?

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4. Can ombudsman institutions, equality bodies or national human rights institutions support victims of business-related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen or I don't live in the EU? Are there other public services (such as a labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?

Germany's National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) acts as an out-of-court complaints body. It is based in the Federal Ministry of Economics and Energy and has the task of promoting awareness and effective implementation of the OECD Guidelines. Anyone who can plausibly demonstrate a legitimate interest is able to lodge a complaint with the NCP regarding possible infringements of the OECD Guidelines by a multinational enterprise. The NCP examines the complaints received and, if they are accepted, offers its support to the parties involved in the matter in the form of a conciliation or mediation procedure in order to help them reach agreement on contentious issues. The NCP is responsible for, amongst other things, complaints regarding insufficient respect for human rights and insufficient consideration of human rights in the exercise of corporate due diligence, as defined in the OECD Guidelines. The revised 2011 version of the OECD Guidelines, which include specific recommendations with regard to respect for human rights by undertakings, is expressly based on the United Nations Guiding Principles on Business and Human Rights.

The NCP coordinates its activities and decisions in consultation with the Interministerial Committee (IMC) for the OECD Guidelines. Seven further Federal Ministries are represented in this IMC. The Working Group on the OECD Guidelines provides a further forum for exchange. The members of the Working Group include, in addition to representatives of all the Federal Ministries brought together in the IMC for the OECD Guidelines, representatives

of business associations, trade unions and non-governmental organisations.

Further information on the complaint procedure before the NCP (including information on complaints received and the action taken on them) is available online on the website of the German NCP, which can be found [here](#).

5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations also apply to violations that occur outside the European Union? Who is in charge of monitoring these activities in your country? Are there public reports available providing information on the functioning of the system?

In the '2016-2020 National Action Plan for Business and Human Rights' (NAP), the Federal Government laid down the expectation that all undertakings are to appropriately integrate human rights due diligence processes into their business activities in Germany and around the world, i.e. also outside the EU. This expectation is not a legal provision. The NAP defines human rights due diligence on the basis of five core elements, one of which is the setting up of a complaint mechanism by undertakings.

In that context, the NAP stresses the important role that non-governmental complaint mechanisms can play and encourages enterprises to participate in or set up such mechanisms. The NAP imposes a number of requirements on the setting up and functioning of non-governmental complaint mechanisms. For example, the complaint mechanism should be structured differently according to the target group. When setting up new mechanisms and making use of existing ones, care should be taken to ensure that they guarantee a fair, balanced and predictable procedure that is accessible to anyone who is potentially affected. The procedure should allow for as much transparency as possible vis-à-vis the parties involved and should be in line with international human rights standards. A number of German undertakings have already set up internal or sectoral complaint mechanisms to enable their employees and people outside the undertaking to claim human rights violations.

The Federal Government is scrutinising the implementation status of human rights due diligence by undertakings by means of a survey conducted annually from 2018 to 2020 in accordance with scientific standards. This survey will provide empirical findings on whether enterprises with more than 500 employees have set up complaint mechanisms and whether those mechanisms are fulfilling their function. The results of the NAP monitoring are also important for the Federal Government's discussion on follow-up measures to the current NAP. If the NAP monitoring shows that fewer than 50% of the undertakings concerned meet the NAP requirements in relation to corporate due diligence, the Federal Government will, according to the NAP, consider taking further steps, including legislative measures. The coalition agreement of the current Federal Government also stipulates that, depending on the outcome of a comprehensive and effective review of the NAP, the Federal Government may take legislative action and lend its support to EU-wide regulation.

The members of the multi-stakeholder Partnership for Sustainable Textiles attach great importance to ensuring effective complaint mechanisms along global value and supply chains. For this reason, information and examples of best practice from various members are exchanged within the framework of the complaint mechanisms expert group. Furthermore, the textiles Partnership has entered into cooperation with the Fair Wear Foundation, which is active in the area of complaint mechanisms in seven textile-producing countries.

German development cooperation is currently supporting projects to improve working conditions in the textile sector in Bangladesh, Myanmar and Pakistan. The activities under the projects also include the development and implementation of strategies for effective complaint mechanisms.

As part of the human rights approach of the Federal Ministry of Economic Cooperation and Development, the governmental organisations implementing Germany's development cooperation initiatives have introduced complaint mechanisms: Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ), as a state-owned undertaking, and KfW Entwicklungsbank as promotional bank and public-law institution, have been setting up human rights complaint mechanisms since 2013. They were followed in 2017 by two higher federal authorities: the Federal Institute for Geosciences and Natural Resources (Bundesanstalt für Geowissenschaften und Rohstoffe - BGR) and the National Metrology Institute (Physikalisch-Technische Bundesanstalt - PTB).

The complaint mechanisms are publicly accessible and also deal with complaints relating to activities outside the European Union. On request, the GIZ, KfW, BGF and PTB provide the Ministry with information on complaints received.

Deutsche Investitions- und Entwicklungsgesellschaft mbH (DEG), a subsidiary of KfW, also set up its own complaint mechanism in 2014.

The following out-of-court dispute resolution mechanisms are available in Germany (for procedures before the National Contact Point for the OECD Guidelines for Multinational Enterprises, see Question 4):

1. In mediation proceedings, a third party is called in solely for the purpose of mediating in the dispute; he or she does not have any decision-making power. Mediation is an easily accessible conflict resolution method that is not in principle associated with a specific area. It can therefore be applied in all areas in which conflicts may arise.
2. Germany also offers the possibility of dispute resolution, in which a third party presents the parties with a (non-binding) proposal for a decision. A special form of dispute resolution for consumer contracts is governed by the Act on alternative dispute resolution in consumer matters (*Gesetz über die alternative Streitbeilegung in Verbrauchersachen - VSBG*). This act provides consumers with a convenient and free method of dispute resolution; it also provides undertakings with a mechanism for handling consumer complaints in a way that improves their image and helps to avoid litigation.
3. There is also the possibility of recourse to (out-of-court) arbitration, if the parties agree to it.

Further information on the possibilities for mediation can be found [here](#).

6. Do I have specific rights if I am a vulnerable victim seeking a remedy for business-related human rights violations? Can I have access to legal aid, and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?

German law on civil procedure contains various mechanisms to facilitate access to German civil courts. For example, claimants can apply for legal aid if they cannot afford to pay the costs of the proceedings (Section 114 et seq. ZPO). After the claimant's personal and financial circumstances and the prospects of success of the case have been examined, the court costs and lawyers' fees are covered in part or in full depending on the claimant's need, provided that the action does not appear to be vexatious. Foreign natural persons can also apply for legal aid for court actions in Germany. Legal persons with a registered office in the EU - e.g. victims' associations - can receive legal aid under the conditions laid down in the German Code of Civil Procedure.

Directive 2002/8/EC aims to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

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