



EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS

SWIFT LEGAL VICTORY IN THE COMPLAINT AGAINST LIDL

A coalition between the European Center for Constitutional and Human Rights (ECCHR), the Customer Protection Agency (VZ) in Hamburg, and the Clean Clothes Campaign (CCC) has recently achieved a legal victory against the market-leading German discounter Lidl.

The ECCHR, together with the CCC, supported the Customer Protection Agency in Hamburg in filing a complaint against Lidl on 6 April, 2010. In this complaint, Lidl is accused of misleading customers as to its compliance with social and labor standards in its supplying factories. Through such advertisements, Lidl deceives consumers and gains an unfair competitive advantage. This complaint marks the first time in Germany that a German corporation is taken to court over poor working conditions.

Only ten days after the submission of the complaint, Lidl conceded. The corporation effectively admitted to the allegations made against it and retracted its advertisement promises of worldwide fair working conditions in textile supplying plants in Bangladesh.

ECCHR-PROGRAM BUSINESS AND HUMAN RIGHTS

Under the lead of Dr. Miriam Saage-Maaß, the Managing Director of their Business and Human Rights department, ECCHR fights against the impunity of corporate injustice. The glaring disparity between legal avenues available to those who have had their fundamental rights violated by economic actors, on the one hand, and transnational corporations on the other, ought at the very least to be reduced through professional, legal proceedings and cooperation with human rights organizations. Three areas are particularly relevant here: a) corporate co-operation with violators of international criminal law (e.g. the Argentinean military dictatorship, the South African apartheid system), major labor rights violations (as in the case of the Lidl supplier factories or the cotton production in Uzbekistan), and the violation of economic, social, and cultural human rights in infrastructure projects or in extraction industries.

In order to provide an overview of the legal proceedings against corporations in Europe, ECCHR has systematically analyzed 69 cases of corporate injustice in Europe. Our colleagues made inquiries into the possibilities for legal action against corporations, including, as the Lidl complaint has show, through customer and competition law. The conference that occurred in the autumn of 2008 under the title, "Transnational Corporations and Human Rights" brought together human rights activists and lawyers from Europe, the U.S., Latin America, Asia, and Africa and served as the groundwork for the now global ECCHR network. Over 230 participants from more than 30 countries took part in discussions about the

possibility of transnational co-operation with the goal of making corporations legal accountable for their human rights violations. The discussions triggered during this conference were further developed at regional seminars in collaboration with Misereor and Brot für die Welt (English: Bread for the World)

DEGRADING WORK CONDITIONS IN LIDL SUPPLIER FACTORIES IN BANGLADESH

Faced with pressure from customers and a public discussion about the responsibility of European businesses to deal with working conditions in supplier firms, many businesses react by turning to voluntary commitment initiatives. Lidl is no exception; in 2006, it became a member of one such initiative that aims to demonstrate 'Corporate Social Responsibility' (CSR): The Business Social Compliance Initiative (BSCI). This international initiative for retailers aims to improve working conditions along the supply chain. The BSCI code of conduct follows the conventional labor rights upheld by the International Labor Organization (ILO). The code includes rules relating to maximum working hours, salaries, discrimination and freedom of trade unions.

Lidl created the impression that the working norms explicitly referred to by the BSCI are not only imaginary goals to be attained in the future, but rather that conditions in supplying factories have already been improved, and are already in compliance with BSCI standards. As such, Lidl states that its decision to purchase goods depends on its supplier's compliance. In addition, Lidl has made the BSCI code "mandatory" for its suppliers, and is regulating their compliance. If Lidl is referring on its website to "safeguarding social standards", then it is describing working conditions that already exist and that are being maintained by measures such as liaison with the German Technical Cooperation (GTZ), a private enterprise belonging to the German Federal Government that specializes in technical cooperation for sustainable development.

ECCHR and the Clean Clothes Campaign commissioned a study to ascertain whether or not working conditions in Bangladeshi textile factories had improved. Workers employed by Lidl suppliers were selected for the study. The focus was further narrowed to suppliers that had taken part or were then taking part in the supermarket's training programs - in other words "model factories", where the management had been trained in social standards. The research results have been published in German under the title "Die Schönfärberei der Discounter", and will soon be released in English. They paint a horrific picture: long working hours, pay deductions meted out as punishment, trade union prohibition and discrimination against women, all of which breach the ILO Convention, the BSCI ethics code and Lidl's own, self-imposed obligations. In many cases employees are working from 8am until 10pm, seven days a week and in addition to the standard 48-hour working week, employees are also doing up to 35 hours of weekly overtime. Although international standards such as the BSCI stipulate that employees must not be forced to work overtime, these daily additional hours were not undertaken voluntarily in the firms under investigation. Were it to be voluntary, workers could refuse overtime without fear of reprisal such as verbal abuse, withdrawal of pay or dismissal. Yet these very measures were standard when employees refused to work additional hours. Vacation leave is not guaranteed,

and those requesting leave are verbally abused and threatened with the withholding of pay. Those who miss work due to illness are not paid for the time missed. Depending on the position of the employee within the company, salaries range between 1600 and 3000 Taka per month (around 16.38-31.50 EUR). Workers stressed repeatedly that these wages are often not sufficient to provide for their families. Every withheld wage can thus mean the financial ruin of entire families. Moreover, every attempt to initiate a trade union is nipped in the bud with threats and violence, as well as dismissals. There is therefore a reason as to why, to date, not a single trade union has been established in the factories. Workers in all factories under investigation spoke of experiences with thugs. Within the factory any discussions between workers are forbidden and can be punished. Anyone speaking while working or during breaks is accused of agitation. Furthermore, no consideration is given to the needs of pregnant women. They are expected to work the same overtime as their colleagues, even when this means working late into the night. Although women are legally entitled to four months' paid maternity leave, this is often not upheld. Those who demand this risk losing their job. Women considered themselves fortunate if they were given leave without being fired, even though this leave is unpaid. Sexual assaults on female workers perpetrated by the management are also frequent occurrences.

FEMALE WORKERS ARE ESPECIALLY VULNERABLE TO "DISCOUNTING" - LIDL IS BUT ONE EXAMPLE

Around 85% of workers in the textile industry in Bangladesh are women. Therefore female workers are particularly at risk of being exposed to degrading labor conditions. Even while women in Bangladesh are increasingly gainfully employed, traditional gender roles continue to affect the integration of women in the economic market and predestine women, in their roles as "supplementary earners", for low-paying positions and precarious jobs. If they work at all, women in Southeast Asia find only vulnerable employment (according to ILO figures this accounted for 84% in 2009). Therefore the access to adequately paid employment is an important step for women's economic independence and self-determination. Corporations such as Lidl not only violate minimum labor standards in their production practices in the South, but more importantly their practices support the persistent economic discrimination of women around the globe.

THE CHARGE

Businesses such as Lidl out-source the risks and costs of production. At the same time, they adopt voluntary commitments which are then used to suggest to customers that partner companies take social responsibility seriously and take the appropriate measures to ensure that goods on sale are produced in compliance with international social standards. It is not only the workers who are entitled to dignity and rights. European customers also have the right to know what exactly it is that they are buying, and where their money is going. It is essential that they are able to rely on the manufacturing details provided by retailers to be correct and unambiguous.

Using the laws against unfair competition (UWG) it is charged that businesses are legally bound to comply with voluntary commitments they have referenced in their advertising material. The complaint maintains that Lidl have not complied with this obligation: by referencing the BSCI and their code of conduct Lidl are advertising sustained improvements in working conditions at their supplier firms. Customers are given the impression that:

- the suppliers' compliance with social standards is a mandatory requirement
- Lidl only purchases from manufacturers who comply with these standards, allowing consumers to select purchases on the safe assumption that they have been produced without the violation of international labor norms.
- That compliance with social standards will continue to be ensured and
- that should any problems or faults arise they will be identified and investigated by a system of checks and controls, and the situation will be amended.

In contrast to this, the study showed that despite audits and training massive violations of labor rights occurred in all supplier firms as a matter of course. No Lidl customer can trust that the products they are buying were produced without the abuse of labor rights, nor can they be confident that visible improvements to such violations are underway.

SUCCESS THROUGH LEGAL PROCEEDINGS

Lidl is now forced to withdraw advertising

Lidl has confirmed that it will desist from its former advertising practice. Lidl will henceforth desist from suggesting to customers that the Business Social Compliance Initiative obliges its members to comply with mandatory social standards, or from implying that Lidl has fulfilled this obligation

The German public can now see clearly the situation faced by those working in firms that supply German businesses

Proceedings initiated against Lidl's whitewashing were not just about protecting German consumers from Lidl's false advertising. ECCHR was also particularly keen to bring before a court the catastrophic working conditions in Bangladesh, and to assist in their improvement.

Through the enormous press interest attracted by the case ([extracts from the media](#)) the charge has demonstrated that the methods used to address Corporate Social Responsibility (CSR) have not yet proved effective. As before, German consumers are able to profit from the cheap costs of workers in Bangladesh and other countries in the Global South and purchase goods at discount rates. Trainings and standards implemented by businesses will not effect change until more is paid for goods and until workers and local management are brought together to negotiate an improvement to working conditions. Whether charges like this one change the behavior of businesses in the long term fundamentally depends on the reaction of politicians and society in general.

It remains to be seen whether the charge will result in direct changes. Lidl can react simply by changing the text in its advertisements, thus preventing future charges based on the laws of unfair competition. For the same reasons, Lidl might also dilute the strength of its voluntary commitments to social responsibility. Should this be the case, the weaknesses of CSR-measures would be made truly apparent. Firstly, the voluntary nature of these initiatives, which makes them so popular, is

problematic: as soon as it becomes difficult to ensure the guarantees, businesses can simply give up on them. Secondly, it is increasingly clear that CSR measures and initiatives are tailored to the interests of businesses. They are devised for the needs of businesses, without consideration of the needs of workers. The workers' need for standards that they can refer to and to which they are entitled, is completely ignored.

**THE LAW CONCERNING UNFAIR COMPETITION (UWG):
INNOVATIVE LEGAL PROCEEDINGS AGAINST
UNACCEPTABLE WORKING CONDITIONS**

Given the scarcity of legal instruments available in Europe to those who proceed against business abuse of human rights, the ECCHR believes that it is essential to exploit all new legal means. To ensure that all these measures are exhausted, the ECCHR conducts considerable research and consults legal experts on different areas of law.

Although the laws of unfair competition (UWG) are designed to address the needs of fair competition and consumer protection, they also offer an opportunity for action against abuses of labor rights.

Following the example in other EU countries, UWG legislation allows consumer groups to take action against advertising strategies that deliberately mislead consumers in order to induce them to purchase items. As such, any information that might induce a sale should be verified. For a socially conscious consumer, the conditions in which a product was manufactured are decisive when selecting an item to purchase. Clearly, the retailer does not have to guarantee the compliance of a third party, here the supplier. It is critical importance however, that the retailer does not provide any misleading information in relation to the supplier. If Lidl cannot guarantee the suppliers' compliance with labor norms, then the consumer should be able to trust the retailer to refrain from suggesting that it has verified such compliance, or that it is able to do so.

Ostensibly, the charge according to UWG has been filed in order to force the retailer to refrain from such false advertising. However, it would be irrefutably cynical for Lidl to content themselves with simply removing this claim, particularly given the retailer's boasts about its social responsibility. A business will only convince its customers of its credibility when it shows that social responsibility entails an honest and transparent treatment of the situation; if training and audits prove to be ineffective, then they must aim to install concrete improvements that directly benefit the textile operatives.

This legal process has contributed to the fight for humane working conditions in those factories that supply European businesses. Such court cases make it clear that the abuse of elementary human is more than a question of voluntary corporate responsibility. If businesses include compliance with labor rights in their codes of conduct, then they are creating both a voluntary commitment and a legally binding duty.

HOW CAN THE LEGAL POSITION OF THE AFFECTED WORKERS BE IMPROVED?

Currently, there is no direct legal route whereby those workers subjected to inhumane working conditions can bring their compensation claims or demands for improvement before a German court. In an age of global economic structures, it is scandalous that while businesses can operate on a global level, workers have no opportunity to lodge claims against a company in its own country. It is ECCHR's opinion that both European and German lawmakers must rectify this gap in legal protection. Adequate bases for claims must be established to allow damages claims to be filed against European businesses. Furthermore, lawmakers should create procedural requirements that open up genuinely viable legal routes for victims of corporate misconduct.
