

Jurisdiction for claims against transnational companies for human rights violations

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Note: This blogpost is part of a series on „Corporate social responsibility and international law“ that presents the main findings of the contributions published in August Reinisch, Stephan Hobe, Eva-Maria Kieninger & Anne Peters (eds), Unternehmensverantwortung und Internationales Recht, C.F. Müller, 2020.

1. The question of the reach of courts' jurisdiction is highly significant for claims against transnational enterprises based on human rights violations or environmental damages abroad. It does not only determine the applicable law but also the access to a particular justice system.
2. Universal jurisdiction of national courts for human rights and environmental damages claims against enterprises cannot be established, neither on the basis of existing law nor from a legal policy perspective. Rather, such claims have to be handled under the traditional jurisdictional mechanisms.
3. From a global perspective, a remarkable shift regarding jurisdiction can be noted: Whereas the courts in the United States are increasingly limiting access to their justice system in cases with foreign elements, jurisdictional limits are no significant hurdle for human rights and environmental damages claims in the European Union.
4. Domestic enterprises can be sued at their seat. Yet, the *forum non conveniens* doctrine allows US courts - and perhaps soon English courts as well - to decline jurisdiction, also for human rights and environmental damages claims.
5. Yet, human rights and environmental damages claims against foreign enterprises can also only be brought under certain circumstances in the EU.
6. Claims against foreign enterprises for human rights violations and environmental damages abroad can only rarely be brought before domestic courts based on special jurisdiction related to specific subject matters, for example the

jurisdiction for tort claims at the place where the harmful event occurred.

7. If human rights and environmental damages claims are simultaneously directed against a domestic enterprise, for example a mother company or a buyer company in the EU, at least partially, foreign subsidiaries and suppliers can be sued on the basis of special jurisdiction over multiple defendants which can be used strategically.

a) If foreign enterprises have their seat in a third State outside the European Union, the jurisdiction of the domestic courts over the foreign co-defendant is governed by the national law of the forum Member State.

b) However, the current trend to establish a separate liability of domestic enterprises, for example, by extending human rights and environment-related duties of care for the supply chain, could endanger this special jurisdiction over multiple defendants, which, on the other hand, could lose significance.

8. Extending the general jurisdiction at the domicile of the defendant by relying on a personal criterion different to the seat of the defendant enterprise is not a viable solution.

a) Today US courts refuse to exercise jurisdiction based solely on the foreign enterprise 'doing business' within the territory. In some EU Member States, for claims against foreign enterprises at least with a seat in a third State, exorbitant jurisdiction can be established, for example, based on assets of the foreign defendant enterprise within the territory.

b) At the most from a policy perspective, for claims against foreign subsidiaries of a domestic enterprise the introduction of an enterprise jurisdiction could be considered.

9. For claims against foreign enterprises jurisdiction of the domestic courts can often only be based on a *forum necessitatis* if proceedings cannot reasonably and effectively be brought or conducted abroad; the hurdles for such an exceptional jurisdiction are, however, high.

10. To hear human rights and environmental damages claims against enterprises lies within the powers of the domestic courts.

a) Foreign enterprises do not enjoy State immunity even if they violate human

rights or damage the environment abroad in collaboration with foreign States.

b) The power to adjudicate is also not limited by the fact that a decision of the court on human rights and environmental damages claims potentially has implications on the foreign policy relations of the forum State.

c) The domestic courts are often even not barred from deciding on human rights and environmental damages claims of foreign States against enterprises.

Full (German) version: *Anatol Dutta*, Internationale Zuständigkeit für privatrechtliche Klagen gegen transnational tätige Unternehmen wegen der Verletzung von Menschenrechten und von Normen zum Schutz der natürlichen Lebensgrundlagen im Ausland, in: August Reinisch, Stephan Hobe, Eva-Maria Kieninger & Anne Peters (eds), Unternehmensverantwortung und Internationales Recht, C.F. Müller, 2020, pp. 39 et seq.