

Four Against KiK: A Conversation with Caspar Dohmen

Michael Bader

Abstract Caspar Dohmen is a business journalist, author and lecturer living in Berlin. In this interview, he speaks to Michael Bader about the role of the media in raising awareness, transnational activism and strategic litigation claims. Their conversation illuminates the crucial role of journalists regarding inter-connected transnational social struggles, such as global production of textile and garment.

Keywords Journalism · Media · Rana Plaza · KiK case · Ali Enterprises factory fire

Caspar Dohmen is a German business journalist, author and lecturer living in Berlin. He writes feature articles and background reports for the German newspaper *Süddeutsche Zeitung*, and regularly contributes reports to German radio broadcasting networks like Deutschlandfunk, SWR and WDR. He previously worked as an editor for *Süddeutsche Zeitung*, *Handelsblatt* and *Wiesbadener Kurier*, and has written several books dealing with the topic at hand: *Profitgier ohne Grenzen (Profit without Borders)*, *Das Prinzip Fairtrade (The Principle of Fairtrade)* and, most recently, *Schattenwirtschaft (Shadow Economy)*, which was written together with three researchers about the world of informal work. In this interview, Michael Bader comes in conversation with Caspar Dohmen about the crucial role of media and journalists in transnational activism and strategic litigation claims.

Michael Bader: How did you come to know about the lawsuit against KiK? Why did you choose to write about it?

Caspar Dohmen:¹ For me, the lawsuit against KiK was a journalistic stroke of luck. When I heard about the idea, my curiosity was of course immediately piqued

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because it's a classic David versus Goliath story, which readers and journalists love—and I'm no exception. On one side were the people who had suffered direct damage in the fire at the Ali Enterprises textile factory and the relatives of the at least 258 dead, many of whom had lost their family's breadwinner. On the other side was the textile discounter KiK, a large company from Germany. Those working at a distance were taking aim at a powerful actor in the Global North. This had already occurred before, after previous scandals and grievances in Global South supplier companies, but never before had supply-side workers brought an action against a company in a German court. If they were successful, then it would not only be the company that got convicted but rather the entire business model of our current global division of labour. This is because many companies no longer produce their products themselves, but rather limit their activity to research and development, as well as marketing and sales. In fact, production today is often completely carried out by third parties. This applies equally to clothing, toys, computers and smartphones. The conditions in these global supply chains are dictated by multinational corporations, which pass the pressure on to suppliers, who, in turn, pass it on to their employees. The dogs always bite the last in the chain and it's the workers at the bottom who face dangerous working conditions, starvation wages and excessive working hours as part of their everyday life.

Journalistically, this lawsuit offered an ideal opportunity to bring readers and listeners closer to the conditions along supply chains. The popular narrowing of public discussion after disasters like the Ali Enterprises fire or Rana Plaza collapse, with its 1129 dead, to the question of whether, as a consumer, you should still buy clothes from a cheap brand always seemed absurd to me. Or whether one should still buy clothing from Pakistan or Bangladesh. I had already seen on my first visit to a textile factory in Asia that seamstresses there produce goods for cheap and expensive brands in the same hall. And the seamstresses had told me that they would lose their jobs if consumers boycotted the goods they sewed.

Bader: How did you become interested in questions of global production? What is the personal story behind your writing about topics such as the KiK case?

Dohmen: As a young business journalist, I got to know the so-called value chain model. At the time, in the early 1990s, I worked as an editor for the *Handelsblatt* newspaper and participated in a seminar for young journalists that had been organised by the Bertelsmann Foundation. If you want to understand what strategies companies are pursuing, you have to know the concept, a management consultant explained to us. It's about breaking down entrepreneurial activity and limiting it to the steps a company can take to maximise its profits. Accordingly, companies now outsource activities on a large scale. Local suppliers have taken over canteens, cleaning and plant security, among other services. But more and more activities have also been moved from the Global North to the Global South and Eastern Europe, mainly due to lower wages. Call centres in the Philippines have taken over customer service, software companies in India have taken over system support and accounting, factories in China now manufacture computers and smartphones, and factories in Bangladesh now produce clothing.

After the financial crisis of 2008, as a journalist I dealt with the serious side effects of financial capitalism on a large scale. The collapse of Rana Plaza seemed to me the appropriate moment to address turbo-capitalism's consequences for the global division of labour. Officially, a dozen well-known brands had their goods produced in one of the five textile factories in the multipurpose Rana Plaza complex. KiK was also there, as were Benetton and Mango. When I heard about the plans for the lawsuit against KiK, I thought about how I should approach the issue and it soon became clear to me that I would like to accompany the plaintiffs in their project from start to finish. This proved to be a difficult undertaking, as the proceedings took much longer than I expected.

At SWR, a German regional public broadcaster, I was able to win over an editor for the topic, who in turn inspired other colleagues. This enabled me to realise the radio feature "Tatort Textilfabrik" ("Crime Scene Textile Factory") for German public-service broadcaster ARD. For me, this was the start of a whole cycle of research and stories about the global division of labour. I did research on textile supply chains in Pakistan, India, Bangladesh and El Salvador, and on other supply chains in other countries. My experiences also resulted in a book on business and human rights, *Profitgier ohne Grenzen*, and a learning module, "Am seidenen Faden" ("On a Silken Thread"), for familiarising young journalists with supply chains.

Bader: What do you make of the lawsuit against KiK? What questions did it raise for you?

Dohmen: KiK was not just any client for the Ali Enterprises factory but accounted for at least 70% of its capacity utilisation at the time of the accident. So, was the supplier only independent on paper? Or did their buyer KiK determine what happened? And if so, could the latter be held jointly responsible for the consequences of the fire? Such questions were asked by the European Center for Constitutional Human Rights and I was very interested in the answers. If the plaintiffs were to win in court, I thought it would probably have consequences for many transnational companies with operations in distant countries in pursuit of the lowest possible costs. As KiK explained at the time, any company producing abroad could then be held liable for conditions in factories it did not own. This was unimaginable for them then, just as it was for the Federal Association of German Employers in the summer of 2020. But in the meantime, a whole series of companies, including KiK, have begun calling for a supply chain law. And the German government is now working on such a law. There is no doubt that something has happened and that the lawsuit against KiK and the reporting around it certainly had a part to play in it.

Bader: Did the collapse of Rana Plaza and the fires in the Ali Enterprises and Tazreen Fashion factories in South Asia, as well as the lawsuit against KiK in Germany, alter public perception on questions of global production?

Dohmen: I still write regularly about this topic for *Süddeutsche Zeitung* and report on it for Deutschlandfunk and other ARD radio stations. This is only possible because the demand for such stories has increased. Rana Plaza was the main reason

for the topic's rise to prominence on the global public agenda. Just how much so, I only learned later at a workshop hosted by the Fraunhofer Gesellschaft in 2017, where I and a handful of other industry, civil society and trade union experts discussed scenarios for the textile industry's future. The researchers who invited us had combed through databases including around 23,000 press sources looking for links between well-known brand names and terms such as "child labour," "working conditions," "modern slavery" and "living wage" for the period of 1990–2016. The results showed that in 2013 and 2014, the press reported on the topic more than ever before—thus reaching more and more people. The grievances in the global textile industry had already been the subject of discussion for a quarter century before the Ali Enterprises factory burned down and Rana Plaza collapsed. In Europe, the Clean Clothes Campaign has addressed the issue since at least 1989, following a scandal about poor working conditions in a C&A supplier. Since then, the network has grown to include more than 300 organisations from 15 countries, all struggling for better working conditions for seamstresses in the Global South. In the US, a scandal about miserable working conditions in an Indonesian sweatshop that supplied Nike triggered a similar movement in 1990. But on both sides of the Atlantic, the protest against conditions in the global textile industry persisted in social niches and a few milieus, such as universities. In the media, the protest found comparatively little resonance.

This was hardly surprising at that time, as in the early 1990s, the world was preoccupied with the consequences of the fall of the Berlin Wall. It was only then that the conditions were created for more and more companies to transfer their production completely to supply chains. First of all, China and the countries of Central and Eastern Europe came to organise their economies capitalistically rather than socialistically. Then came a surge of liberalisation in world trade. In 1994, the community of states founded the World Trade Organization. In early 2005, with the expiry of the World Textile Agreement, the last restrictions in industrialised countries on the import of textiles from developing countries fell. Many in the Global South saw the globalisation push as a chance to boost development in their countries, with their big trump card being cheap labour. The calculation worked out for hundreds of millions of people who were able to rise into the middle classes, especially in China and India. But in many places, workers continued to face meagre wages and often inhumane conditions. Today, seamstresses' wages in Asian factories usually fail to meet their basic existential needs. Nevertheless, many workers are happy when they get such jobs. These connections became clear to me when I was on the road for the lawsuit against KiK.

But it was not only the plaintiffs' side that was interested in convincing me, as a journalist, of their point of view. The defendants' side was too. KiK did not stonewall the media, but rather engaged in dialogue. After the disaster, KiK paid aid money to those affected. The company also remained convinced that it had fulfilled its responsibilities prior to the accident. After all, it had demanded that the manufacturer comply with a code of conduct and, at the same time, had had an audit carried out. KiK saw the fact that the factory had been certified to the high SA8000 standard only shortly before the accident as confirming its position. Above all,

however, the company wanted to show that under the current legal situation, it could not be held liable for the consequences of the fire at the supplier's premises. The company opened doors for me and provided insights. However, because of the lawsuit, many other companies also began to take a serious look at the situation in their supply chains.

Bader: When you think back and reflect about your own journalistic engagement with the lawsuit against KiK and the underlying conditions of global production it speaks to, did your view or assessment change over time? Would you say the lawsuit had any impact despite being lost in court?

Dohmen: In one respect, I made a mistake in my initial assessment of the complaint. At first, I only thought there were two options. On the one hand, the court could consider the case and dismiss the claim. This, I thought, would be further indication that affected persons' chances to sue in German courts are limited. On the other hand, the judges could award damages to those affected, which would have drastic consequences both because it would directly help the affected persons who suffered harm and, from a broader perspective, because it would open up important legal avenues for workers in supply chains connected to Germany. Such a decision would, above all, have consequences for the current system of the global division of labour. After all, if corporations were to be held liable for violations at their suppliers under certain circumstances, they would have to change a number of things. They would likely urge that grievances be really recognised and remedied, and they would perhaps even start producing in their own factories again and thus take full responsibility for labour and production practices, as was normal in the past. In the beginning, I had not considered that the court might not make any decision on the matter whatsoever. But that is exactly what happened. According to the Dortmund Regional Court, the case was time-barred under Pakistani law. This left the central question unanswered as to whether a company could be held liable for conditions at its supplier.

Nevertheless, the proceedings made a great deal of difference. Above all, the public attention around the lawsuit contributed momentum to the discussion about a binding supply chain law in Germany. When the German government adopted a National Action Plan for Business and Human Rights in 2016, it was still based on the principle of voluntarism. It asked companies to fulfil their human rights due diligence obligations in their supply chains but did not prescribe it. According to the results of two surveys conducted by the German government, only about every fifth company did so. Currently, in the summer of 2020, the *Eckpunkte für ein Lieferkettengesetz* ("Cornerstones for a Supply Chain Law") presented by two German Federal Ministers sit on my desk. On the aspect of enforcement, they read:

The law will be designed in such a way that the requirements of an "obligatory norm" under EU law are met. This means that German law is applicable in this respect (as the law of the place of action where the supply chain management takes place) and supersedes the law of the country of production (the law of the place where the damage occurs), which is usually applicable in cross-border cases. In this respect, it will no longer be necessary to obtain time-consuming and costly legal opinions in order to determine the content of the foreign law.

What the Federal Minister of Economic Cooperation and Development Gerd Müller (CSU) and Federal Minister of Labour Hubertus Heil (SPD) are planning here would considerably simplify lawsuits such as the past case against KiK. If the law had been in place at the time of the Ali Enterprises fire, it would have greatly benefitted the four plaintiffs and their supporters. Of course, they have had their complaint and cannot repeat it because of the statute of limitations, but should this law pass, they will have helped to facilitate access to German courts for plaintiffs in other cases. In this sense, the four will have been successful after all: Muhammad Hanif, who started as a factory worker at the age of nine and survived the fire by a hair's breadth; Muhammad Jabbir, the widower who lost his son Muhammad Jahanzab Abdul Aziz Khan; Yousuf Zai, who found his dead son Attaullah Nabeel in the ruins; and Saeeda Khatoon, who was able to immediately identify the corpse of her son Ijaz Ahmed because he had shielded his face with a plate, leaving it recognisable.

Michael Bader studied law at Humboldt University in Berlin, Germany, and holds a Master of Laws (LLM) in Law, Development and Globalisation from SOAS, University of London. Bader joined the European Center for Constitutional and Human Rights in September 2019 as a Research Fellow in the Business and Human Rights programme with a focus on corporate exploitation in global supply chains. Since September 2020, he has been supporting ECCHR's Institute for Legal Intervention as a Bertha Justice Fellow.

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