

Munich Dispute Resolution Day, 6. Mai 2022

**Menschenrechtsklagen vor
Zivil- und Schiedsgerichten in Deutschland**

Menschenrechtsverletzung im Ausland – Klage im Inland

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- I. Einleitung: Fokus auf deliktische Klagen
- II. Internationale Zuständigkeit
 1. Inländische Mütter / „Kettenköpfe“
 - a. Forum rei, Art. 4 Brüssel Ia-VO
 - b. Kein Rechtsmissbrauch durch reine Ankerklage
 2. Ausländische Töchter / „Kettenglieder“
 - a. Forum connexitatis, Art. 8 Nr. 1 Brüssel Ia-VO;
keine Entsprechung in der ZPO
 - b. Forum delicti commissi, Art. 7 Nr. 2 Brüssel Ia-VO;
§ 32 ZPO
 - c. Kein Forum legis
 - d. Kein Forum necessitatis
 3. OEIGWG, 3. Entwurf vom 21. August 2021, Art. 9: u.a. Forum actoris
- III. Prozesskostenhilfe und Anwendung ausländischen Rechts
- IV. „Beweis“, Art. 22 Rom II-VO
- V. „Besondere Prozessstandschaft“, § 11 Lieferkettengesetz 2021
- VI. Kollisionsrecht
 1. Erfolgsortsanknüpfung, Art. 4 Rom II-VO
 2. Ubiquitätsprinzip nur bei Umweltschäden, Art. 7 Rom II-VO
 3. Sicherheits- und Verhaltensregeln, Art. 17 Rom II-VO:
Nur „Berücksichtigung“ „soweit angemessen“
 4. Eingriffsnorm, Art. 16 Rom II-VO i.V.m. Art. 22 Abs. 5 RL-Entwurf 2022;
Keine Entsprechung im Lieferkettengesetz 2021
 5. OEIGWG, 3. Entwurf vom 21. August 2021, Art. 11:
Weitreichendes Wahlrecht des Klägers
- VII. Schluss

LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES¹

Article 9. Adjudicative Jurisdiction

9.1. Jurisdiction with respect to claims brought by victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses covered under this (Legally Binding Instrument), shall vest in the courts of the State where:

- a. the human rights abuse occurred and/or produced effects; or
- b. an act or omission contributing to the human rights abuse occurred;
- c. the legal or natural persons alleged to have committed an act or omission causing or contributing to such human rights abuse in the context of business activities, including those of a transnational character, are domiciled; or
- d. the victim is a national of or is domiciled;

This provision does not exclude the exercise of civil jurisdiction on additional grounds provided for by international treaties or domestic laws.

9.2. Without prejudice to any broader definition of domicile provided for in any international instrument or domestic law, a legal person conducting business activities of a transnational character, including through their business relationships, is considered domiciled at the place where it has its:

- a. place of incorporation or registration; or
- b. place where the principal assets or operations are located; or
- c. central administration or management is located; or
- d. principal place of business or activity on a regular basis.

9.3. Courts vested with jurisdiction on the basis of Article 9.1 and 9.2 shall avoid imposing any legal obstacles, including the doctrine of *forum non conveniens*, to initiate proceedings inline with Article 7.5 of this (legally binding instrument).

9.4. Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State, if the claim is connected with a claim against a legal or natural person domiciled in the territory of the forum State.

9.5. Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State if no other effective forum guaranteeing a fair judicial process is available and there is a connection to the State Party concerned as follows:

- a. the presence of the claimant on the territory of the forum;
- b. the presence of assets of the defendant; or
- c. a substantial activity of the defendant.

Article 11. Applicable Law

11.1. All matters of procedure regarding claims before the competent court which are not specifically regulated in the (Legally Binding Instrument) shall be governed by the law of that court seized on the matter.

11.2. All matters of substance which are not specifically regulated under this [international legally binding instrument] may, upon the request of the victim, be governed by the law of another State where:

- a. the acts or omissions have occurred or produced effects; or
- b. the natural or legal person alleged to have committed the acts or omissions is domiciled.

¹ Grundlage zur weiteren Bearbeitung durch den Human Rights Council, zuletzt in der 49. Sitzung v. 28 Februar – 25. März 2022 („Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Text of the third revised draft legally binding instrument with the concrete textual proposals submitted by States during the seventh session“).