

First trial on business and human rights starts in Swedish court



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Background

In the long chain of events when multinational companies have hurt citizens in third world countries, such as Chevron-Ecuador, Shell-Nigeria, Dow Chemicals-Bhopal there has only been one Swedish case; the non-ferrous company Boliden shipping 20,000 ton mining waste to Chile containing arsenic. Several hundred people in the port city Arica in Northern Chile were later ill and raised the issue of compensation. The Chilean victims sued Boliden in 2013 with a 20,000 page document. After many years of preparations, the court proceedings started this week in the city where Boliden has its HQ, Skellefteå. The verdict is expected in the beginning of 2018.

1. The issue

Boliden owns and exploits a number of non-ferrous mines in the area around Skellefteå. One problem with the minerals is that apart from zinc, copper, some gold and silver they also contain arsenic (As), a highly poisonous mineral. For many decades Boliden have tried different ways of disposing of the arsenic. The most successful was probably developing a product to impregnate railroad ties (järnvägsslipers) to prevent that they rotted. Since these sleepers were replaced by concrete the market disappeared.

Boliden exported mineral waste to a company in Chile, Promel, in 1984. Promel dumped the waste on a site that later was turned into a new housing area. Children were playing around and were exposed to arsenic, lead and cadmium. Today they claim that 796 inhabitants have been seriously ill.

A number of trials in Chile against Promel took place. Promel went bankrupt before they had started to handle the waste and the eyes then turned towards Boliden. Were Boliden aware of how Promel had handled the issue? Should Boliden have done something to stop it?

Boliden claims that the Swedish Conservation Agency (CNV) was informed about the export of waste. SNV has denied this.

2. Applicable law

In cases when a company is meeting requests from victims the victims usually sue the company in its home country, as that is the place where there always are assets that can be claimed. It is however an open question if the proceedings should be handled according to Swedish or foreign (Chilean) law. The argument for foreign law is that a person is usually tried at the place where the crime is committed. But did Boliden commit its crime of negligence in Chile where it does not have an office or at its head office?

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3. Class action in Sweden

There are several differences between the Swedish legislation on class action (grupptalan) and the more well-known US legislation:

- In difference to the US legislation the cost for starting class action proceedings is low
- In Sweden the law firm can not charge a percentage of the outcome, only a fixed rate
- In Sweden all claimants must have the same claim

The Swedish deviations from the US principles were introduced in order to avoid what by Swedish business circles is seen as common abuse in US. The number of class action case in Sweden have also been limited and the impossibility of using a percentage based fee is probably what has been a problem in starting a business & human rights case. The Swedish system requires that a law firm acts pro bono, as the claimants often are poor.

4. The proceedings

In the week that passed the claimants presented their case and asked for 81 million kronor + cost of proceedings. In the week to come Boliden will present their claim. Important aspects for the court to consider will be the responsibility of Boliden vs. Promel, the fact that quite a long time have passed and the evidences might be difficult to ascertain.

5. Is there a way out?

The international experience is that a court case with totally different views is difficult to solve in court. Most likely both parties would be disappointed. It therefore sometimes happens that the parties take the issue out of court and reach a compromise. It might not correspond to the wishes of any side but it should not be seen as a surrender.

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