CAMPAIGN FOR NONSMOKERS’ RIGHTS

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The Campaign is registered in:
ORGANISATIONS AND INDIVIDUALS CONCERNED WITH NONSMOKERS’ RIGHTS OUTSIDE THE UNITED STATES

FORCED TO SMOKE PASSIVELY?
DEFEND YOURSELF!

“While one person waits for the times to change, the other tackles the problem head-on and takes action.” (The Italian poet DANTE ALIGHIERI, 1265-1321: taken from: BERLINER MORGENPOST of 20 Jan. 1996)

“Smoking in front of nonsmokers is a weakness of character, a lack of consideration and a threat to physical health. [...] In cases of involuntary passive smoking the person responsible must always be charged and punished.” (DAUNDERER: Handbuch der Umweltgifte - Klinische Toxikologie für die Praxis [Manual of Environmental Toxins - Clinical Toxicology for Practice] - 102nd addendum 1/96, p. 13f)

Smokers can still smoke around other people for the most part with impunity and even poison children with cigarette smoke. But do we have to accept these physical injuries without opposition? Certainly not, we would much rather stand up firmly for our basic right to freedom from bodily harm.

We should show inventiveness and unrelenting persistence in our action for a smokefree environment. Many victims of passive smoking feel left to the mercy of the smokers. They let themselves be intimidated and muzzled or smoulder in helpless rage. This is indeed understandable, but doesn’t get us anywhere. So what can you do?

COERCION TO SMOKE PASSIVELY IN THE WORKPLACE

“In the workplace, cigarette smoke inhaled passively is to be categorised as a dangerous substance damaging to health... There is certainly no other similarly widespread dangerous substance that is damaging to health.” (MAK Commission [Maximale Arbeitsplatzzkonzentration, F. Wöckel = Maximum Workplace Concentration] of the DEUTSCHEN FORSCHUNGSGEMEINSCHAFT [GERMAN RESEARCH COMMUNITY]; from: DER KASSENARZT [THE GENERAL PRACTITIONER], issue 35, 1987, p. 31)

“According to various opinion polls not only the majority of nonsmokers, but also approx. one third of smokers would favour a ban on smoking in the workplace.” (BURCKHARD JUNGE; from: DER KASSENARZT [THE GENERAL PRACTITIONER], issue 35, 1987, p. 31)
“If nonsmokers are affected, a ban on smoking is unavoidable.” (Sachverständigenrat für Umweltfragen [Commission of Experts for Environmental Issues]; from: DER KASSENARZT [THE GENERAL PRACTITIONER], issue 35, 1987, p. 31)

Since even the former German Health Department categorised passive smoking as at least 100 times more dangerous than asbestos particles in a statement to the Federal Health Ministry in 1988 and it has furthermore been proved that many carcinogenic substances are contained in cigarette smoke, it should be clear that smoking in the workplace is a more serious and thus absolutely acceptable reason for absence from work because of the extreme health risk. However, I cannot guarantee that the judiciary will see it in the same way because everything is always completely different when it comes to smoking...

Absence from work is at any rate justified if there is pollution from cigarette smoke. It is, however, important to always make sure you have evidence. It might happen that in future legal disputes your colleagues no longer remember that anyone smoked at all. For this reason, I recommend the following steps:

Inform your smoking colleague, in the presence of witnesses, that passive smoking causes you considerable health problems and ask him/her to stop smoking. If a peaceful agreement is not reached, go directly to the manager of the firm and inform him/her that you have developed health problems because of forced passive smoking and must thus go to the doctor immediately. Let the doctor confirm your inability to work and certify the damage from passive smoking (test for antacid, methanol and nicotine in urine and indicate the illness symptoms).

As a matter of principle you can lodge a claim for compensation from the person responsible (smoker) in every instance of forced passive smoking, especially when s/he smokes despite an existing smoking ban and has harmed your health or something else. In civil proceedings, if your claim for damages fails, which is probable, you will have to pay costs, because a judge would sooner rule - exceptions prove the rule! - that a victim of passive smoking be smoked to death than award him/her damages. So, it is better to agree on compensation with the smoker outside the court.

The employer and not the individual smoker is liable for the pollution from cigarette smoke in the workplace because in line with his/her duty to protect and care for the employees the employer has to make sure there is air conducive to health. In this special case you should accordingly lodge claims for compensation with your employer. Since the smoker criminal has harmed your health individually or jointly with others, s/he must be brought to justice; a criminal charge because of bodily harm is definitely justifiable because even if the manager of the company allows smoking in the workplace in principle, smokers are nevertheless not allowed smoke in the presence of others. (See chapter: “Nonsmokers Protection in the Workplace” in my books “Körperverletzung durch Passivrauchen” [Physical Injury from
You should definitely submit a written complaint to the works council and lodge a charge with the police because of coercion and physical injury. The police are duty bound to deal with the charge.

The criminal proceedings are free of charge but they will, with almost 100% probability, be abandoned under the slightest pretence. However, there must be instruction on the right of appeal in which it is noted that you have the possibility to lodge a complaint against the abandonment of the proceedings within two weeks. The complaint is free of charge. If there is no instruction on the right of appeal you are not bound by any time constraints when lodging your complaint.

If you get the impression that the prosecution of the offence (bodily harm) has been impeded by the abandonment of the proceedings and the accused has been granted an unfair advantage, you should make a charge against the judge for perversion of justice and obstruction of punishment in office.

If you receive an answer that bodily harm as a result of forced passive smoking is generally excluded from criminal prosecution “according to the present status of jurisdiction”, submit a constitutional complaint about collective perversion of justice to the detriment of victims of passive smoking. However, as a European you should expect that your complaint will not be accepted at all for a decision to be taken.

After unsuccessfully pleading your case in all the national courts, as a European you can, according to Article 25 of the EUROPEAN CONVENTION ON HUMAN RIGHTS, lodge a complaint with the EUROPEAN COURT OF HUMAN RIGHTS in Strasbourg within six months because of violations of human rights in connection with forced passive smoking (Address: CONSEIL DE L'EUROPE, F-67075 Strasbourg Cedex, FRANCE). We ask you to send the appropriate complaint form (Application under Article 25 of the European Convention on Human Rights and Rules 43 and 44 of the Rules of Procedure of the Commission).

Demand immediate compensation for passive smoking without fail. Especially when a connection can be seen between your complaint proceedings and your employer possibly giving you notice, you should sue for extensive compensation payments and rehabilitation measures.

Protection from forced passive smoking is often neglected for the sake of convenience. Sometimes it appears to be too much effort to implement a smoking ban and it is expected that the victim of passive smoking will back
down. However, you have sent a signal that you want to assert your claim using all available means and your boss will certainly not want to be flooded with further proceedings. In the meantime, he will hopefully have realised the necessity of satisfying the legitimate and legally guaranteed right to air conducive to health.

**VICTIMS OF PASSIVE SMOKING AND THE WELFARE SYSTEM**

I know people who were forced out of their jobs because they could no longer stand forced passive smoking in their workplaces. If this has happened to you, please note the following: if you are eligible to claim unemployment benefit or social security, you should know that it cannot in any way be expected of you to wait in the smoke-filled waiting rooms of the relevant offices or to have to pass through smoky corridors. Your placement officer in particular or the person dealing with you in the social security office should not be allowed to smoke around you.

In emergencies, the following tips might come in handy: apply for the appropriate social benefits immediately after becoming unemployed in a handwritten letter sent by recorded delivery with a reply coupon. Point out in your letter that passive smoking has caused you health problems and that, should it be necessary to visit the office, you must insist upon being spared having to endure forced passive smoking there. State straight away that you will take legal steps if you are forced to smoke passively.

If you are nevertheless subjected to forced passive smoking when summoned to the office, even if only for a short time, you can lodge a complaint because of bodily harm. - as long as the smoker is an official. Furthermore, if it is a visitor that is smoking, you can lodge a claim for compensation against the office, because you after all expressly and provably pointed out that you would lodge a complaint if you were subjected to passive smoking and those responsible failed or deliberately neglected to implement the necessary and absolutely reasonable provisions to protect your health. The office is liable for the damage to your health which it has caused because of inadequate health protection.

However, do not rely on a court seeing it in the same way as I have described. Rathermore, be prepared to have to appeal to all the national courts and finally the [European Court of Justice](https://en.wikipedia.org/wiki/European_Court_of_Justice) in order to enforce the most fundamental of human rights. Given the current power structures you have, however, little chance of success either at the national or the European courts of perverted justice.

If you are threatened with benefit cuts because you refuse to enter the smoke-filled office concerned or to take a job offer somewhere where it is likely that you will be exposed to the smoke of co-workers, lodge a complaint against the person dealing with you because of coercion.
By now, you will have arrived at a critical point, especially when you are forced to survive on social security. There is a saying whose gist is: ‘Where need is at its greatest, rescue is not far off.’ If you find yourself in a similarly dramatic situation where there appears to be no way out, chances of a spectacular action that attracts the attention of the world are especially good. Just imagine the possible consequences, were it to be made known that health-conscious people are not only socially excluded but also have their basic foundations of life taken away by the arbitrariness of the authorities. Is there any more convincing evidence that human rights are being trampled under foot?

It is important that you never let yourself be intimidated. Instead look on every instance of apparent failure and adversity as an opportunity for new and surprising actions.

**Smoke in Public Buildings**

Complain to the person in charge of the establishment – in person, over the telephone or at best in writing. If it is a civil servant who forces you to smoke passively, ask for his/her name or service number and submit a complaint to the supervisor. Demand compensation.

The authorities are obliged to deal with your request. If, after three months, your complaint has not been answered, you are entitled to appeal because their failure to act (at the Verwaltungsgericht [Administrative Court]). Normally, only minor procedural costs are incurred, which the losing party or his/her legal insurance has to pay. It is mostly enough just to threaten the authority with a lawsuit because of their failure to act to scare the officials out of their idleness and ignorance.

If you are not satisfied with the response from the authority, you should submit a petition and demand a smoking ban for publicly accessible spaces (Address: DEUTSCHER BUNDESTAG, Petitionsausschuß, Platz der Republik 1, 11011 Berlin)

As a European you can also lodge a petition with the EUROPEAN PARLIAMENT according to Article 138 d EC Treaty because of the legitimising of human rights violations because of forced passive smoking being tolerated (European Parliament, Petitions Committee, Palais des Institutions Européennes, Place des Nations 29, 1349 Luxembourg, Tel. 00352 / 43 00 24 86, Fax 00352 / 43 22 74). Petitions are free of charge.

If many people make use of the outlined or other appeal procedures, it will at least have a signal effect and hopefully overwhelm the authorities and courts to such an extent that they will press for the introduction a general smoking ban so that they no longer have to deal with the many lawsuits because of passive smoking.
So insist on your right again and again! No one can stop you lodging a criminal charge because of the bodily harm actually resulting. But don’t forget witnesses – it can in fact happen that smoker criminals later on no longer remember having smoked at all... It is advantageous if you can prove that passive smoking has caused you health problems - at best with a medical certificate. You should not give the courts the pleasure of a lack of evidence so that they have the welcome opportunity to abandon the proceedings. Be prepared for the court to back the culprits. When the cigarette mafia manipulate politicians and the judiciary behind the scenes and the police is largely recruited from nicotine addicts, perversion of justice obstruction of punishment, to the detriment of passive smokers, is to be expected as the norm.

**GENERAL TIPS**

Please remember to send your most important charges and complaints by recorded delivery with a reply coupon or if you deliver your letter personally, get an acknowledgement of receipt of the original (with stamp, date and signature) on a copy of the letter. Without this receipt your letter may never have been sent – you know what I mean – and thus the deadline for submission may have been exceeded...

A favourite ploy of the bureaucrats, if they speak to you personally, is to explain that they are not responsible and send you somewhere else, where, of course, again no-one wants to be responsible. You cannot allow this to happen and should thus demand that your letter definitely be accepted and answered in writing. If this does not happen, then ask for the name or service number of the reluctant bureaucrat and submit a complaint to his/her superior about the subordinate’s work.

Do not rely on verbal information from officials. Take along witnesses when you complain to the employees of the state bureaucracy. The witnesses should write down the most important points. This makes an impression on the officials and forces them to take the matter seriously.

Have confidence in the effectiveness of your efforts and develop your inner power and stamina! Then you will always have a lot more staying power. Do not let yourself be put off by stubborn officials, ignorant politicians or the financial power of the cigarette industry. You need neither a special qualification nor an excessive amount of money for your opposition, but merely an unbending will. Success will come if you are persistent enough. Think about your self-respect and the following generations, to whom we owe it to put an end to the machinations of the cigarette industry.

**FURTHER SUGGESTIONS FOR ACTION**

a) Before the start of an event you could ring up to enquire if smoke-free air will be guaranteed. In the interest of your own health you should leave smoke-filled premises straight away, at best demonstratively and stating the reason. “It stinks like hell here” is enough as a comment and often has a
greater effect than long discussions. How about entering the smoky offices of officials with some friends wearing gas masks?

Tobacco is known to be a drug. When you see officials smoking, then submit a complaint to their superiors because of use of drugs while on duty! You are also entitled to lodge a criminal charge because of physical injury if an official smokes in your presence and you develop health problems because of it.

b) At a bicycle demonstration for “Legal protection against air pollution” in Berlin, eco-activists shouted “Cars stink!” – with cigarettes in their hands... The environmental organisations would surely gain more credibility and popularity if they campaigned for protection from forced passive smoking for a change and above all stopped smoking in their own ranks. If you are a member of such an organisation, press for them to take a stand by actively campaigning against the destruction of nature and health by the use of tobacco or leave the organisation if there is persistent silence on this topic.

c) Women demonstrate for the legalisation of the murder of defenceless foetuses (abortion). How would it be if they acted to preserve life for a change?

So mothers-to-be, go to the Parliament with banners for the protection of children and pregnant mothers from the consequences of passive smoking!

d) Tell the politicians before the election why you won’t vote for them – because they have prevented the legal protection of nonsmokers, instead of implementing it. If you know a politician who is campaigning in a credible manner for effective protection against forced passive smoking, voice your appreciation and offer him/her your support.

e) Write to the Minister of Health and remind him of his responsibility for the many fatalities from active and passive smoking. If you wish, you could also add that politicians who adhere to their policy of legalising the tobacco drug, support its cultivation with tax-payers’ money and often even authorise advertising of this lethal drug, should be sitting in prison, not parliament because of their support of the drug mafia and connivance with mass murderers.

f) Establish a think-tank and collect ideas in an unbiassed way. This especially concerns people who are prepared to look for unusual solutions and bring new impulses for important changes in the community.

g) For actions of civil disobedience I recommend first studying the literature about the life and works of Mahatma Gandhi, Danio Dolci and Martin Luther King junior. What about a communal hunger strike for the rights of nonsmokers? Or a sit-down strike in front of a cigarette factory or outside parliament? Admittedly, these are rather hackneyed methods but you may be able to think up something more spectacular.
What would definitely be effective is a country-wide general strike against the machinations of the cigarette industry. In view of the many active and passive smoking fatalities, such a drastic measure appears quite reasonable. Do trade unions first need to be established to decide on and organise such action? If you are a member of a trade union, motivate them to arrange a general strike for legal protection from forced passive smoking. Announce that you will cancel your membership of the union if no action is taken.

h) Ally yourself with other people affected and agree on combined action, compare notes on your experience and encourage each other. Avoid excessive aggravation. Approach your campaign playfully and confidently and enjoy defying the stinking smokers and the drug mafia. You can learn a lot along the way and gather important experience.

i) If your actions are original enough, inform the press! You may have a good chance of finding yourself in the paper the next day and being televised. Especially if you have been successful, you should let your successes be publicised in suitable media so that other people learn about them and are encouraged to resist forced passive smoking. Look for trustworthy journalists; serious reporting is unfortunately not to be taken for granted but is rathermore the exception.

If a media report contains incorrect facts, you have the right to an official correction. If your activities are reported in an insulting or slanderous way, you can bring a charge for defamation, libel and slander and claim compensation. If, on the other hand, you are deliberately ridiculed by certain smutty media, you have hardly any chances to defend yourself. Take it in your stride and do not inform the paper or radio/television station of any of your future activities.

**CLOSING REMARKS**

When you file complaints with authorities, institutions, government offices etc., please send me copies of the letters and the replies – even and especially if they are rejected. To what extent those responsible can be held liable can be looked into at an appropriate time. Please inform me if you would consent to a possible publication of the correspondence sent to me.

Please consider the following as well:
You are obliged by law to give first aid. So, if you see clouds of smoke rising, you have to take action to extinguish them. Let’s hope there is enough water available. Take some with you, just in case!