

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on the issue of human rights and transnational corporations and other business enterprises

REFERENCE:
AL OTH 3/2021

27 January 2021

Dear Ms. Arzu Kaymanlı Örsel,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Working Group on the issue of human rights and transnational corporations and other business enterprises, pursuant to Human Rights Council resolutions 41/12 and 44/15

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a communication to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning recurrent cases of anti-union dismissals of Cargill production workers at the Bursa-Orhangazi plant, in Turkey, and especially the dismissals effected in 2018.

Tekgıda-İs is a federation of nine unions founded on 13 April 1952, with the objective to contribute to the regulation and development of the working life, labour law and working conditions in Turkey. It gathers members from the tobacco, drink and food sectors. The union aims to protect the economic and social rights of its members, as well as their freedom of beliefs and speech in work relations. Tekgıda-İs is an affiliate union of the International Union of Food (IUF).

IUF is an international federation of trade unions founded in 1920. Based in Switzerland, it aims to defend the rights and interests of workers in sectors of food, agricultural, hotel, restaurant, catering, tobacco and other allied. IUF is composed of 425 trade unions affiliates in 127 countries. The federation represents over 10 million workers all over the world, including a vast majority of unionized Cargill workers.

Cargill Turkey

According to the information received:

On 5 March 2018, members of the labour union Tekgıda-İş applied to the Turkish Labour Ministry for bargaining unit status at Cargill's Bursa-Orhangazi plant, in Turkey. In order to obtain the multi-unit bargaining certification of Cargill's food facilities, the union needed to reach the 40% memberships in the overall enterprise. As a result, unionists started to mobilize at their workplace in order to reach this percentage of membership.

It was reported that Cargill management of the Bursa-Orhangazi plant tried to challenge the union's application for bargaining unit certification. Indeed, the firm caused the Tekgıda-İş's membership to fall under the 40% threshold by adding workers in the head office to the legal bargaining unit. On March 7, 2018, unionists were also warned that the company's working rules would change in an unfavorable way if the bargaining unit status was obtained. Fourteen workers involved in this attempt of unionization were then dismissed on 17 April 2018.

Cargill justified the dismissals as a consequence of the amendment of the "Sugar Law" announced by the Turkish government on 27 March 2018, which reduced the quotas of sugar to be produced. Due to this reduction, Cargill claimed that it had to downsize some company's staff and stated that no other positions were found for the workers. Economic constraint was therefore the reason indicated in all dismissal notices received by the fourteen workers.

As the fourteen dismissed workers were members of Tekgıda-İş, twelve of them decided to contest the decision in Court in 2018 for unfair dismissal on the basis of union activity. Two decided not to engage in any legal procedure. The complaints were lodged by Tekgıda-İş, on behalf of its twelve members.

Between 2018 and 2019, while the trials were ongoing, the IUF, to which Tekgıda-İş is affiliate, tried several times to engage in an open dialogue with Cargill Inc. on behalf of the dismissed union members but none of these attempts were successful. Indeed, a letter was sent to Cargill's CEO David MacLennan in May 2018 but received no answer. Between 2018 and 2019, thirty-four unions affiliated to IUF, which have members working for Cargill or who have collective bargaining relations with the firm, also sent open letters urging Cargill management to resolve the existing issues with the trade unionists and reinstate all dismissed workers. As Cargill is a USA-based corporation, IUF asked the United States National Contact Point (US NCP) for the OECD Guidelines for Multinational Enterprises for mediation in August 2018. The US NCP accepted the case but the proceeding did not lead to a settlement of the issue between Cargill and the dismissed workers.

On 10 July 2019, the Bursa-Orhangazi's local Court of First Instance (labour) concluded that all twelve production workers were unfairly dismissed for union activity. Cargill decided to appeal the decision. According to information received, during the second instance process, the cases of the fourteen workers were not considered all together, but rather divided between two legal departments and judgments were therefore not rendered at the same time. On 25 December 2019, the Bursa-Orhangazi's district court of appeals

decisions rendered verdicts on four of the twelve workers. According to the Court, the economic justification provided by Cargill was not sufficient to justify those four dismissals. Indeed, the principle according to which enterprises must keep dismissals as a last resort was not respected. Anti-union dismissals were therefore not recognized for those four workers. However, on 20 February 2020, the Final Court confirmed the first instance court's decision for the other eight and recognized that they were dismissed on the basis of union activity. In its final and un-appealable decision, the Court ordered reinstatement in all twelve cases.

According to Law No. 4857 of 2003, Turkish enterprises are legally required to pay enhanced compensation in lieu of reinstatement, even in case of anti-union dismissals. Normally if a Court concludes that no valid reason has been provided to justify the dismissal, the worker must be re-engaged by the employer within one month. However, if the worker is not reinstated, he or she has the right to compensation of his/her wages for a minimum of four months and a maximum of eight months (Art. 21 para. 1 Law No. 4857). If the dismissal is based on discrimination (sex, race, language, religion, political thought etc.), a compensation up to four months' wages is added (Art. 5 Law No. 4857). Finally, the National Law No. 6356 on Trade Unions and Collective Labour Agreements specifies that, if the discriminatory dismissal occurs because of union activity, compensation of up to one year is added (Art. 25).

Following the Court's decisions, the twelve workers applied to positions at Cargill in December 2019 and February 2020, in connection with the reinstatement orders. Cargill rejected their applications and provided compensations instead, while it seems that, between 2019 and the time of this communication, nine permanent positions were created, in the same department that the dismissed workers had previously worked in, and none of these positions were offered to them. Thus, in lieu of reinstatement, Cargill decided shortly after the Court's decision to pay the required compensation to the twelve workers.

It was also reported that similar cases had previously happened at Cargill Turkey. In 2012, 2014 and 2015, seven workers involved in union activities at Cargill Bursa-Orhangazi factory were reportedly dismissed for poor performance, according to Cargill. In 2015 and 2018 the Supreme Court confirmed that all seven were dismissed for union activity and ordered that they be reinstated. However, the company decided to provide compensation instead of reinstatement in each case.

We express our grave concern regarding the reported stigmatization and attempts of intimidation of labour-unionists at Cargill Turkey. If the above allegations are confirmed, these individuals appear to have been targeted solely for having exercised their right to freedom of association protected under the international covenant on civil and political rights. This is in contravention with human and labour rights standards governing freedom of association. Serious concern is expressed on the fact that Cargill management in Turkey would have deliberately created an environment of fear in order to discourage its workers to unionize.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Considering the ILO conventions 87 and 98, which prescribe reinstatement as a remedy for anti-union dismissal, please explain the reasons why none of the additional positions created since 2019 within the same departments in which the dismissed workers previously worked at Cargill's Bursa-Orhangazi plant, in Turkey, have not been offered to them.
3. Please explain if measures have been taken by Cargill in order to apply the ILO prescription mentioned above and provide for effective remedy to workers.
4. Please provide information on the steps that Cargill Turkey is taking to ensure that its workers can fully enjoy their right to associate and unionize, and what results have been achieved.
5. Please provide information about the human rights due diligence policies and processes put in place by Cargill Turkey to identify, prevent, mitigate and remedy adverse human rights impacts of your activities, in line with the UN Guiding Principles on Business and Human Rights.
6. Please indicate to which extent workers were able to shape these measures to ensure they are adapted to their actual needs.
7. Please provide information on steps taken by your company to establish operational-level grievance mechanisms to address alleged human rights abuses and adverse human rights impacts caused by your company throughout your operations.
8. Please describe the measures that Cargill Turkey has taken, or plans to take, to prevent recurrence of such adverse human rights impacts in the future

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please be informed that a letter on the same subject has also been sent to the Government of Turkey, to the Government of the United States and Cargill HQ.

Please accept, Ms. Arzu Kaymanlı Örsel, the assurances of our highest consideration.

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dante Pesce
Chair-Rapporteur of the Working Group on the issue of human rights and
transnational corporations and other business enterprises

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, and while we do not wish to prejudge the accuracy of these allegations, we would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations and does not diminish those obligations.

The Principles 11 to 24 and Principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. Moreover, the commentary of the Principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”.

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Guiding Principle 13).

Principles 17-21 lay down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for

how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).