



Summary Report

INDEPENDENT INVESTIGATION AT ORMA TEKSTIL FACTORIES (Turkey)

On July 14, 2014, Participating Company H&M requested that the Fair Labor Association (FLA) commission an independent investigation into allegations regarding Freedom of Association (FOA) violations at Orma Tekstil facilities. H&M sources from three Orma Tekstil factories, one in Duzce and two in Istanbul. The FLA engaged a well-known academic and independent expert to carry out the investigation and prepare a report. The FLA also assessed the findings of the independent expert against FLA Compliance Benchmarks and made a number of recommendations to H&M regarding remediation areas to pursue with Orma Tekstil management. H&M has developed an action plan to address the FLA recommendations.

Allegations of FOA Violations

H&M had received a range of allegations from two unions – Teksif and Oz Iplik-Is – actively organizing the workforces at all three Orma Tekstil facilities. The two unions sent written complaints to H&M on June 23, 2014 (Teksif) and July 1, 2014 (Oz Iplik-Is).

Teksif alleged the following actions by management at the Duzce factory, among others:

- Dismissal of 10 workers because they were registered as Teksif members.
- Efforts by managers to dissuade workers from affiliating with Teksif or to encourage them to resign from the union, stating that formation of a Teksif union at the factory might lead to its closure.
- Recruitment of Oz Iplik-Is to begin organizing in the factory and assistance with their organizing efforts in order to derail Teksif's organizing efforts.
- Illegal use of workers' e-state passcodes without their consent and knowledge to register them to Oz Iplik-Is.

Oz Iplik-Is meanwhile lodged the following allegations against management and Teksif:

- Management took legal action to revoke authorization letter allowing Oz Iplik-Is to start collective bargaining negotiations.

- Smear campaign by Teksif against Oz Iplik-Is, accusing Oz Iplik-Is of being a “yellow” union and having a special relationship with management.
- Unethical claims by Teksif about Oz Iplik-Is and its success in organizing the majority of the workforce at the Duzce factory.

Independent Expert Investigation: Methodology and Timeline

The FLA selected Professor Kuvvet Lordoglu, a well-known academic and expert in industrial relations issues in Turkey, to conduct the investigation. FLA supported Professor Lordoglu by identifying two individuals to assist him with worker interviews; the FLA’s Regional Manager participated in some of the activities as an observer.¹

- As the objective of the investigation was to gain a better understanding regarding allegations of violation of freedom of association, interviews with workers, management and union representatives were central elements. The investigation sought to understand freedom of association issues at Orma Tekstil around the unionization efforts at the three factories.
- In addition to interviews, field observations and document reviews were also conducted to check the overall working conditions and current systems in the subject factories.

To ensure that employees and/or managers that currently work at Orma factories are not adversely affected by their participation in the investigation or by its findings, the names and job titles of individuals have been removed. Some sensitive information – such as the number of members of each union or production and financial information – have been presented in the form of percentages rather than actual figures.

The investigation was conducted from mid-August to early September 2014. This was followed by the preparation of the report and recommendations:

- August 15: H&M local office visit
- August 25: Teksif Union visit
- August 26: Oz Iplik-Is Union visit
- August 28-29: Orma Tekstil Duzce facility visit
- September 1-2: Orma Tekstil Istanbul facilities visit

¹ The investigation team consisted of Professor Kuvvet Lordoglu – Investigator; Bora Sahin – Worker Interviewer; Cigdem Oguz – Worker Interviewer; and Alpay Celikel – FLA Observer.

- Balance of September: Analysis of information collected and preparation of draft report and recommendations.
- October: Discussion of the draft report with H&M and FLA and finalization of report.

Findings of Independent Expert's Report

The findings of the independent expert's investigation included the following:²

1. One of the major root causes of freedom of association violations identified is the intense competition between two unions -- Teksif and Oz Iplik-Is -- to organize the Orma Tekstil facilities. There is a historic rivalry between the two unions, who have competed before in other settings.
2. While union pluralism is allowed by Turkish law and competition is inevitable when more than one union is seeking to organize a workplace, the situation at Orma Tekstil -- especially at the Orma Tekstil Duzce factory -- was particularly tense, as the actions of both unions polarized the workforce. As a result, some of the workers have lost faith in unions in general and both unions lost members.
3. As the Oz Iplik-Is union has members among the managerial staff in all three factories, and these managerial staff played an active role in the competition between the unions by promoting Oz Iplik-Is, it can be concluded that management was not impartial with respect to the competition between the two unions. However, these interferences were mainly caused by individual decisions on the part of managerial staff rather than by a general company strategy endorsed by top management and the company's owner. Many mid-level managers and supervisors registered with the Oz Iplik-Is union openly admitted that they had promoted this union as a reaction to Teksif's aggressive and disruptive behavior, divisive organizing strategy, unrealistic promises and offensive language and claims against the employer.
4. There was not sufficient evidence to conclude that the dismissal by management of 26 workers in March 2014 was solely based on their Teksif union membership. The investigation found that only 10 of the dismissed workers were registered with the Teksif union, and the other 16 were not registered to any union; moreover, the total number of workers planned to be retrenched was 200. It can be concluded, however, that management mishandled the retrenchment process, which was decided in haste and failed to explore other alternatives to mitigate the impact on workers.

² The full report by Prof. Lordoglu is available at <http://www.fairlabor.org/report/orma-tekstil-independent-freedom-association-investigation>.

5. Both workers and managerial staff lack knowledge on rights and responsibilities regarding freedom of association and collective bargaining, and this has created turmoil within all three factories. In order to overcome this weakness, it is important to organize training sessions -- with different content -- for both workers and managerial staff.

6. Pursuant to international standards, it should be the workers who decide which union should organize and achieve a majority in a given workplace. When there is competition among unions, universal norms dictate that an independent secret ballot election should be held to determine the union that holds majority at a workplace.

FLA Assessment

Professor Lordoglu's report suggests that Orma Tekstil management breached the following elements of the FLA Workplace Code of Conduct standards and compliance benchmarks, as supported by findings from the report:

FOA.13--Employer Interference/Favoritism: Employers shall not interfere with the right of freedom of association by favoring one workers' organization over another.

-- Most of the Oz Iplik-Is union members at the Duzce factory interviewed by Prof. Lordoglu's team mentioned that their managers had asked them to register with Oz Iplik-Is saying that if Teksif would get the majority and start CBA negotiations, this could lead to the closure of the factory or create big conflicts among the workforce.

-- 50% of workers interviewed at the Duzce factory indicated that supervisors/managers had explained about Oz Iplik-Is to them and asked them to register with the union; 30% of respondents stated that the accounting and HR departments at the Duzce factory asked them to register with Oz Iplik-Is.

-- 10% of Oz Iplik-Is members interviewed at the Duzce factory indicated that supervisors/managers helped them with registration to this union, such as by providing transportation to the post office to register, etc.

-- Some female workers were told by supervisors at the Duzce factory that their children could have access to the factory's day care facilities if they registered with Oz Iplik-Is.

-- Workers at the Duzce factory claimed that their e-state passcodes were used without their consent to register them to Oz Iplik-Is. There is a lawsuit pending on this issue.

- A manager at one of the Istanbul factories stated that he had actively promoted Oz-Iplik-Is and affiliation with this union among workers within his department and helped workers join the union.
- Although stating they are neutral with respect to the two unions, managers complained at great length about Teksif's unionization style; very few complaints about Oz Iplik-Is' style.
- Some workers at the Duzce factory stated that they joined Teksif in reaction to management's support/manipulation in favor of Oz Iplik-Is.

FOA.6--Anti-Union Discrimination/Dismissal, Other Loss of Rights, and Blacklisting: Employers shall not engage in any acts of anti-union discrimination or retaliation, i.e., shall not make any employment decisions that negatively affect workers based wholly or in part on a workers' union membership or participation in union activity, including the formation of a union, previous employment in a unionized facility, participation in collective bargaining efforts or participation in a legal strike.

- There is a risk of noncompliance as Orma Tekstil does not have objective criteria for retrenchment.

The Investigator also found that a significant number of managerial personnel at the three Orma Tekstil factories were affiliated with the Oz Iplik-Is union. Thus:

- At the Duzce factory, 2 out 3 production managers and 10 out of 16 production supervisors were registered to Oz Iplik-Is.
- At the Istanbul factories, 4 out of 6 managerial staff interviewed stated that they had registered to the Oz Iplik-Is union.

While neither local law nor the FLA Workplace Code of Conduct bar managerial staff from affiliating with worker organizations, in practice this is a rare occurrence in Turkey. The very large number of managerial staff affiliated with one of the unions (Oz Iplik-Is) is believed to be unprecedented and could be a source of friction between supervisors affiliated with Oz Iplik-Is and members of the competing union.

FLA Recommendations

Consistent with the recommendations made by Prof. Lordoglu, the FLA recommends that H&M pursue with Orma Tekstil management remediation with regard to the following areas:

1. Orma Tekstil should develop policies and procedures for its management staff consistent with the principle of non-intervention in union activities and impartiality when faced with union competition. Orma Tekstil management should strictly enforce these policies and procedures and take punitive action against managers that do not comply with them.

2. Orma Tekstil should organize and deliver training sessions for both workers and managerial staff on freedom of association and collective bargaining. The training sessions should be delivered separately to workers and management by an independent trainer selected by H&M, FLA and IndustriALL, who should also vet the content of the training. The training should be conducted as soon as possible. The objective of the sessions would be:

- Train workers on their rights and responsibilities regarding freedom of association and the right of collective bargaining under local law, ILO conventions and the FLA Workplace Code of Conduct and provide practical information on how to register or resign from a union. Also include training on practices that are permissible and not permissible during the organizing process.
- Train managerial staff on their rights and responsibilities regarding freedom of association and the right of collective bargaining under local law, ILO conventions and the FLA Workplace Code of Conduct and provide practical information on how to remain impartial in the face of multiple union organization campaigns.

3. Orma Tekstil should develop a set of retrenchment guidelines that rely on objective criteria so that it can eliminate the possibility that managers could use reductions in the workforce as a way to discriminate against union affiliates or sympathizers.

The FLA also recommends that IndustriALL promote a high-level meeting between the two unions with the objective of achieving an agreement to hold a secret ballot election at the three facilities to determine the most representative trade union. Orma Tekstil should create an enabling environment for the secret ballot elections to occur. The secret ballot union elections should be organized by an independent body accepted by H&M, the FLA and IndustriALL, without any interference from the employer or from either of the two unions involved in the conflict. These actions would presuppose that the parties drop the ongoing law suits.

H&M Action Plan

1. H&M held a meeting on November 3, 2014, with top management of Orma Tekstil to discuss the report of the investigator (Appendix 1). Orma Tekstil management indicated their full commitment to implement the recommendations

contained in the report, accepting the holding of a secret ballot election at its three facilities to determine the most representative trade union.

2. H&M urged Oz Iplik-Is and Teksif to sign an MOU agreeing to a secret ballot election under the supervision of IndustriALL. Prof. Lordoglu's report considered that signing of the MOU was a prerequisite for holding the secret ballot election supervised by IndustriALL. To date, Oz Iplik-Is has not agreed to signing the MOU and has refused to withdraw the authorization request from the Ministry of Labor and Social Security granting it collective bargaining rights. As a result, the secret ballot election has not occurred despite Orma Tekstil management's efforts and acceptance to hold the secret ballot election in its facilities.

3. H&M consulted with IndustriALL and the FLA to identify the trainer for the training sessions on freedom of association and collective bargaining at Orma Tekstil recommended by the investigator. The consensus trainer was Prof. Ahmet Selamoglu, an experienced expert on freedom of association and related issues. Mr. Selamoglu conducted training sessions for workers and management at the Duzce facilities on December 22-23 and 25, 2014, and at the Istanbul facilities on January 8 and 10, 2015.

4. H&M conducted a full audit of the Orma Tekstil Duzce facilities on December 29-30, 2014. The audit included review of all factory policies related to discrimination, discipline, retrenchment, grievance system, leave, overtime work, verbal harassment, sexual harassment, and abusive conduct. Areas needing improvement have been shared with factory management; H&M is following up regularly on progress in all areas.

H&M also reported that it had been informed by Orma Tekstil that public prosecutors had rejected six different claims against mid-level management and supervisors alleging violation of worker rights and also that Orma Tekstil has withdrawn the lawsuit (mentioned in the independent expert's report) seeking to cancel the November 26, 2014 letter of authorization regarding collective bargaining received by Oz Iplik-Is.

Conclusion

The investigation conducted by Prof. Lordoglu regarding allegations of violations of FOA at Orma Tekstil facilities supplying H&M in Duzce and Istanbul found that the major root cause of FOA violations was the intense competition between two unions, Teksif and Oz Iplik-Is, seeking to organize the Orma Tekstil facilities. The findings of Prof. Lordoglu's investigation suggest that Orma Tekstil management breached the FLA Workplace Code of Conduct benchmark regarding employer interference/favoritism and the lack of objective criteria for retrenchment created a risk of noncompliance with regard to the benchmark regarding anti-union discrimination.

H&M has developed and put in place a comprehensive remediation plan to address the findings and recommendations from Prof. Lordoglu and from the FLA. In particular, H&M discussed the contents of the report and its recommendations with Orma Tekstil management and with IndustriALL. IndustriALL in turn held meetings with the two unions to seek their agreement to withdraw pending legal actions and participate in a secret ballot election under the supervision of IndustriALL. As of the time of the preparation of this report, Teksif, Orma Tekstil management and H&M support the secret ballot election process under the supervision of IndustriALL, but Oz Iplik-Is has not agreed to it.