Commentary

∴

UNI Global Union v. VEON: Compliance as Disguise?

By Yvonne Erkens, Associate Professor of Labor Law, Leiden University, the Netherlands

Introduction

VEON is a multinational telecom and technology company headquartered in Amsterdam. Bangalink is a Bangladeshi subsidiary. UNI Global Union (UNI) is a global trade union federation of more than nine hundred affiliated unions in 150 countries. On 11 July 2016, UNI submitted a complaint on behalf of the Bangalink Employees Union (BLEU). In its specific instance to the Dutch National Contact Point (NCP), UNI stated that Bangalink had violated the freedom of association by dismissing a union leader, harassing union members, and working with the Bangladeshi authorities to suppress the union.

After UNI submitted the specific instance, the NCP held several confidential meetings with both parties. The case was put on hold in December 2016 and UNI and VEON attempted to resolve the issue directly. In September 2017, UNI requested the NCP to resume the specific instance notification because the issues regarding trade union rights in Bangalink had not been resolved.

VEON states in its initial response that it is committed to working with legitimate, representative unions, that BLEU is not a representative union, and that BLEU has not been able to register as a trade union in accordance with Bangladeshi law. According to VEON, the company is “in constant dialogue with its employees.” By asking VEON to enter into discussion or negotiations with UNI or BLEU, the NCP is likely to infringe on Bangladeshi law, thus contravening OECD guidelines. Regarding the request of UNI to resume handling the specific instance, VEON argues that “there are no substantiated allegations nor

surviving issues from the original notification which VEON can identify [that] are not before the Bangladeshi courts” and will be decided through “the national justice system,” which is “the appropriate forum” for the matters. According to VEON, UNI has an overriding policy objective of its own: the establishment of unions in telecommunications companies in Bangladesh. This may be legitimate, but not through “inappropriate and unsubstantiated allegations to an NCP.”¹

Analysis

VEON has not accepted the NCP’s good offices to facilitate a dialogue between the parties on the matters raised. The objective of the NCP, as included in its initial assessment of 6 February 2018, was to bring the parties to an agreement on the workers’ freedom of association at Bangalink and on mechanisms that would improve the company’s due diligence monitoring and response throughout the VEON group.²

Various attempts have been made to bring parties together and to collect information. After several rounds of comments on drafts and meetings with Bangalink in Dhaka, Bangladesh, UNI and VEON, including clarification on Bangladeshi labor law by an independent legal expert, a final statement was published on the NCP website on 11 February 2020.

The NCP first notes that all Dutch companies that conduct business abroad, including foreign entities headquartered in the Netherlands, are expected to adhere to the OECD Guidelines for Multinational Enterprises. Regarding violations in supply chains, the 2011 update of the OECD guidelines states that enterprise should “seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship”.³

Second, the NCP observes that it has not been possible to establish a meaningful dialogue with an agreed agenda within the context of the specific instance between UNI and VEON. VEON claims that Bangalink supports freedom of association and works collaboratively with unions or other collective bargaining organizations wherever such organizations are legitimate and represent the workforce throughout the group. VEON also claims that Bangalink’s

1 Dutch National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises, Final Statement, *Specific Instance of UNI Global Union vs. VEON*, 11 February 2020, 3.

2 Ibid., 4.

3 Ibid., 4.

practices in the field of employee policy go far beyond requirements of Bangladeshi law and the OECD guidelines.⁴

The OECD guidelines refer to applicable international standards. The NCP observes that the case concerns rights guaranteed by Article 2 of ILO Convention No. 87 on freedom of association. Bangladesh ratified this convention in 1972. The ILO has stated on many occasions that the stringent procedural conditions for the registration of trade unions in Bangladesh are not in line with international legislation and necessitate amendment of local legislation. The “NCP notes that in its 2017 Report, published at the ILC session of 2018, the Committee of Experts of the ILO (CEACR) repeated its strong concern about the application of ILO Convention No 87” in Bangladesh. One of the points of concern was the high membership requirement (30 percent), on which it requested government action to truly reduce membership thresholds.⁵ The CEACR also commented on the definition of worker under the Bangladesh Labour Act (BLA), emphasizing the need to broaden it.⁶

The NCP further states that inquiries in Bangladesh have shown that the local trade union has been seeking registration for years, but the competent authorities have so far rejected the request. It seems that, according to the BLA, as long as a trade union has not yet been registered, it cannot exercise any rights of a union until the registration has been accepted, and that an appeal against the rejection of registration would not affect the situation. The NCP thus understands that according to domestic law a union cannot function without previous authorisation, which is a clear violation of Article 2 of ILO Convention No. 87.⁷

It concludes that domestic law has some limitations for Bangalink to engage directly with a local union seeking registration, but it not clear how far these would apply when Bangalink would engage directly in a dialogue or mediation with UNI. The NCP understands that nothing in Bangladeshi law would prohibit VEON to enter—outside Bangladesh—into dialogue with the local trade union BLEU or its international representative UNI. Under OECD guidelines, VEON should have considered engaging in the NCP procedure. Beyond that, VEON can be expected to carry out risk-based due diligence to identify and prevent human rights impact of their operations in Bangladesh and use its leverage over its subsidiary Bangalink to adopt a more positive attitude to resolve the registration issue with the local union. The NCP also notes that no

4 Ibid., 5.

5 Ibid., 6.

6 Ibid., 5.

7 Ibid., 6.

formalized dialogue is under way between Bangalink and its workers and their representatives, nor through a worker participation committee or registered trade union.⁸

Conclusions

Referring to Part II, Commentary, Article 35 of the OECD guidelines, the NCP issues a statement and makes recommendations as appropriate on the implementation of the guidelines even if a party to the specific instance is unwilling to engage or to participate in good faith. This procedure makes it clear that an NCP will issue a statement in any case, even when it feels that a specific recommendation will not be called for.

Noticeable is the NCP's cloaked irritation toward VEON. The procedure took considerable time, partly because of the many specific instances handled by the NCP and its lack of capacity in the second half of 2018.

The NCP recommends that VEON draws up policies and measures to promote and facilitate freedom of association throughout the company and addresses its international obligations regarding freedom of association and collective bargaining. The NCP also recommends that VEON uses its leverage on its subsidiary Bangalink to ensure that Bangalink respects its employees' decision on trade union membership, refrains from any interference with the registration of the local union, enters into constructive dialogue with it, and promotes establishment of the required Worker Participation Council within Bangalink.⁹

The NCP concludes that, based on available information, neither VEON nor Bangalink has yet taken appropriate action, especially in light of the possible limitations of Bangladeshi labor law. The NCP regrets that VEON until now has not been willing to enter into dialogue with the complaining party on the matters raised in the specific instance.¹⁰

The unwillingness of VEON is tucked behind procedural arguments and Bangladeshi law. VEON states that the NCP cannot ask VEON to enter into discussion or negotiations with UNI or with BLEU because it might infringe on Bangladeshi law, given that BLEU is not a representative union and has not registered as a trade union. Issues should be addressed by the courts in

⁸ Ibid., 6.

⁹ Ibid., 7.

¹⁰ Ibid., 7.

Bangladesh. If UNI wishes to lobby for changes in the law of Bangladesh, it should address its requests to the Bangladeshi government.

It is questionable that VEON—a multinational enterprise headquartered in Amsterdam—hides behind Bangladeshi law, especially given that the ILO has stated on many occasions that the stringent procedural conditions for registration of trade unions in Bangladesh are not in line with international legislation and necessitate amendment of local legislation. VEON could certainly have adopted a different attitude, given that according to the OECD guidelines enterprises should seek ways to honor the principles and standards of the guidelines to the fullest extent possible under domestic law.¹¹ Further, according to its CSR report, VEON has signed the UN Global Compact.¹² Principle 3 states that “businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.” VEON’s unyielding attitude can be interpreted as unwillingness to commit to international standards rather than willingness to respect national regulations.

Further, this case makes clear the governance gap in the area of core labor rights and the shortcomings of compliance and enforcement mechanisms. VEON states that the company complies with the national law of Bangladesh, a country that despite the supervisory system of the ILO flouts international obligations. VEON must adhere to the OECD guidelines—given that the ILO can interfere only with countries, not companies—but the guidelines are soft law. Enforceability is lacking and that is an unsatisfactory outcome. For now, this situation could be resolved only if national courts take NCP’s decisions into account when assessing the wrongfulness of a company’s behavior in a tort procedure.

11 OECD Guidelines for Multinational Enterprises, Concepts and Principles, Article 2.

12 Dutch NCP, Final Statement, 5.