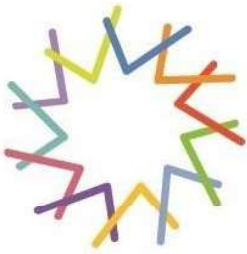


FINAL REPORT

CASE E-00011: Justice and Reparations

-

Repsol



LINEAS DIRECTRICES DE LA OCDE
PARA EMPRESAS MULTINACIONALES

PUNTO NACIONAL DE CONTACTO ESPAÑOL



GOBIERNO
DE ESPAÑA

MINISTERIO
DE INDUSTRIA, COMERCIO
Y TURISMO



INDEX

I. DESCRIPTION OF THE CLAIM

A. Summary

B. Identification of the parties

C. Points of the Guidelines that are considered to be violated according to Justice and Reparation

D. Claimant's claims

II. NCP ACTIONS

III. NCP VALUATION

A. Context

B. Assessment of the situation

C. Conclusions

D. Recommendations



I. DESCRIPTION OF THE CLAIM

A. Summary

The National Contact Point (NCP) acknowledged receipt of a new case on April 19, 2022, filed by the law firm, Justicia y Reparación, and referred to the Spanish company, Repsol, in relation to the spill caused by its activities in Peru. In the case, they allege an alleged violation of the OECD Guidelines, in the chapters on human rights (IV) and environment (VI).

Thus, Justicia y Reparación argued that the spill had caused a specific damage to its representatives: a group of non-boat artisanal fishermen from Bahía Blanca beach who are part, along with others, of the Association of Fishermen, Founders, Shipowners and Artisanal Stevedores (ASPEFAEA). According to the claimant, this damage is of a different severity than that of other affected communities, which should be duly weighed by the company in order to determine the compensation to be paid.

B. Identification of the parties

- Institution or person making the request: Law firm Justicia y Reparación.
- Company: Repsol, a Spanish company in the energy sector, engaged in the production and marketing of hydrocarbons and derivatives, among other functions.

C. Points of the Guidelines that are considered to have been violated:

The complaint alleges potential non-compliance with the [OECD Guidelines for Multinational Enterprises with respect to](#) Chapter IV Human Rights and Chapter VI Environment. Specifically, the complainant specifies that, in its opinion, the OECD Guidelines for Multinational Enterprises have been violated, specifically:

- Points 1, 2, 5 and 6 of Chapter IV "Human Rights".
- The heading or "chapeau" of Chapter VI "Environment".

D. Claimant's claims

The claim of the claimant, Justicia y Reparación, expresses its claims as follows:

*"...] it is our intention to open, through the National Contact Point of the Kingdom of Spain, a **channel of dialogue** with the [respondent] company, which will allow us to hold a transparent and good faith dialogue with it that will finally allow us to agree on a comprehensive reparation for the material and non-material damages caused to the non-boat artisanal fishermen of Bahía Blanca beach represented".*



II. NCP ACTIONS

A. Meetings

Since receiving the case, the NCP secretariat has studied it in depth and met with both parties.

Thus, after the case was assessed by the NCP and its Advisory Council was heard in a plenary session held on June 9, 2022, it was accepted, and a meeting of the NCP secretariat was subsequently held simultaneously with both parties on July 13. The terms of reference, voluntarily accepted by the parties and recalled by the NCP during the process, were agreed upon. These terms provided for the parties to maintain bilateral communication with each other and to inform the NCP accordingly.

The main lines of argumentation of the parties are summarized below.

A.1 Meetings with the complaining party

The NCP Secretariat met with the complainant for the first time on May 25, 2022. The purpose of this meeting was to further explore the reasons why the case was brought before the NCP, as well as to learn more about the case in greater detail. The NCP Secretariat held a second individual meeting with the complainant on October 11 to enable the complainant to provide more details about the case.

Both in parallel to and subsequent to these meetings, the NCP Secretariat has maintained communication with the complainant primarily by e-mail, but also by telephone. However, the NCP secretariat notes that communication was more fluid in 2022 than during the following year, particularly in the second quarter of 2023, due in part to technical problems with the complainant's server, which were not duly notified to the NCP.

During these communications, Justice and Reparation mentioned its willingness to address the issue of financial compensation for its clients based on a report from the National University of Callao -provided to the other party- which evaluated the damages suffered by its clients. The claimant also suggested that the latter inform it of the amount expected for its principals.

Finally, a third meeting with the complainant took place on July 13, 2023. This followed an unsuccessful attempt by the NCP to establish communication with the Complainant at the beginning of June, in order to gather information on the negotiation. In this meeting, the Complainant has reaffirmed its desire to obtain a differentiated remedy for its principals.

A.2 Meetings with the respondent

On May 5, 2022, the NCP met for the first time with the complained company. On November 4, 2022, the NCP secretariat held a second meeting with the respondent, which resulted in a change in the process, as explained in the following section. In addition to the above, the NCP secretariat has maintained contact with the company by electronic means both in parallel to these meetings and after them, during the process.



A.3 Bilateral meetings of the parties

The contacts between the parties exclusively take place on the basis of the terms agreed by the parties voluntarily at the first joint meeting in July 2022. Their bilateral nature is justified by the nature of the content and purpose of the meetings, as they deal with issues related to the determination of the amount of compensation for the victims, which the NCP cannot and should not enter into.

These bilateral contacts began after the November 2022 meeting of the NCP secretariat with the company, from which the process progressed. At that meeting, the NCP secretariat invited the company to open a dialogue with the other party, and contacts between the two parties continued during the first half of 2023 through face-to-face meetings, virtual meetings and mobile messaging communications.

This is a new phase in the process, in which the parties directly address issues related to compensation, its methodology and amount, as well as advance payments. In this same phase, the party complained against is now represented by the company's local social action team, due to its direct knowledge of the issue, while the complaining party will take as a reference the aforementioned report of the National University of Callao, previously provided to the company.

During these bilateral contacts, the Respondent invited the Claimant to join and support the process of determining the respective compensatory amounts. Specifically, they came to discuss the modalities and delivery of the advances that the respondents had not received because they had decided not to enter into the compensation process. However, there is no record that they reached any agreement, except for 4 of the 22 initially represented by the claimant who, according to information provided by the company, unilaterally contacted the company in June, without the claimant's attendance.

III. NCP VALUATION

A. CONTEXT O

The scope of application of the OECD Guidelines focuses on the analysis of the direct impact of the company's activity and its responsibilities in relation to many aspects of its business activity.

In this case, a complaint has been filed for the alleged violation of Chapter IV, Human Rights, and Chapter VI, Environment.

Therefore, in line with other similar analyses and with the recommendations of the OECD itself, it should be noted that the possible liability of the company complained of would be analyzed within the framework of due diligence.

Based on the foregoing, it was decided to conduct a more detailed examination of the issues related to the following Guidelines, taking as a starting point that the offer and acceptance of the good offices did not presuppose in any case an effective violation by the Respondent of the following points:

- Points 1, 2, 5 and 6 of Chapter IV "Human Rights".
- The heading or "chapeau" of Chapter VI "Environment".



With respect to the events up to the closing of this report, there are still a series of investigations and procedures underway to elucidate the possible liability of the company in other ways, which have not yet been concluded.

In any case, the company assumed the responsibility -and continues to do so- to clean up and remediate the areas affected by the spill and to compensate those affected, without prejudice to what is finally established by the courts.

Regarding compensation to those affected, according to information provided by the company, those represented by the complainant had not yet entered into the out-of-court compensation procedure offered by the company, although the company informed the NCP in June 2023 that four of the twenty-two represented by the complainant had unilaterally approached the company that same month to express their interest in entering the compensation process.

B. ASSESSMENT OF THE SITUATION

In order to analyze this case, the complainant provided both the company and the NCP secretariat with a report from the University of Callao. This report included a calculation, in their opinion, of the specific damage caused to their clients, derived from the negative impact of the spill. In this way, the plaintiff sought, on the one hand, to make the company participate in the specificity of its request, justified by the singularity of the activity of the represented parties; and also that the information collected would serve as a basis for determining the amount of compensation.

The company, however, has stated that it does not agree with the content of the settlements, preferring to continue using the bases and methodology of the settlements already formalized with other affected parties.

In addition to the divergence on this key point of the case, the NCP secretariat has recently noted new discrepancies between the parties with respect to the possibility of entering into the compensation process offered by the company. Specifically, according to information provided by the company in June 2023, Justicia y Reparación had expressed the intention of its representatives to enter the process, for which it had requested the Extrajudicial Settlement Act, already sent by the company. However, in July, Justicia y Reparación denies the fact that its principals are going to enter into this process. And they add that, although they maintain their intention to reach an agreement with the company, they continue to defend the need for the company to take into account the specificity of their claim, which should be reflected in the amounts to be received. In addition, Justicia y Reparación insists on an active participation of the NCP in these negotiations, however, as already indicated, it is not the NCP's competence to define or grant compensation.

With respect to the latter two premises, the NCP secretariat indicates the following:

- Regarding the issue of the specificity of the claim, on which the complainant relies, it should be noted that the company, at the beginning of the bilateral negotiations, also expressed that it had taken into account that the adverse impacts



may vary among the different groups affected. Therefore, it indicated that it would have given priority in the compensation to those who presented a greater degree of vulnerability, assessing the type of activity carried out by those affected and starting with those activities of a seasonal nature and whose summer operating season had ended months ago (umbrella sellers, ice cream vendors, candy sellers, etc.). Subsequently, the company has reported how the compensation process has been progressing, becoming effective for more affected people.

Likewise, the company commented that it was not aware that those represented by the claimant were registered in the Peruvian government's list of affected parties, although other members of the trade association to which they belong did appear therein, having already received some compensatory advances. According to the company, this payment on account "did not imply any kind of waiver of rights with respect to the eventual final compensation".

- On the other hand, also in relation to the phase of the process in which the parties have had bilateral contacts and meetings and in which issues related to the quantification of compensation have been discussed, the NCP secretariat has already clarified at the time that it was not within its competence to enter into a discussion of this nature, specifying that its mandate was only to provide a forum for dialogue, to try to bring the parties together, and to allow contact between them.

C. CONCLUSIONS

Based on the analysis carried out, this final report concludes the case without agreement between the parties. The NCP took this decision after tacitly extending the annual duration of the procedure in April 2023 in plenary session, due to the technical difficulties encountered in maintaining fluid communication between the NCP Secretariat and the complainant, but in the hope that the parties would still be able to bring their positions closer together.

The closing of the specific instance is based on the mandate of the NCPs, recognizing that, despite the fact that the parties have not been able to reach, in a sufficiently long time, any agreement due to the different points of view regarding the possibility of granting a differentiated treatment to the complainants, the parties entered the process with the determination to achieve results.

In December 2022, bilateral communications were initiated to determine the amount of compensation. It should be noted that these were carried out without the participation of the NCP Secretariat, as the matter to be discussed (determination of compensation) is outside its mandate.

It is also considered a positive result that, thanks to the initiation of the specific instance, it has been possible to facilitate a space for dialogue between the parties to discuss and try to reach a satisfactory solution for both, although it is recognized that, as of the closing date of this report, the discussion between the parties is still ongoing.



D. RECOMMENDATIONS

The NCP thanks the parties for their cooperation during the process and, in addition, based on the provisions of the OECD Guidelines for Multinational Enterprises applicable to this case, it considers it appropriate to make the following recommendations.

Recommendation 1: Invites the parties to maintain the bilateral contact initiated and to continue the dialogue on the issue, within the framework of good faith and in the interest of making rapid and full progress in providing redress to those affected. To this end, requests that they report to the NCP on the milestones achieved in their negotiations within 6 months of the publication of this report on the NCP website.

Recommendation 2: While recognizing the efforts made by the company in the cleanup and removal of the spill in the affected areas, it is recommended that the company does not cease in this task and spares no effort to avoid environmental degradation and further threats to biodiversity. The company is also asked to report on the progress of this recommendation within 6 months, as in the preceding paragraph.

Madrid, September 13, 2023
Spanish National Contact Point
pnacional.sccc@mincotur.es