

Germany: Turhan Ersin wins case against dismissal at Opel

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On Friday, January 13, Turhan Ersin won his case in the labor court in Bochum in Germany in his appeal against dismissal. His employer, the Adam Opel company, was seeking to sack Ersin who is a member of his factory's works council. The court chaired by Judge Dieter Vermaasen threw out Opel's request.

Following a seven-day labor dispute in October 2004, the Adam Opel company issued immediate dismissal notices for two workers: Turhan Ersin, and Richard Kaczorowski. The company management of Opel, which is a subsidiary of General Motors, accused both men of intimidating and forcing other colleagues to take part in strike action. Both men denied the charges.

In a scandalous trial held on December 19 last year at the state labor court in Hamm, Richard Kaczorowski was forced to accept a harsh settlement and his redundancy notice. The latest and second hearing in the case of Turhan Ersin had been postponed several times following the initial verbal hearing on April 28 last year, where Judge Vermaasen also adjudicated.

In mid-October 2004 the workforce at the Opel factory in the city of Bochum had occupied the work gates and completely shut down the plant, holding "information meetings." The workforce was reacting to the announcement to the media by General Motors of its intention to close plants and implement mass redundancies and wage cuts throughout Europe, in particular in its German factories.

The spontaneous occupation of the factory gates was the response by workers to this public challenge and was supported by the families of Opel workers and large sections of the local population in the industrial Ruhr region. It took place, however, against the express wishes of the majority of the works council, the regional works council and the trade union bureaucracy. After six days of action the latter, through all sorts of tricks and maneuvers, were collectively able to bring about an end to the workers' protests.

This opened the way for company management to implement the massive attacks on jobs and wages demanded by the GM headquarters. In addition, the company felt free to undertake punitive action against individual workers such as Turhan Ersin and Richard Kaczorowski. The works council later submitted its protest at the two dismissals, but had failed at the termination of the labor dispute to agree with management on measures to prevent any victimization of those taking part in the protests. Such agreements had been struck on many previous occasions following labor disputes at the factory.

The summary dismissal of Richard Kaczorowski, an ordinary worker, became effective immediately despite the protest of the works council. However, under German labor law, Opel required an appropriate court order to enforce the dismissal of Turhan Ersin, who was a member of the works council.

Scarcely one week after the initial hearing, the Adam Opel company submitted an "auxiliary petition," according to which Turhan Ersin was to be removed from the works council if the labor court refused to confirm his dismissal. The basis for this auxiliary petition was an interview Ersin gave to the *World Socialist Web Site*. In this interview Ersin criticized the works council and trade union for neglecting to undertake measures to defend warehouse worker Richard Kaczorowski against his dismissal without notice. He expressed his opinion that the works council should at least refuse to carry out overtime work until the company reinstated Kaczorowski.

As was the case in the first hearing, workers at the Bochum Opel factory tensely awaited the result of this latest hearing against Turhan Ersin. Between 60 to 70 colleagues had come to support him in court. Once again many colleagues had to wait outside the small courtroom. This time, however, additional chairs were allocated and spectators were also allowed to stand in the court.

Last spring just 20 spectators were allowed into the courtroom with approximately 50 colleagues forced to wait outside. This time about 40 spectators were able to follow the course of the hearing. Judge Dieter Vermaasen apologized at the beginning of the hearing that the labor court at Bochum could not provide a big enough hall to accommodate the public interest in this case. In addition to the work colleagues of Turhan Ersin, a number of journalists were in attendance as well as television teams from West German Broadcasting (WDR) and the private television station SAT 1.

Opel was represented at the hearing by Elmar Eising, from the company's personnel department, as well as the attorney Dr. Markus Kappenhagen of the international law firm Baker & McKenzie LLP.

Turhan Ersin was once again accompanied by his attorney Michael Dornieden. The Bochum works council, represented by its chairman Rainer Eienenkel and an attorney of the trade union, participated in the hearing on behalf of Turhan Ersin.

At the beginning of the first day of the hearing in April last year, Judge Vermaasen explained that it was necessary to decide on a purely formal, procedural question. The central issue at stake, i.e.,

what actually took place last autumn and whether the dismissal of Turhan Ersin was legal or not, could only be dealt with in a later hearing.

This matter of procedure concerned the legal status of the company which employed Turhan Ersin. At the time of the dismissal notice the Adam Opel company was comprised of three different enterprises: the Adam Opel AG (in the meantime converted into the Adam Opel GmbH), the GM-Fiat Worldwide Purchasing Opel Germany GmbH (in the meantime absorbed into the Opel GmbH) and Opel Powertrain GmbH (now GM Opel Powertrain GmbH).

The question posed at that time by Judge Vermaasen was the following: along with Adam Opel AG, was it not the case that the two other enterprises also had to agree and sign the dismissal without notice? A positive answer to this question meant that the whole dismissal process would be nullified, since the two other enterprises would then have irrevocably missed the two-week period necessary for the application of the dismissal notice.

At the beginning of the second hearing, Judge Vermaasen made a declaration giving his opinion on the legal basis for the court case and the point of view of the court, i.e., the standpoint of Judge Vermaasen and his two honorary judges.

The main hearing addressed Germany's *Mitbetsimmung* participation procedure, which governs relations between employers and the works councils, which is elected by the factory workforce. It was not an issue of "individual rights," i.e., the conflict between Opel and Turhan Ersin. The protection against dismissal laid down in the appropriate paragraph 103 of the German industrial democracy act (BetrVG) does not relate to individual protection, but protection of the entire works council. Paragraph 103 protects "firstly the operability of the works council" as a whole, and "secondly the democratically arrived at election result of the workforce" in its vote for the works council.

Bearing in mind, however, that all persons employed at the Bochum Opel factory had participated in this election, i.e., including persons employed by the joint venture enterprises, GM and Fiat, as well as the Powertrain GmbH, these two enterprises were also, according to the court, required to sign the dismissal notice because Turhan Ersin is also a works council representative for the workers of these other enterprises.

It was immediately clear to all assembled in the court that this represented a victory for Turhan Ersin. After the judge had called the court to order, the representatives of the two opposing parties were allowed to once again state their points of view.

It was clear that the attorney hired by Opel, Kappenhagen, did not share the point of view of the presiding judge. In his argumentation, Kappenhagen tried to base his case on a number of different related court decisions. The judge answered with the remark that "we are not proceeding here on firm legal territory." Such cases have received little attention up to now. Judge Vermaasen repeated again: paragraph 103 BetrVG does not deal with individual notices, but the relationship between the works council and the employer.

The representative of the Opel personnel department, Elmar Eising, remarked that he found it "out of touch" that only one employer could confirm a work contract and likewise only one

employer issue a dismissal notice, while the intermediate step—the request for the dismissal of a member of the works council—requires the cooperation of all employers from all of the companies involved.

For his part, Turhan Ersin's lawyer Michael Dornieden expressed his agreement with the remarks made by the judge. He thanked the judge for his detailed statement on this issue in particular, which he had not dealt with in such detail in his writs for the hearing.

Dornieden also reported, however, that after the strike the head of personnel for Opel Powertrain GmbH had personally thanked his client and other members of the works council for their moderate behavior, thus confirming that there was no obvious reason to sack Turhan Ersin without notice.

There then followed loud exchanges. Eising called out: "That is just nonsense." Eising maintained he had been in constant contact with the Powertrain personnel manager in this connection and was confident he would have supported the dismissal notice. If he has thanked some members of the works council, then he could not have meant Ersin.

After tempers had calmed down somewhat, Dornieden made the additional demand that the auxiliary petition by Opel to exclude his client from the works council be dropped. Elections to the works council at Opel Bochum are due on March 9, which meant that the workforce would have their own opportunity to decide whether Turhan Ersin should remain their representative. If Turhan Ersin is excluded before the election, he still has the opportunity of being re-elected in a short time.

Kappenhagen did not want to let the workforce decide whether Turhan Ersin remains in the works council or not and called upon Judge Vermaasen to decide "quickly" on the issue. To the laughter of those in court Vermaasen replied that he was going on vacation and would therefore probably arrive at a judgment by the middle of March.

Subsequently, Judge Vermaasen withdrew for consultation with his both honorary assessors. Turhan Ersin and his colleagues were confident and colleagues were already congratulating him on his victory in the break.

Eising and Kappenhagen left the court. They were therefore absent for the announcement of the decision following a half-hour consultation. The request by Opel for confirmation of the dismissal without notice of works council member Turhan Ersin was rejected. A fresh date for the auxiliary petition was to be looked into, meaning in fact that it is likely to be dropped.

Turhan Ersin expressed his satisfaction with the judgment and thanked all of his colleagues and supporters in attendance.



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