LEXOLOGY
Getting The Deal Through

Business & Human Rights

in Turkey

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Turkey

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UNPROCESSED QUESTIONS

All questions

Updates and trends

39 What are the key recent developments, hot topics and future trends relating to business and human rights in your jurisdiction?

There are no known material developments or future trends on business and human rights in Turkey. However, the rights of migrant workers and other labour-related issues are trending topics in the business and human rights field, particularly in the clothing sector, due to the high number of Syrian refugees that have moved to Turkey within the past few years. The Ministry of Labour is currently engaged in a project on developing working conditions for refugees, together with the Ethical Trading Initiative, a UK organisation with particular focus on improving working conditions in global supply chains.

Which international and regional human rights treaties has your jurisdiction signed or ratified?

The following international human rights treaties have been signed and ratified by Turkey:

- the Charter of the United Nations entered into force on 24 August 1945;
- the Convention on the Prevention and Punishment of the Crime of Genocide entered into force on 12 January 1951;
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force on 21 April 1988. Turkey is not bound by article 30/1 referring to arbitration;
- the International Covenant on Civil and Political Rights entered into force on 7 July 2003. Article 27 shall be interpreted and applied in accordance with the Turkish Constitution and the Treaty of Lausanne;
- the Optional Protocol to the International Covenant on Civil and Political Rights entered into force on 29 June 2006. The competence of the Human Rights Committee shall:
- the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, entered into force on 12 December 2005;
- the International Covenant on Economic, Social and Cultural Rights entered into force on 10 July 2003. Articles 13/3 and 13/4 of the Covenant will be interpreted in accordance with article 3 (the state's integrity, official language, flag, national anthem and capital), article 14 (prohibition of misuse of fundamental rights and liberties) and article 42 (right and duty of education) of the Turkish Constitution;
- the International Convention on the Elimination of All Forms of Racial Discrimination entered into force on 13 May 2002. Regarding article 22 of the Convention on the competence of the International Court of Justice, the explicit consent of the Republic of Turkey is required in each individual case;
- the Convention on the Elimination of All Forms of Discrimination against Women entered into force on 24 July 1985. Turkey is not bound by article 29/1 referring to arbitration; and its Optional Protocol entered into force on 26 August 2002;
- the Convention on the Political Rights of Women entered into force on 26 January 1960;
- the Convention on the Rights of the Child entered into force on 9 December 1994. Articles 17, 29 and 30 shall be interpreted according to the Turkish Constitution and the Treaty of Lausanne; and
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families entered into force on 18 June 2004. Declaration on article 15: Restrictions under Turkish laws regarding acquisition of immovable property by foreigners are preserved. Reservation on article 40: the Turkish Code on Trade Unions (No. 2821) allows only Turkish citizens to form trade unions in Turkey. The rights of migrant

workers and their families to form trade unions is not applicable under Turkish laws. Declaration on articles 76 and 77: Turkey will recognise the competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families at a later stage.

Has your jurisdiction signed and ratified the eight core conventions of the International Labour Organization?

The conventions entered into force in Turkey on the following dates:

- the Forced Labour Convention, 1930 (No. 29): 30 October 1998;
- the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87): 12 July 1993;
- the Right to Organise and Collective Bargaining Convention, 1949 (No. 98): 23 January 1952;
- the Equal Remuneration Convention, 1951 (No. 100): 19 January 1967;
- the Abolition of Forced Labour Convention, 1957 (No. 105): 29 March 1961;
- the Discrimination (Employment and Occupation) Convention, 1958 (No. 111): 19 July 1967;
- the Minimum Age Convention, 1973 (No. 138) (minimum age specified: 15 years): 30 October 1998; and
- the Worst Forms of Child Labour Convention, 1999 (No. 182): 2 August 2001.

How would you describe the general level of compliance with international human rights law and principles in your jurisdiction?

The latest available report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) dated March 2018, concerning 2017, refers to human rights violations committed throughout the duration of the state of emergency in Turkey, which lasted from 15 July 2016 to 18 July 2018, and the safety issues in south-east Turkey. OHCHR states in the report that its findings 'point to a constantly deteriorating human rights situation, exacerbated by the erosion of the rule of law'. On 21 July 2016, Turkey derogated from some of its obligations under the International Covenant on Civil and Political Rights. It is also stipulated that the emergency decrees issued after the extension of the President's executive powers by amending the Constitution, which are not subject to judicial review, included provisions falling against basic human rights safeguards and Turkey's obligations under international law.

On the EU side, the motion for a European Parliament Resolution on the 2018 Commission Report on Turkey (2018/2150(INI)), dated 26 February 2019, refers to issues concerning 'the rule of law and fundamental rights, including the separation of powers, democracy, freedom of expression and the media, human rights, the rights of minorities and religious freedom, freedom of association and the right to peaceful protest, the fight against corruption and the fight against racism and discrimination against vulnerable groups'. The motion notes that, in July 2017, Parliament called on the Commission and the member states to formally suspend the accession negotiations with Turkey should the constitutional reform package be implemented in an unchanged state, and because the constitutional reform failed to redress the consequences of the state of emergency, as it preserved the extensive powers granted to the President during the state of emergency period.

Furthermore, there are criticisms that certain inconsistencies exist between the international treaties signed and ratified by Turkey and domestic laws. According to the Business and Human Rights Guidelines of the Corporate Social Responsibility Association of Turkey, there have been breaches on the right to syndication, right to work, right to collective agreement, right to strike, prohibition of child labour and work safety due to the inconsistencies between ILO conventions and domestic legislation in Turkey. This situation highlights the need for harmonising domestic legislation with ratified international treaties on business and human rights.

Does your jurisdiction support the development of a treaty on the regulation of international human rights law in relation to the activities of transnational corporations and other business enterprises?

Turkey is not a member of the UN Human Rights Council, and consequently did not attend the hearings for Resolution No. 26/9 of 26 June 2014 of the UN Human Rights Council on 'elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights'. There are also no official attempts or plans by the Turkish government concerning the development of a treaty on this issue.

Has your jurisdiction enacted any of its international human rights obligations into national law so as to place duties on business enterprises or create causes of action against business enterprises?

As per article 90 of the Turkish Constitution, international treaties that have been duly enforced carry the force of domestic law. International treaties are ratified by law issued by Turkish Parliament. If there are discrepancies between a duly enforced international treaty on basic rights and freedoms and national laws, the provisions of the relevant international treaty shall prevail. There are several national regulations in Turkey, such as labour legislation, environmental legislation and data protection, that base their grounds on international human rights. However, there is no specific legislation addressing the human rights obligations of businesses.

Has your jurisdiction published a national action plan on business and human rights?

There is no official attempt by the Turkish government to publish a national action plan or national guidelines on business and human rights.

Are businesses in your jurisdiction subject to any statutory human rights-related reporting or disclosure requirements? Which enterprises are subject to these requirements?

There are several laws and regulations setting reporting or disclosure requirements for companies on non-financial issues, which may be interpreted to comprise human rights-related issues. Some of the most relevant examples are provided below.

As per the Turkish Commercial Code No. 6102 (TCC), joint stock companies, limited liability companies and limited partnerships with share capital are required to prepare an annual activity report. The content of the annual activity report is regulated by the Regulation on Determining the Minimum Content of Annual Activity Reports of Companies, which stipulates that, although activity reports shall mainly reflect the company's financial condition and financial performance, non-financial risks shall also be set out. Although it does not specifically refer to human rights-related issues, the Regulation also refers to the interests of the shareholders, creditors and other relevant persons and entities, addressing the requirement to provide information on significant events occurring after the end of the relevant financial year that may have effects thereon.

The Capital Markets Board of Turkey (CMB) also imposes a responsibility on public companies to publicly declare 'material events'; that is, all information, events and developments that may have an impact on the value or market price of the capital market instruments or the investment decisions of the investors. Although the law does not provide

a precise definition of the term, 'material events' might be deemed to cover social and economic events and human rights issues that might create the aforementioned impact. According to the Capital Markets Law (CML), material events disclosure is among the public disclosure documents that are required to be correct and complete, otherwise the relevant public company, as well as any related parties, will be held responsible for losses and damages (article 32 of the CML). On the other hand, the CMB Communiqué on Material Events, which regulates the details of the material events disclosure, sets a voluntary disclosure option for prospective evaluations.

There are several non-financial reporting requirements relating to the environment that may have an impact on human rights.

As per Environmental Law No. 2872, all businesses, establishments and enterprises whose planned activities may result in environmental issues are obliged to prepare an environmental impact assessment report. The Regulation on Environmental Impact Assessment provides a list of types of companies that fall within the scope of this requirement, which include high-risk sectors, such as oil, thermal power, nuclear power, mining, airports, ports and shipyards. The report should bear the content specified in the form annexed to the Regulation on Environmental Impact Assessment, which specifically requires potential risks to the environment, measures to mitigate environmental impact and a monitoring plan to be addressed. Furthermore, as per the provisions of the Public Procurement Law, the projects that require an environmental impact assessment report cannot proceed to public auction unless this is obtained.

The Regulation on Increasing Efficiency in Energy Resources and Use also sets certain reporting requirements for industrial businesses with high levels of energy consumption. Accordingly, businesses with an annual total energy consumption of at least 1,000 tonne of oil equivalent are obliged to appoint an energy manager who shall assess and control energy consumption and submit annual reports to the General Directorate of Energy Affairs.

The Regulation on Control of Industrial Air Pollution addresses an obligation to issue periodic emissions measurement reports for the purpose of controlling smoke, dust, gas, steam and aerosol emissions caused by industrial facilities.

The Regulation on Monitoring of Greenhouse Gas Emissions provides for a tracking, reporting and verification obligation for operations listed in its Annex I. The relevant businesses shall annually report to the Ministry of Environment and Urbanism the greenhouse gas emissions observed within the previous year up to 30 April. The details of the reporting, such as the main principles, content and procedure, are regulated under the Communiqué on the Monitoring and Reporting of Greenhouse Gas Emissions.

The Regulation on Prevention and Mitigation of the Impacts of Major Industrial Accidents also sets certain reporting obligations on businesses that are involved in hazardous materials, as detailed therein. Accordingly, the relevant businesses shall report to the Ministry of Environment and Urbanism on hazardous materials involved in their operations, risks pertaining thereto and measures to be taken. Moreover, the relevant businesses shall also prepare a high-risk scenario, setting out the dangers and risks pertaining to major accidents that may result from their operations, as well as a policy document on prevention of major accidents, which shall both be kept in the workplace.

As per the Occupational Health and Safety Law, employers are responsible for keeping a list of occupational diseases and work accidents that have occurred in their workplace, carry out the necessary investigation and report these issues to the Social Security Institution (SSI) within three working days.

What is the nature and extent of the required reporting or disclosure?

See question 7.

Which bodies enforce these requirements, and what is the extent of their powers?

The regulations mentioned in question 7 refer to certain public authorities that enforce these requirements, such as the

Ministry of Environment and Urbanism, the SSI and the CMB.

What voluntary human rights-related reporting or disclosure regimes are applicable to businesses in your jurisdiction?

The CMB imposes certain obligations on listed companies on non-financial reporting and disclosure. As per the Corporate Governance Principles, annexed to the Communiqué on Corporate Governance (II-17.1), companies shall include in their annual activity report information on social rights of workers, occupational training and other corporate social responsibility activities related to the company's operations that have social or environmental effects. The Corporate Governance Principles also stipulate that companies shall comply with regulations on environment and public health and respect, and support internationally recognised human rights and show care towards social responsibility. However, these are not mandatory and are imposed on a comply-or-explain basis only. In the event that a public company does not opt to abide by these principles, it shall publicly disclose this together with its explanation within the Corporate Governance Principles Compliance Report.

Borsa Istanbul, the Istanbul stock exchange (BIST), also provides the BIST sustainability index for listed companies to report their environmental, social and governance performance on a voluntary basis. There are 62 companies that are subject to assessment under the sustainability index in 2019. This system enables companies to be subject to an assessment by Ethical Investment Research Services, a UK ethical investment organisation.

What best practices should businesses consider when implementing policies to ensure compliance with human rights-related reporting or disclosure requirements?

It would be advisable that businesses clearly define their human rights strategy pertaining to their operations, consider the views of all stakeholders, train and monitor their employees and others involved in their operations, and provide a detailed report including human rights risks and the measures taken to prevent them.

Are businesses in your jurisdiction subject to any statutory human rights-related due diligence requirements? Which enterprises are subject to these requirements?

See question 7.

What is the nature and extent of the required due diligence?

See question 7.

Which bodies enforce these requirements, and what is the extent of their powers?

See question 9.

What voluntary human rights-related due diligence regimes are applicable to businesses in your jurisdiction?

See question 10.

What best practices should businesses consider when implementing policies to ensure compliance with due diligence requirements?

See question 11.

What criminal charges can be asserted against business enterprises for the commission of human rights abuses or involvement or complicity in abuses by other actors? What elements are required to establish guilt?

According to article 38/7 of the Turkish Constitution, criminal liability is personal. Therefore, legal entities cannot be held criminally liable. Article 20 of the Turkish Criminal Code also stipulates that criminal liability is personal and that legal entities cannot be subject to criminal liability, except for safety measures that may be imposed on private legal entities (eg, stock companies) as the penalty for a crime.

The imposition of safety measures on legal entities is regulated in article 60 of the Turkish Criminal Code, which stipulates that if a private legal entity is operating based on a permit given by a public authority, this permit shall be revoked and confiscation provisions shall apply if there has been a criminal prosecution with the participation of the legal entity's organs or representatives and upon misuse of the relevant permit, provided that this was done to the benefit of the relevant legal entity. Therefore, a link of causation should exist between the legal entity's operation based on permit or licence and the crime committed to the legal entity's benefit. Also, if the legal entity's body or representative that has acted in fault in committing the relevant crime has been acquitted or the court has not reached a decision on its conviction, no safety measures may be imposed on the relevant legal entity. This clause may only apply in the case of the commitment of certain crimes that are explicitly set out in law, which are several and aim to protect legal interests, such as right to live, physical integrity, liberty, environmental protection, privacy, public health, constitutional order or state security. However, the courts are given a discretion to refrain from applying these safety measures if the application of this provision shall lead to heavier consequences than the committed action itself.

On the other hand, the Law on Misdemeanours acknowledges commitment of misdemeanours by legal entities and regulates the imposition of administrative penalties or administrative fines on legal entities for this purpose. In terms of this Law, misdemeanour is a wrong against which an administrative penalty is envisaged. Accordingly, in the case of noise due to the operation of a commercial enterprise, inappropriate disposal of waste by enterprises operating in the food and services sector or in construction, or economic crimes (eg, bid-rigging, bribery, fraud), the relevant legal entity, which received benefits from the relevant misdemeanour, will also be subject to an administrative fine.

In the case of an alleged crime that involves a legal entity, the following conditions will be evaluated:

- actus reus, which refers to an act or action defined in the relevant criminal law;
- mens rea, in form of fault or negligence of the person who committed the alleged crime;
- unlawfulness; and
- nullum crimen sine lege (ie, no crime can arise without law).

What defences are available to and commonly asserted by parties accused of criminal human rights offences committed in the course of business?

If an offence is committed by a person who has no authority to represent the legal entity, the relevant legal entity shall not be held criminally liable, but the relevant real person will personally be liable. This is based on the principle of subjectivity of crimes and, thus, whoever has committed it, shall be criminally liable. On the other hand, in the case of an act of ultra vires by a person who is authorised to represent the legal entity, criminal liability may arise depending on the circumstances. The imposition of safety measures on legal entities is subject to the condition that the real person who has committed the alleged crime to the legal entity's benefit has been convicted by criminal courts; thus, cases of acquittal or non-conviction might be used as defences by the relevant legal entity. Another defence could be that the alleged offence is not committed to the legal entity's benefit, in which case the legal entity shall not be held liable. Furthermore, if the alleged offence is due to an act of an employee who has acted against the employer's instructions or has acted in bad faith to harm the legal entity, the legal entity will not be held liable, as in such a case, the link of causation will not exist.

In what circumstances and to what extent can directors and officers be held criminally liable for the business's commission of or involvement or complicity in human rights abuses? What elements are required to establish liability?

Criminal liability is subjective under Turkish law. Therefore, a director or officer of a company can be held criminally liable for the relevant company's involvement or complicity in human rights abuses only if he or she had a personal responsibility for such. In other words, if he or she has acted in fault in the commitment of the relevant abuse while performing his or her duties within the company, he or she might be held jointly liable along with the company.

To establish this liability, it is crucial to check the authorities and duties of the directors under the company's internal directive on management to see if the relevant abuse falls within the scope of their duties and if there has been any kind of transfer of authority to others. The director who is authorised to prevent the alleged offence, who has not fulfilled his or her duties and caused the commitment of the relevant offence by fault, shall be criminally liable. However, if there has been a duly made transfer of authority, the director who has transferred his or her authorities might avoid criminal liability.

Members of the board of directors or other officers or managers can escape criminal liability by proving that they did not have any fault, that the employees acted against their instructions or that the crime was committed under the instructions of another director or manager. Having said that, if the statutory requirements and measures on health and safety of workers have been breached and an abuse has occurred in this respect, the board of directors, as well as other responsible officers, might be held criminally liable.

In what circumstances may the courts disregard the separate legal personalities of corporate entities within a group in relation to human rights issues so as to hold a parent company liable for the acts or omissions of a subsidiary? What defences apply and what remedies are available?

In principle, the shareholders or the parent company cannot be held liable for the criminal actions of their subsidiary by way of piercing of the corporate veil, as the criminal liability is subjective and personal.

In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties? What defences apply and what remedies are available?

Criminal liability is personal under Turkish law; therefore, if a human rights abuse is committed by a third party (eg, employees, contractors), the relevant third party, and not the business, shall be liable according to its fault.

If a human rights abuse is committed by a body of the legal entity (eg, its board of directors), the relevant legal entity shall be liable (article 50/2 of the Turkish Civil Code). This liability will be a joint liability of the legal entity itself and its corporate body. To call this liability, the crime should have been committed within the scope of the duties of the relevant body, and the relevant body should have acted in fault. The criminal liability of the legal entity will be limited to the specific consequences set out in law, such as administrative monetary fine, confiscation and cancellation of licence. The legal entity, in its defence, may allege that the abuse was not committed while the relevant body performed its duties, and, therefore, the legal entity should not be held jointly liable.

Who may commence a criminal prosecution against a business? To what extent do the state criminal authorities exercise discretion to pursue prosecutions?

Under Turkish criminal procedural law, the public prosecutor is authorised to initiate criminal investigations upon formal complaint or upon being informed of a potential crime taking place. Anyone can file a formal complaint before the public prosecutor or the police. After carrying out the required investigation process, the public prosecutor decides whether the relevant case should be subject to public criminal lawsuit, in which case it will prepare a bill of indictment and submit it to the authorised criminal court of first instance. The criminal court, upon reviewing the bill of indictment, will then decide if it will proceed with prosecution; thus, if it will initiate the lawsuit or not. Both the public prosecutor and the authorised criminal court judge may exercise a certain level of discretion in assessing the evidence gathered and the bill of indictment to decide if a criminal prosecution should be followed.

What is the procedure for commencing a prosecution? Do any special rules or considerations apply to the prosecution of human rights cases?

See question 22 regarding the procedure to commence a criminal prosecution under Turkish law. Currently, there are no special rules applying to the prosecution of human rights cases, except a few concerning the Constitutional Court (CC) and the European Court of Human Rights (ECHR).

The CC, after evaluating the case on merits, shall decide whether there has been an infringement of a right. If it decides on infringement, it shall rule to the measures that will be taken to remove the infringement and its consequences. If the infringement is caused by a court decision, the court file shall be sent back to the relevant court for retrial. However, where there is no legal benefit expected from a retrial, the applicant might be granted compensation or might be referred to general courts (article 50 of Law No. 6216 on Establishment and Proceedings of Constitutional Court).

If the public prosecutor's decision not to initiate prosecution is found by the ECHR to have been given without efficient investigation, or if the mentioned decision is dismissed upon amicable settlement or unilateral declaration resulting from the application before the ECHR challenging this decision, a new investigation may be commenced, if requested, within three months of the finalisation of the decision (article 172/3 of the Criminal Procedural Code). If it is determined that the final decision is based on an infringement of the European Convention on Human Rights or its protocols and this is determined by the ECHR's final decision or if a decision is dismissed upon amicable settlement or unilateral declaration resulting from the application before the ECHR, the relevant lawsuit shall be re-heard by way of retrial, which can be requested within one year of the finalisation of the ECHR decision (article 311 of the Criminal Procedural Code).

What civil law causes of action are available against businesses for human rights abuses committed by the business? What elements are required to establish liability? What defences apply and what remedies are available?

The relevant legal ground to claim the civil liability of a business for a human rights abuse might be tort liability under Turkish law. Accordingly, businesses might be held liable under the general principles on tort under the Turkish Code of Obligations (TCO) (article 49 et seq). To establish liability in tort, there should be an act committed by the relevant business, an established fault or negligence on the business, illegality of the act, a damage occurred as a result of the relevant act and link of causation between the act and damage. There may be several defences to put forward by the business, such as the fault of a third party or of the victim, which might be evaluated by the court to establish the business's civil liability.

Article 50 of the Turkish Civil Code stipulates that legal entities shall be held liable for the actions of their bodies. The mentioned liability shall be joint, wherein the relevant body shall also be liable along with the legal entity. Therefore, in such a case, the legal entity shall be held directly liable in terms of general principles on tort liability.

As for joint stock companies, the company will be held responsible for the torts committed by people who are authorised to represent or manage the company while they were performing their duties (article 371/5 of the TCC). The scope of this provision aims to cover board members, as well as delegated directors and managers; however, this is not numerus clausus. Additionally, as per the clear wording of the provision, the company cannot be held liable for torts committed by its bodies acting outside the scope of their duties within the company. The company is entitled to have recourse to the relevant corporate body for damages (article 371/5 of the TCC) in light of the general provisions on recourse under the TCO (article 62).

In what circumstances and to what extent are directors and officers of businesses subject to civil liability for the business's commission of or involvement or complicity in human rights abuses? What elements are required to establish liability? What defences apply and what remedies are available?

The board of directors and third parties who are responsible for management are obliged to perform their duties with the care of a cautious manager and guard the company's interests in good faith (article 369/1 of the TCC). Those 'who are responsible for management' include delegated managers who have had the authority to represent or bind the company conferred upon them. The concept of care of a cautious manager is defined as an objective criterion, which refers to the care that would be shown by a manager of a company that is similar in size and in sector. As stated in the reasoning of article 369 of the TCC, a manager might be deemed to have shown due care if he or she has carried out the required research and sought information from relevant people before deciding on a certain issue. In such a case, the relevant manager should not be held liable for the damages occurred due to his or her decision, which should be defendable on the date it was given.

Accordingly, the TCC adopts the 'business judgement rule' as a measurement to decide on the liability of directors, which has the following conditions:

- to act in good faith;
- to be well informed of the decision and its consequences; and
- to keep the company's interests higher than personal ones, even in the case of a conflict.

In the event that the given decision qualifies as a business judgement rule, the relevant director will not be held personally liable for the damages. Even if the director might be held personally liable, this liability will be pro rata to the director's fault or omission. Similarly, if the authority representing or managing the company has been transferred to third parties (ie, delegated managers), these delegated managers will be held liable for the damages arising from their decisions.

In what circumstances may the courts disregard the separate legal personalities of corporate entities within a group in relation to human rights issues so as to hold a parent company liable for the acts or omissions of a subsidiary? What defences apply and what remedies are available?

The theory of piercing the corporate veil under Turkish law can be based on the following limited grounds:

- thin capitalisation in the subsidiary;
- mixing of the assets of the subsidiary and the parent company; and
- misuse of the separate legal personality of the subsidiary.

These are all based on the breach of acting in good faith (article 2 of the Turkish Civil Code). Having said that, it is not easy to prove the existence of any of these legal grounds in practice, in claiming that a parent company should be held liable for the actions of its subsidiary in respect of human rights abuses. There are also no appeal court decisions on business responsibility for human rights abuses, as the limited number of appeal court decisions on piercing the corporate veil mainly concern employment claims.

In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties? What defences apply and what remedies are available?

In the event that a company's employees have committed human rights abuses within the scope of their employment, the relevant company is held liable as the employer on a strict liability basis (article 66 of the TCO). Therefore, in principle, the company will be held liable for damages, unless it proves that it has shown due care in electing the employee, giving instructions on his or her job, and exercising monitoring and control to prevent the damaging outcome. Furthermore, in a business enterprise, the employer is responsible for compensating any damages incurred due to the activities of the relevant business enterprise, unless it proves that the work environment of the business enterprise was adequate to prevent the relevant damage. The employer is entitled to have recourse to the relevant employee pro rata to his or her responsibility for the damage occurred.

Moreover, if the human rights abuse took place in relation to the acts of a person assisting in the performance of a debt (eg, a contractor) towards a creditor, the company is liable to compensate the damages arising in this respect (article 116 of the TCO). To call this liability, it is necessary that either the performance of an obligation or the exercise of the right arising from a relationship has been transferred to the persons assisting in the performance, and the damages should arise within the scope of the performance of the relevant task. The company may claim, in its defence, that the damaging act did not take place within the scope of the assisting person's duties. It is possible to remove the liability for the acts of the assistant in performance upon prior agreement. However, if the relevant service, profession or art that requires proficiency is carried out based on a permit given by law or by authorities, any agreement that would rule this liability out shall be deemed null and void.

In what circumstances can shareholders be held liable for the business's commission of or involvement or complicity in human rights abuses? What defences apply and what remedies are available?

In light of the principles of separate legal personality and limited liability for capital companies, it is not straightforward to hold the shareholders liable for the company's commission of, or involvement or complicity in, human rights abuses. In principle, the liability of the shareholders in stock companies is limited with the amount of share capital that they

undertake to put in the company. The company's creditors, which may include involuntary creditors, such as victims of tort and human rights abuses, in principle, shall seek legal action against the relevant company that committed the abuse. However, for simple partnerships, shareholders might be held liable for the debts of the partnership depending on the terms concerning the representation and management, as the partnership itself has no legal personality.

Under what criteria do the criminal or civil courts have jurisdiction to entertain human rights claims against a business in your jurisdiction?

There are no specialised courts to hear human rights claims against businesses in Turkey. The CC and ECHR, however, are authorised to monitor the fulfilment of state responsibility on human rights claims.

Criminal courts

In principle, the criminal court of the place where the crime is committed shall have jurisdiction. In the case of an attempted crime, this is where the last action is taken, in the case of a continuous crime, this is where the act is discontinued, and in the case of successive crimes, this is where the last crime is committed (article 12 of the Criminal Procedural Code). In the event that the place where the crime is committed is not known, jurisdiction falls to the courts of:

1. the place where the suspect is caught or of the suspect's residence;
2. if these are not known, the suspect's most recent address in Turkey; or
3. if this is not known, the place where the first procedural action took place (article 13 of the Criminal Procedural Code).

For crimes committed abroad, the courts under items (1) and (2) shall have jurisdiction; however, the Court of Appeal may confer jurisdiction on a court closer to the place where the crime is committed, if this is requested.

Civil courts

Human rights abuses might be accommodated within the scope of torts in civil law claims. In tort claims, the courts of the place where the tort is committed, where the damage has occurred or might potentially occur or where the victim is domiciled, shall have jurisdiction.

What jurisdictional principles do the courts apply to accept or reject claims against businesses based on acts or omissions that have taken place overseas and parties that are domiciled or located overseas?

There are no Turkish court precedents on human rights claims against businesses located abroad, and, therefore, this question remains unanswered. Having said that, the doctrine of forum non conveniens, which is often applied by courts in business and human rights claims, is not adopted in Turkish law based on the reasoning that it would fall against article 36 of the Turkish Constitution, which stipulates that Turkish courts cannot refrain from seeing lawsuits that fall within their authority and jurisdiction.

Is it possible to bring class-based claims or other collective redress procedures against business enterprises for human rights abuses?

Turkish law allows collective actions for associations, non-governmental organisations and other legal entities, to

protect the interests of their members or a part of the community they represent, provided that the claim falls within the scope of their statute. Collective actions might address the determination of the rights of the relevant group or request the remedy of the unlawful situation or might only be preventive to protect the prospective rights of the relevant group. If the conditions are present, it would be possible to bring collective action against business enterprises for human rights abuses.

Are any public interest litigation mechanisms available for human rights cases against business enterprises?

There are no public interest litigation mechanisms specifically for human rights claims against businesses. Conditional fee agreements ('no win, no fee'), which are popular instruments in business and human rights litigation, are not available under Turkish law, as article 163 of the Lawyers Act requires that lawyers' agreements should refer to legal aid, an amount or a monetary value.

Having said that, legal aid is possible if the claimant can successfully prove that he or she has no financial means to cover legal expenses and lawyers' fees (articles 334 to 340 of the Civil Procedural Code and articles 178 to 179 of the Lawyers Act). In such a case, lawyers' fees shall be paid by the Treasury, while legal expenses shall be borne by the party that lost the case. In the event that the party that sought legal aid loses the case, certain facilities might be provided for payment.

What state-based non-judicial grievance mechanisms are available to hear business-related human rights complaints? Which bodies administer these mechanisms?

Human Rights and Equality Institution of Turkey

The Human Rights and Equality Institution of Turkey (HREI) is a public entity that has administrative and financial autonomy, and was established by Law No. 6701 to set up a national prevention mechanism for the protection of equality and human rights. HREI is responsible to ex officio investigate, decide on and follow-up human rights abuse claims. Its board is authorised to hold decisions on human rights abuses and to impose administrative penalties stipulated in law. However, administrative penalties stated in law refer only to breaches of equality, leaving out human rights abuses (article 25 of Law No. 6701). Issues that fall within the scope of duty of juridical authorities are exempt (article 17/4 of Law No. 6701).

Ombudsman

The ombudsman is authorised to monitor, investigate and consult on administrative acts and actions from a human rights-based view of justice, in respect of law and fairness. Issues that fall within the scope of duty of juridical authorities are exempt from the ombudsman's scope of authority.

National contact point

The Ministry of Industry and Technology, General Directorate of Foreign Investment and Incentives is currently the national contact point (NCP) in Turkey, as required by the Organisation for Economic Co-operation and Development (OECD). Accordingly, its duty is to promote the OECD Guidelines for Multinational Enterprises, the relevant due diligence and act as a non-judicial grievance mechanism in related complaints.

What is the procedure for filing complaints under these mechanisms?

Both real persons and legal entities may file complaints under the mechanisms mentioned in question 33.

HREI investigates and finalises all applications within three months. It will then ask the addressee of the complaint its opinion, followed by the opinion of the complainant in response to the addressee's opinion. HREI may then ask the parties to reach a settlement. If the parties cannot reach a settlement, the HREI board will decide if there has been a human rights abuse or infringement of equality as alleged, in which case it will file a criminal complaint for the mentioned offence.

All administrative procedures should be exhausted prior to making an application before the ombudsman; however, in the case of a situation that is likely to give rise to damages that are difficult or impossible to remedy, the ombudsman may accept applications regardless of this rule. The ombudsman shall investigate the matter within six months of the application date, and shall notify its findings and suggestions to the complainant as well as to the relevant authority. The ombudsman's decision is not binding on the relevant authority, which may comply or explain its reasons for non-compliance.

The NCP is authorised to receive complaints that are directly addressed to companies, including multinationals. It evaluates the complaint, decides whether to accept or reject it and prepares a report in this respect. The NCP might also suggest settlement negotiations to the parties of the complaint. In its report, the NCP shall set out its views and recommended solutions and the parties' settlement on the matter.

What powers do these mechanisms have? Are the decisions rendered by the relevant bodies enforceable?

All the authorities mentioned in question 33 have investigative powers only, and may provide recommendatory decisions. The addressees of these decisions may choose to comply or may explain the reasons for non-compliance, in the case of an ombudsman decision.

What remedies are provided under these mechanisms?

The remedies under these mechanisms are rather recommendatory, with no power of enforcement.

Are these processes public and are decisions published?

The decisions of the HREI board might be announced publicly, if deemed necessary. The law merely refers to 'via adequate means' without any specific stipulation on how and where the decisions might be announced.

The decisions and activities of the ombudsman shall be announced in its annual report through publication in the Official Gazette, unless the complainant in a specific application requested confidentiality.

The NCP's final report, which covers its recommendations on the matter, is also made public via its website.

Are any non-judicial non-state-based grievance mechanisms associated with your jurisdiction?

There are no known non-judicial non-state-based grievance mechanisms in Turkey that might serve for business and

human rights claims.