A HANDBOOK FOR PRACTITIONERS | **TURKEY**

Civil Liability for Human Rights Violations

OAK FOUNDATION

Bonavero Institute of Human Rights

AUTHORS

Dr Pınar Kara
Minerva Business and Human Rights Association
PROFILE

Dr Çiğdem Çimrin
Minerva Business and Human Rights Association
PROFILE

Özge Nur Kara
Minerva Business and Human Rights Association
PROFILE

*The authors would like to thank **Dr Muzaffer Eroğlu** for his support.

FREQUENTLY USED ABBREVIATIONS	
Civil Code	Turkish Civil Code No 4721
Convention	European Convention on Human Rights
CPC	Civil Procedure Code No 6100
ECHR	European Court of Human Rights
TCC	Turkish Commercial Code No 6102
TCO	Turkish Code of Obligations No 6098

Publication Information: This country report is one of the 17 reports prepared for a comparative project on civil liability for human rights violations led by the Bonavero Institute of Human Rights. It follows a unified template, and some terms in this report were defined consistently for the purposes of the project. To access other country reports and introduction from the project team, please click here.

All online resources cited and/or referenced in this report were accessed on 1 April 2022. Publication Date: October 2022

Cover photo by Hakan Arslan (courtesy of iStock).

CONTENTS

INTERACTIVE

TABLE OF CONTENTS

TURKEY

Turkey is a civil law jurisdiction. While human rights are primarily protected under the Constitution and international treaties to which Turkey is a party and has ratified, civil law remedies are regulated under various domestic laws. Turkish law on civil liability is thus not automatically triggered in the face of human rights violations; however, the general or specific provisions of civil liability serve as a ground for compensation if the relevant human rights violation caused harm to a third party in a non-contractual relationship. There is no specific legislation or court decision in Turkey concerning civil liability of corporate entities for human rights abuses arising from their operations. Although Turkey has not yet established a National Action Plan to implement the UN Guiding Principles on Business and Human Rights, article 9.3.b of Turkey's Action Plan on Human Rights, introduced by the Republic Ministry of Justice in 2021, refers directly to the UN Guiding Principles on Business and Human Rights, and to the implementation of national guiding principles with regard to business and human rights.

INDICES

103/167
Democracy Index 2021 Ranking

32/100
Freedom House 2022 Score

96/180
Transparency International Corruption Index 2021 Ranking

The focus jurisdictions within the scope of the project have been selected to maximise diversity and representativeness. They reflect both common law and civil law traditions, a wide geographic distribution, different political systems, and varying levels of socio-economic development. The latter factors may impact the overall efficacy of the law on civil remedies and respect for the rule of law as a value. To provide useful context about the jurisdiction, each report indicates the relevant ranking or score of that jurisdiction in three leading global indices on democracy and the rule of law: Democracy Index by the Economist Intelligence Unit (measures the state of democracy in 167 states and territories); Freedom House (rates people's access to political rights and civil liberties with 100 being an optimal score); and Transparency International Corruption Index (ranks 180 countries by their perceived levels of public sector corruption).

Introduction

1. Turkey (officially the Republic of Türkiye) is a civil law jurisdiction, characterised by a hierarchy of norms led primarily by the Constitution of Turkish Republic[1] (Constitution), domestic codes and international treaties that are ratified and enacted in domestic law, and secondary legislation. While there is no precedent case law system similar to common law jurisdictions, the decisions of the Joint Chambers of the Supreme Court are binding, having the force of law; other judicial decisions have a guiding nature and can be relied on in litigation.

2. As part of the law of civil remedies, Turkish Civil Code No 4721[2] (Civil Code) and Turkish Code of Obligations No 6098[3] (TCO), are separate codes which are in essence interrelated with each other. According to article 5 of the Civil Code, general provisions of the Civil Code and the TCO shall apply to all civil law relations, to the extent appropriate. Turkish Commercial Code No 6102 (TCC),[4] a further separate code, states in article 1 that it is an inseparable part of the Civil Code. Turkish civil law is based on these three main codes, which are to be read and interpreted together.

3. Under Turkish law, human rights protection is traditionally based on the Constitution, the international treaties to which Turkey is a party and the laws enacted for ratification of these treaties. Human rights violations do not automatically trigger civil law remedies, because Turkish law provisions on civil liability do not specifically regulate human rights violations. However, to the extent that a human rights violation constitutes a harm caused by a third party in a non-contractual (extra-contractual) relationship, the general or specific provisions on civil liability may be triggered. In the Case Scenarios below ([40] onwards), the three defined harms (assault or unlawful arrest; environmental harm; and harmful or unfair labour conditions) will give rise to civil liability based on general provisions on tort, strict liability of the polluter based on specific provisions in Environmental Law No 2872,[5] and vicarious liability of the employer based on specific provisions in the TCO. However, for wrongful acts committed by public bodies or public officials, administrative law will also apply in certain circumstances as explained in [7] below.

4. General tort liability under Turkish law is regulated in the TCO. According to article 49 of the TCO, anyone who harms another person by acting with fault or negligence, which is unlawful, is obliged to compensate the relevant damage. The elements of general tort liability are as follows: (1) an act or omission, (2) fault, (3) unlawfulness, (4) causation, and (5) damage.

---

1 Constitution of the Turkish Republic No 2709, OJ 20.10.1982/17844. English translation is available at: https://www.anayasa.gov.tr/en/legislation/turkish-constiution

2 Turkish Civil Code No 4721, OJ 08.12.2001/24607 (Civil Code) English translation is available at: https://rm.coe.int/turkish-civil-code-family-law-book/1680a3bcd4.

3 Turkish Code of Obligations No 6098, OJ 04.02.2011/27836 (TCO).

4 Turkish Commercial Code No 6102, OJ 14.02.2011/27846 (TCC).

5 Environmental Law No 2872, OJ 11.8.1983 /18132 (Environmental Law).

General Questions

1

Can a claim under the law of civil remedies in your jurisdiction be brought against public bodies, corporations and/or individuals when one of the three defined harms results in human rights violations?

2

What are the elements of the civil remedies that you have identified above that have to be established by a claimant seeking the remedy?

3

Does the law of your jurisdiction recognise civil liability for complicit or accessory conduct (or a similar concept) in relation to the three defined harms?

4

When can a parent company be held liable under the law of civil remedies for the wrongful acts and/or omissions of a subsidiary or independent contractor in a supply chain?

5

What remedies are available under the law of civil remedies to victims of the three defined harms in your jurisdiction?

6

What are the advantages and disadvantages of using civil claims as a means of human rights protection in your jurisdiction?

7

Can civil claims be brought against a foreign defendant and if so, what are the rules for that?

8

Can you recommend resources for further research and consultation to anyone interested in learning more about civil liability for human rights violations in your jurisdiction?

CS

Jump straight to the Case Scenarios by clicking here...

Q1 Can a claim under the law of civil remedies in your jurisdiction be brought against public bodies, corporations and/or individuals when one of the three defined harms results in human rights violations?

Under Turkish law, it is possible to initiate legal action for **civil remedies** in respect of the three defined harms resulting in human rights violations against public bodies, corporations, and individuals, provided that the criteria sought by law are present in the relevant case.

5. **Civil claims** can be brought against a person who has allegedly committed a harmful act (or omission), or if the relevant person has acted in the capacity of a representative of a legal entity (eg a corporation or a public body). In the latter case, civil claims can be sought against the relevant legal entity.

6. Under article 50 of the Civil Code, legal entities are liable for the wrongful acts of their 'bodies'. For this reason, in the event that an individual has committed a tortious act in his/her capacity as a 'body' of a legal entity (eg as a member of the board of directors), while performing his/her duty, the relevant legal entity might also be held liable for damages along with the individual who has committed the act. Additionally, in the event that the tortious act was committed by an employee while performing his/her professional duty, the employer shall be held liable for the damage incurred according to article 66/1 of the TCO).

Civil claims against public officers

7. Two different scenarios should be distinguished concerning civil claims against public officers:

   - If a public officer committed abuse outside his civil service (eg outside his/her working hours), a claim can be made under the **general provisions of tort law**;
   - If the abuse was committed by the public officer while performing his/her civil service (eg within working hours and using their powers in professional capacity) then a **claim for damages** can be addressed to the relevant public body before the administrative courts. This is based on article 129/5 of the Constitution, which regulates that the harms incurred by individuals as a result of wrongful actions by public officers will be compensated by the State.[6] The public body may then have recourse to action against the relevant public officer based on the general provisions of tort law.

6 The Constitution art 40/3 (n 1).

SPOTLIGHT: CASE STUDY

The Supreme Court has previously ruled that this constitutional provision does not exclude civil liability; instead it regulates State liability for violations by public officials, which, in the Supreme Court's opinion, provides more security for both the victims and for public officials.[7] Article 13 of the Civil Servants Law[8] further regulates that any person who has suffered a harm due to the performance of a public duty may sue the relevant public body, instead of the personnel who performed the harmful duty. According to Supreme Court decisions on this subject, there must be a functional link between the 'performance of duty', 'use of authority' and the harm incurred in order to impose **civil liability** for the wrongful action of the public official, and the damage must have arisen due to the relevant performance of duty and use of authority while performing a public service.[9]

Liability for dangerous activities

8. According to **strict liability** for dangerous activities under article 71 of the TCO, which provides a specific provision for civil liability, the owner of the business and the operator, if any, are **jointly and severally liable** for losses arising from the activities of the enterprise which poses a significant danger. If consideration of the materials and equipment used in the activity leads to the conclusion that it is capable of causing frequent or severe harms, even if all care expected from an expert is taken, that enterprise is deemed to be a significantly dangerous enterprise.

Liability for polluting the environment

9. A **strict liability** provision for polluting the environment is regulated under the Environmental Law, which furnishes a specific ground in addition to the general tort law provisions under the TCO. Article 28 of the Environmental Law stipulates that those who pollute the environment and harm the environment are responsible for the damage caused, without requiring any fault. The polluter's liability for compensation is reserved within the general provisions of tort liability (article 28/2 of the TCO). Thus it is possible to claim damages for harm caused by pollution based on strict liability under the Environmental Law, or based on general tort liability under the TCO. The Environmental Law provision is based upon the 'polluter pays' principle, whereby the polluter's liability will be established unless it is able to prove that the causal link was broken in the relevant case.

7 General Civil Chamber, Supreme Court, Decision dated 25.02.2015 and numbered E 2013/1235, K 2015/849. A version of this case report is not publicly available. The same applies to a number of other case reports cited in this document. You may be able to download them from a subscription-based legal research tool.

8 Civil Servants Law No 657, OJ 23.7.1965/12056.

9 General Civil Chamber, Supreme Court, Decision dated 25.02.2015 and numbered E 2013/1235, K 2015/849 (n 7).

Vicarious liability of the employer

10. Article 66 of the TCO regulates **vicarious liability** for employers concerning harms suffered by third parties due to the actions of their employees while performing their work. If the employer can prove that he/she has shown due care for prevention of the incurred harm in terms of choosing the employee, providing instructions on the work, and supervising and monitoring the employee, then he/she will not be liable. Furthermore, in the case of a business enterprise, the employer shall be liable for the harm caused by the operations of the relevant enterprise unless he/she proves that the organisation of the work can prevent the relevant harm. The employer is entitled to have recourse to action against an employee who caused harm on a pro rata basis of his/her liability.

Civil claims in criminal proceedings

11. Civil and criminal legal proceedings are separate and independent from each other, even though certain torts (eg an act causing injury) are also criminal offences. Under article 74 of the TCO, civil courts are not bound by a criminal court's findings or decisions on the existence or the degree of fault, nor on its determination of the relevant damage. Similarly, a criminal court's decision on acquittal is not binding on a civil court. Civil courts may make independent decisions on civil liability regardless of a prior criminal court judgment on the same facts. If a claimant has brought civil claims for damages arising from an act which is subject to criminal proceedings, the claimant cannot request the civil court to await the decision of the criminal court. On the other hand, civil claims for damages can be made at criminal proceedings by way of filing a request for intervention. In the event that the criminal court rejects the request for damages or decides to award an amount lower than the claim, this decision will be binding on a civil court.

Q2 What are the elements of the civil remedies that you have identified above that have to be established by a claimant seeking the remedy?

The civil remedies for the three defined harms can be based on **general tort liability** provisions under the TCO. Article 49/1 of the TCO requires the presence of the following elements in order to establish tort liability: (1) **an act or omission**, (2) **fault**, (3) **unlawfulness**, (4) **causation**, and (5) **damage**. Hence, in establishing tort liability, it is required that a person commits an act (or omission), in fault (or negligence), which is unlawful, and which causes a damage to a third party.

Act or omission

12. The damage might be caused by a positive act or a failure to act (ie an omission) of the tortfeasor.

Fault

13. There are different interpretations of the concept of fault in the Turkish legal doctrine:

    - The **subjective** approach focuses on the personal characteristics of the tortfeasor – such as their abilities, physical and psychological condition, education, and profession – and considers the special circumstances surrounding the commitment of the tortious act in the establishment of fault.[10]
    - The **objective** approach focuses on a hypothetical person bearing the same characteristics as the tortfeasor, and assesses the existence of fault based on what the relevant hypothetical person would do under normal circumstances.[11] The objective approach to fault is generally considered more suitable to achieve legal certainty as it limits the possibility for engaging in a moral condemnation of the act based on the subjective qualities of the wrongdoer.[12]

14. Fault can be distinguished as intention or negligence. However, unlike in criminal law, this distinction has no impact on the attribution of liability, but only on the amount of compensation to be decided upon by the judge.

Unlawfulness

15. Unlawfulness refers to the commitment of an unlawful act or omission. Turkish legal doctrine largely defines 'unlawfulness' as a behaviour that conflicts with mandatory legal norms that either prohibit harming others or dictate certain actions required to prevent harm to others.[13] Violation of norms that are mandatory in nature and that protect personal rights or rights in *rem* will constitute unlawfulness. The violation of the domestic laws of a foreign country would not, in principle, constitute unlawfulness; in other words, any violated norm should be part of Turkish domestic law.[14] On the other hand, article 90/5 of the Constitution establishes the principle of the supremacy of international conventions ratified by Turkey over domestic law. According to this provision, international conventions, duly put into effect, shall have the force of law, and in case of a conflict between domestic laws and the provisions of such international conventions that concern fundamental rights and freedoms, the provisions of the international conventions shall prevail.

16. Establishing the element of unlawfulness is especially challenging when the tortious act is committed by way of an omission, as in that case it will be necessary to prove that there was a specific legal norm that imposes the obligation to act in a certain manner, and that the relevant person has omitted to take the required action; otherwise, it will not be possible to construct the element of unlawfulness.[15]

---

10 Fikret Eren, *Borçlar Hukuku Genel Hükümler (General Provisions of Law of Obligations)*, (21st edn, Yetkin 2017) 595; Başak Baysal, Haksız Fiil Hukuku: BK m. 49-76 (Tort Law: Articles 49-76 TCO) (1st edn, On İki Levha Yayıncılık 2019) 60-61.

11 Eren (n 10), 595; Baysal (n 10) 61.

12 Baysal (n 10) 62.

13 Eren (n 10) 611.

14 It should be noted that all international agreements that are duly ratified by the Turkish Parliament and adopted by law are deemed to form part of domestic law (Constitution arts 90/1, 90/4).

15 Yeşim M Atamer, *Haksız Fiillerden Doğan Sorumluluğun Sınırlandırılması, Özellikle Uygun Nedensellik Bağı ve Normun Koruma Amacı Kuramları (Limitation of Liability for Damages Caused by Torts – Especially the Theories of Adequate Causality and the Protection Scope of the Violated Norm*) (1st edn, Beta 1996) 25; Baysal (n 10) 87.

Causation

17. Tort liability can arise only in cases where a causal link exists between the act (or omission) and the damage. According to the theory of adequate causation, which is predominantly adopted in Turkish legal doctrine, the damage would arise as an objective consequence of the chain of events in the normal course of life.[16] The chain of causation will be deemed discontinued in cases of (i) *force majeure*, (ii) victim's fault and/or (iii) a third party's fault. In order to break the chain of causation, the victim's fault and the third party's fault should be in the form of intention or gross negligence.[17]

Damage

18. Damage is another element required for the establishment of tort liability. Damage has been defined in legal doctrine and jurisprudence as a detriment to someone's assets, rights or person, without the consent of the owner. Damage in the narrower sense refers only to **pecuniary** (material) losses, while damage in a broader sense covers **non-pecuniary** (immaterial) losses alongside pecuniary (material) ones.

Q3 Does the law of your jurisdiction recognise civil liability for complicit or accessory conduct (or a similar concept) in relation to the three defined harms?

Turkish law recognises joint and several liability, which, according to article 61 of the TCO, will occur:

- if two or more people **jointly cause a common harm** to a third party (eg when the perpetrators are liable on the same legal ground), or
- if they are liable for the **same harm due to different reasons/grounds of liability** (eg when one is liable under strict liability and the other under general tort provisions).

19. The act of each joint perpetrator should be individually unlawful and should have a causal link with the common damage caused.

20. The injured party can have recourse to anyone who caused/inflicted the damage or who is responsible. Each person who is **held jointly and severally liable** for the harm shall be ordered to pay the amount of compensation that pro rata corresponds to their contribution in the occurrence of the relevant harm, by considering all conditions and circumstances, especially the severity of the fault and of the danger caused thereby.[18]

21. Joint and several liability in tort claims is also acknowledged by decisions of the Supreme Court.

16 Baysal (n 10) 204.

17 Ahmet M.Kılıçoğlu, Borçlar Hukuku Genel Hükümler, *Law of Obligations General Provisions* (22nd Edition, Ankara 2018) 413.

18 TCO art 61/1.

SPOTLIGHT: CASE STUDY

In a mining accident in Soma, Turkey in 2013, 301 mine workers lost their lives. The relatives of the deceased workers brought civil claims requesting pecuniary (loss of support) and non-pecuniary damages. The civil court found Turkish Coal Enterprises (TCE), the licensee of the mine, as well as Soma Coal Enterprises Inc, the employer, and the operator of the mine, jointly and severally liable under article 61 of the TCO, hence responsible to pay damages to claimants. The Supreme Court upheld the judgment of the civil court confirming joint and several liability of the licensee of the mine and the employer.[19]

Q4 When can a parent company be held liable under the law of civil remedies for the wrongful acts and/or omissions of a subsidiary or independent contractor in a supply chain?

Corporate groups

22. Under Turkish Law, a corporate group will be deemed to exist in cases where there is a relationship based on dominance or control between two or more companies (or three group companies in case the parent is an enterprise, which could be a real person or a legal entity), which may be formed directly or indirectly, by owning a majority of voting rights, by having the right to procure the appointment of the decision-making majority of the management body, by contract, or otherwise (article 195/1 of the TCC).

23. Despite the detailed definition of a corporate group and various grounds for claims and liability identified in the TCC, Turkish law does not accommodate any legal grounds for effectively addressing a **parent company's civil liability** for wrongful acts or omissions of its subsidiaries. In fact, the provisions concerning corporate groups mainly aim to regulate an **'inward-facing' liability**, which concerns the protection of the subsidiary's interests against the parent company's and group's interests. As per article 202/1 of the TCC, if the parent company misuses its dominance or control over its subsidiary by causing losses in its assets, it shall cover these losses within the same financial year, or otherwise the subsidiary's creditors who were not able to collect their receivables may request that the parent company pay the relevant amount to the subsidiary. This provision, however, aims to prevent any misuse by a parent company of its subsidiary's resources and it concerns only cases where a loss was caused in the subsidiary's assets by parent company instructions or decisions. Thus, it does not offer any suitable ground for claims of civil remedy based on the three defined abuses. Claims that concern a more **'outward-facing' responsibility** (ie a parent company's liability towards the victims of wrongful acts by its subsidiaries) are not covered by the corporate group provisions.

19 21st Civil Chamber, Supreme Court, Decision dated 12.06.2019 and numbered E 2018/7138, K 2019/4233. A version of this case report is not publicly available (n 7).

Separate legal personality and limited liability

Turkish law recognises the fundamental principles of **separate legal personality** and **limited liability for companies**. In article 329 of the TCC, the principle of limited liability is accepted for joint stock companies. Accordingly, the responsibilities of the shareholders are solely to the company and are limited to the amount of capital they have undertaken to pay.

Piercing the corporate veil

24. The concept of **piercing the corporate veil** has not been regulated under Turkish legislation, but it has been recognised by Turkish legal doctrine and the Supreme Court under specific circumstances. The predominant opinion in Turkish legal doctrine is that the corporate veil can only be pierced where the separate legal personality of the subsidiary has been misused, which is considered by taking into account the good faith principle provided for in article 2 of the Civil Code and the prohibition of misuse of a right.[20] Accordingly, if the parent company is deemed to have intentionally disregarded the separate legal personality for the purpose of circumventing the law or escaping other liabilities, the corporate veil can be pierced. However, this theory is applied very restrictively under Turkish jurisprudence, in particular only in cases where there is a link between the misuse of corporate structure and the relevant company debts and only when the relevant damages cannot be collected directly from the subsidiary.[21]

25. In light of the explanations above in [24] on the principles of separate legal personality and limited liability, along with the restricted application of piercing of the corporate veil doctrine, and the absence of provisions regulating parent company liability for civil remedies in relation to the acts of its subsidiaries, it currently seems challenging to construe an effective legal ground for this type of liability under Turkish law.

Q5 What remedies are available under the law of civil remedies to victims of the three defined harms in your jurisdiction?

Since the three defined harms might be covered under general tort liability provisions in Turkish law, **pecuniary** and/or **non-pecuniary damages** can be claimed, depending on the specifics of each case.

20 İpek Sağlam, *Opinion on Legal Entity – Sustainability Nexus*, (Marmara University Law Faculty, Journal of Legal Research 26 (2) (2020)) 1122; Veliye Yanlı, *Anonim Ortaklıklarda Tüzel Kişilik Perdesinin Kaldırılması ve Pay Sahiplerinin Ortaklık Alacaklılarına Karşı Sorumlu Kılınması (Piercing the Corporate Veil and the Responsibility of Shareholders Against Company's Creditors in Joint Stock Companies)* (Beta 2000), 70-72.

21 Supreme Court decisions that support the restrictive interpretation of piercing of the corporate veil: 3rd Civil Chamber, Supreme Court, Decision dated 3.12.2019 and numbered E 2019/593, K. 2019/9655; 11th Civil Chamber, Supreme Court, Decision dated 11.12.2017 and numbered E 2016/5148, K. 2017/7084. Versions of these case reports are not publicly available (n 7).

Pecuniary damages

26. First, the three defined harms might result in material harms – for example, a decrease in the value of one's property against one's own will. In each of the three cases, the harm caused to the body and health of the victims might result in material harms. The victims might incur costs due to hospitalisation or treatment, and loss of income if they are no longer able to attend their work. These would all negatively impact their assets. For the purposes of determining the amount of compensation, the judge will consider the element of fault – of the tortfeasor as well as the fault of the victim, if any.

Non-pecuniary damages

27. In addition to the pecuniary damages, the three defined harms would potentially also result in non-pecuniary damages. In cases where the victim's personality rights have been infringed, the victim might be granted non-pecuniary damages as a separate compensation from pecuniary damages. According to the Supreme Court judgments, the life, health, physical integrity, mental integrity of the person, and other physical, emotional, and social personality values that cause the person to feel sadness or pain when intervened are the personal rights that may be subject to a claim for non-pecuniary damages. In the case of the three defined harms, it might be possible to establish the grounds for this claim, considering that victims in each of these cases would most likely be facing threats to life and health that might trigger the relevant moral state required for a successful claim in this respect.

SPOTLIGHT: CASE STUDY

Council of State, which is the highest administrative judicial authority in Turkey, upheld the decision of the court of first instance in the case in which a claimant's request for non-pecuniary damages was accepted after a gas bomb capsule used by the police hit the claimant's face when the claimant was caught between the police and the demonstrators during a protest.[22] The court of first instance determined that the harm was caused by fault in public service, and accepted the claim for non-pecuniary damages, evaluating the loss of work capacity, the consequences of the injury on the later life of the claimant, and the sadness and the pain they felt. In another decision of the Council of State, in a lawsuit filed by a claimant who was injured in the police intervention during the Gezi Park protests in 2013, the request for non-pecuniary damage was accepted as lawful.[23]

22 10th Chamber, Council of State, Decision dated 10.11.2020 and numbered E 2015/2238, K 2020/4683. A version of this case report is not publicly available (n 7).

23 10th Chamber, Council of State, Decision dated 07.03.2016 and numbered E 2015/3946, K 2016/1140. A version of this case report is not publicly available (n 7).

Injunctive relief

28. According to article 389 of the Civil Procedure Code No 6100 (CPC),[24] in cases where there is a concern that the acquisition of a protected right will become significantly more difficult or completely impossible due to the change caused by the claimed harm, or that an inconvenience or serious damage will arise due to delay, injunctive relief may be given on the subject of the dispute.[25]

Q6 What are the advantages and disadvantages of using civil claims as a means of human rights protection in your jurisdiction?

29. There are several potential legal avenues to seek judicial redress for the three defined harms in Turkey:

- **Administrative proceedings** can be initiated in the case of (i) the assault, unlawful arrest and detention, and (ii) the environmental harm, provided that there is a link to the administrative authorities. This would be the case, for instance, if the assault, unlawful arrest and detention were conducted by a police officer, or if the environmental harm were caused by the activities of a corporation that were allowed by the ministry or any other public authority through a wrongful or otherwise unlawful decision.

- The alternative of **criminal action** might be relevant for all the three defined harms, considering that the acts would most likely qualify as criminal acts under Turkish law. It is, however, worth noting that criminal liability is personal under Turkish law;[26] therefore, legal entities cannot be held criminally liable. The exception to this general rule is that safety measures may be imposed as sanctions on private legal entities.[27] Moreover, in a criminal action it would not be possible to draw any advantage for tort victims such as compensation of damages that would otherwise be possible. Therefore, this might be considered a complementary method to support civil claims, rather than a substitute approach.

- Filing **civil claims** under general tort liability or special tort provisions may be the most viable solution for an effective remedy for the victims. An important factor that might affect the feasibility of civil liability claims is that the statute of limitations is two years starting from the date on which the victim became aware of the loss and aware of the person liable for damage, and in any case, ten years, starting from the date the act was committed.[28] This differs from criminal actions, where the limitation is a minimum of eight years from the date the crime was committed, and this time period may increase depending on the severity of the penalty.[29]

---

24 Civil Procedure Code No 6100, OJ 4.2.2011/27836 (CPC).

25 CPC art 389 (n 24).

26 The Constitution art 38/7 (n 1); Turkish Criminal Code No 5237 art 20/1, OJ 12.10.2004/25611 (Criminal Code).

27 Criminal Code arts 20/2, 60.

28 TCO art 72.

29 As per Criminal Code art 68 (n 26), unless it is otherwise regulated, the statute of limitations is 30 years for crimes of aggravated life imprisonment, 25 years for life imprisonment crimes, 20 years for crimes of at least 20 years of imprisonment, 15 years for crimes of 5-20 years of imprisonment and 8 years for crimes of maximum 5 years of imprisonment or of judicial monetary fine.

30. **Legal aid** is available in civil, criminal and administrative judicial proceedings. Not only Turkish citizens, but also foreigners can benefit from legal aid subject to the condition of reciprocity, and provided that the claimant can successfully prove that they have no financial means to cover legal expenses and lawyers' fees.[30] The Treasury covers the lawyers' fees, and legal expenses shall be paid by the party who loses the case. However, the legal aid system in Turkey is currently criticised for not being sufficiently objective and transparent in the appointment and monitoring of lawyers, and for offering an insufficient budget.[31]

31. There are also state-based **non-judicial grievance mechanisms** in place to file human rights complaints. These mechanisms are mostly advisory and have no enforcement power, hence they are often insufficient to provide effective access to remedy:

- The Human Rights and Equality Institution of Turkey (**HREI**) is a public institution, established by Law No 6701[32] to put in place a national mechanism for the protection of equality and human rights. HREI is responsible ex officio for investigating, adjudicating and following up on allegations of human rights violations. The Board of Directors is authorised to decide on such violations and to impose administrative penalties. However, the administrative penalties specified in the law refer only to equality violations, and exclude other human rights violations (article 25 of Law No 6701). Additionally, matters that fall within the jurisdiction of judicial authorities are exempt (article 17/4 of Law No 6701). HREI is criticised by human rights organisations for lacking impartiality and independence in practice, as all its members are appointed by the President and their appointments can be terminated with the approval of the President or the appointed minister.[33]

- The country's Ombudsman office is authorised to monitor, investigate and assess administrative acts and actions in terms of law and equity, with a human rights-based justice perspective. But matters falling under the jurisdiction of judicial authorities are exempt from the oversight of the Ombudsman. The Ombudsman's decision is not binding, but is rather issued on a comply-or-explain basis.

- The General Directorate of Foreign Investment and Incentives of the Ministry of Industry and Technology, is currently the OECD national contact point (NCP) in Turkey. Accordingly, its mandate is to promote the OECD Guidelines for Multinational Enterprises (2011) and it acts as a non-judicial grievance mechanism in relevant complaints. However, unfortunately, the Turkish NCP has so far been ineffective in Turkey due to its being based in a single ministry. As such, it does not have any significant engagement from other ministries or from stakeholder organisations, thus reducing its ability to tackle a wide range of issues.[34]

30 CPC art 334-340 and Lawyers Act No 1136 arts 178-179, OJ 07.04.1969/13168.

31 İdil Elveriş, 'Türkiye'de Adli Yardım, Karşılaştırmalı İnceleme ve Politikalar' ('Legal Aid in Turkey, Policy Issues and a Comparative Perspective, Round Table Discussion') in İdil Elveriş, Sercin Kutucu and İmmihan Yaşar (eds), *Türkiye'de Adli Yardım Sisteminin Değerlendirilmesi (Analysis of Legal Aid System in Turkey)*, (1st edn, İstanbul Bilgi University 2005) 48-49, 51.

32 Law on Human Rights and Equality Institution of Turkey No 6701, OJ 20.4.2016/29690.

33 For a critical analysis of the HREI and the Ombudsman, please see the National Human Rights Institutions as a Human Rights Protection Mechanism, The Cases of The Ombudsman and Human Rights and Equality Institution of Turkey Report.

34 OECD, Progress Report on National Contact Points for Responsible Business Conduct, Meeting of the OECD Council at Ministerial Level, Paris (22-23 May 2019), 5.

Q7 Can civil claims be brought against a foreign defendant and if so, what are the rules for that?

32. In principle, there are **no limitations** under Turkish law on bringing civil claims against a foreign defendant. However, the rules on jurisdiction would affect whether Turkish courts would have jurisdiction in a claim with a foreign defendant.

33. As per article 40 of the Turkish Code on Private International and Procedural Law No 5718,[35] the international jurisdiction of Turkish courts is determined by the rules of domestic law. The **nationality of the litigious parties** is not important to the extent that the Turkish courts have jurisdiction in terms of Turkish law. The rules on jurisdiction are regulated under different codes, including the Civil Code, the CPC and the TCC. In cases that fall within the scope of the relevant provisions, Turkish courts will have **international jurisdiction**. It is also required that the relevant dispute have **a connection with Turkey** (eg the nationality of one of the parties, or the place of the relevant act or damage).

34. According to the general rule on jurisdiction under article 6 of the CPC, the courts of the **place of residence** of the defendant shall have jurisdiction. Thus, a foreign defendant shall be sued before the courts of the country where it resides. But this is a non-exclusive jurisdiction clause, which renders it possible to initiate proceedings in alternative jurisdictions stipulated by special rules of jurisdiction.

35. There is a special rule on jurisdiction in civil liability in article 16 of the CPC. This provides that the courts of the place where (i) the tortious act is committed, or (ii) the damage has occurred or might possibly occur, or (iii) the victim is residing shall also have jurisdiction. In light of this, claimants have the choice to bring civil claims against a foreign defendant before Turkish courts if either the place of the tortious act, or the damage, or the claimant's residence, is located in Turkey. This provision is important as without it, claimants would not be able to bring civil actions against a foreign defendant before Turkish courts.

36. It should also be noted that the doctrine of ***forum non conveniens*** (the common law doctrine allowing a court to dismiss a civil action where an appropriate and more convenient alternative forum exists) is applied quite restrictively in Turkish law. If there is no other competent jurisdiction, Turkish courts can assume jurisdiction due to a ***force majeure*** (such as a legal or practical impossibility) or for reasons of public policy. However, this is limited to cases where foreign claimants cannot initiate legal action before foreign courts due to any cause connected to the Turkish authorities and should be assessed on a case-by-case basis.

37. In order to enforce a Turkish court decision in the country where the foreign defendant resides, the court decision must be **recognised and enforced** in the relevant foreign country. In the absence of an international agreement on recognition or enforcement of court decisions to which Turkey is a party, recognition and enforcement will take place under the domestic law of the defendant's place of residence.

35 Turkish Code on Private International and Procedural Law No 5718, OJ 12.12.2007/26728.

Q8 Can you recommend resources for further research and consultation to anyone interested in learning more about civil liability for human rights violations in your jurisdiction?

38. Turkey does not yet have a National Action Plan to implement the UN Guiding Principles on Business and Human Rights that was unanimously adopted in 2011 by the Human Rights Council. There is also no specific legislation or court decision in Turkey concerning civil liability of corporate entities for human rights abuses arising from their operations. Nevertheless, the country's 2021 Action Plan on Human Rights makes direct reference to the UN Guiding Principles on Business and Human Rights in Goal 9.3.b, stating that a national set of guiding principles concerning business and work life will be prepared and awareness-raising activities will be conducted in line with these principles. The Ministry of Labour and Social Security has been designated as the responsible body to take the relevant actions envisaged under Goal 9.3.b. This may be deemed to imply a particular focus on 'work life'. According to the implementation schedule for the Human Rights Action Plan, Goal 9.3.b was among the activities targeted to be fulfilled within a year. This period has already passed, with no publicly announced action having been taken.

39. Although resources on business and human rights are very limited, there are numerous reports and academic studies on civil liability. Below is a list of some useful resources in civil liability and human rights:

Thesis & Articles

- Cigdem Cimrin, 'A Right-Based Approach to Companies' Human Rights Responsibility: Human Rights Due Diligence' (PhD thesis, Istanbul Bilgi University, Graduate Programs Institute, Public Law Department 2020)
- Pinar Kara, 'Tort Liability in Corporate Groups: A Comparative Analysis with Particular Focus on Turkey' (PhD thesis, Istanbul Bilgi University, Graduate Programs Institute, Private Law Department 2021)
- Elif Oral, 'Legal grounds for holding transnational corporations directly responsible for human rights violations under public international law' (PhD thesis, Galatasaray University, Social Sciences Institute, Public Law Department 2015)

Books and Book Chapters

- Yesim M Atamer, *Haksiz Fiilerden Dogan Sorumlulugun Sinirlandirilmasi (Limitation of Liability for Damages Caused by Torts – Especially the Theories of Adequate Causality and the Protection Scope of the Violated Norm*) (Beta Basim Yayin 1996)
- H Aydin and W Langley (eds), *Introducing Human Rights in Turkey* (Springer 2021)
- Başak Başoğlu, *Çevre Zararlarından Doğan Hukuki Sorumluluk (Civil Liability arising from Environmental Damages*) (1st edn, Vedat Kitapçılık 2016)
- Basak Baysal, *Haksiz Fiil Hukuku: BK m. 49-76 (Tort Law: Articles 49-76 TCO*) (On Iki Levha Yayincilik 2019)

- Erdem Büyüksagis, *XXXII. Turkey. European Tort Law Yearbook* (De Gruyter Publishing 2014)
- Eren Fikret, *Borçlar Hukuku Genel Hükümler (General Provisions of Law of Obligations)* (21st edn, Yetkin 2017)
- Muzaffer Eroglu, *Multinational Enterprises and Tort Liabilities: An Interdisciplinary and Comparative Examination* (Edward Elgar Publishing 2008)
- Zeynep Derya Tarman, 'Turkey' in Catherine Kessedjian & Humberto Cantú Rivera (eds), *Private International Law Aspects of Corporate Social Responsibility* (Springer International Publishing 2020)

Reports

- Amnesty International (2020) *Turkey*
- Center for Spatial Justice (2022) *An Overview of Corporate Responsibility on Human Rights in Turkey*
- Council of Europe (2019) *Commissioner For Human Rights Of The Council Of Europe, Country Report, Turkey*
- Human Rights Watch (2020) *World Report: Turkey*
- Lexology, Getting the Deal Through (2020) *Business and Human Rights in Turkey*
- Ministry of Foreign Affairs (2021) *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*
- Ministry of Justice of the Republic of Turkey (2021) *Action Plan on Human Rights*

Databases

- Lexpera
- Kazancı
- Supreme Court Decision Database
- Council of Higher Education Thesis Center
- Human Rights Monitoring Resource Hub

CaseScenarios

1 Case Scenario

A wave of peaceful anti-government protests in the capital city of X Country denounced controversial legislation reforming electoral law. X Country's police responded to the peaceful protests with violence and brutality. The protesters were beaten and tear gassed. Some were detained for several days without charge or access to the lawyers. Human rights activists reported alleged torture and other ill-treatment in detention.

The protesters gathered in the market square where many shops and office buildings are located. Security Co is a private company providing security to the premises and personnel of the shops and offices. There is no evidence that personnel of the Security Co were involved in the violence that injured protesters. There is, however, evidence that on several occasions personnel of Security Co provided X Country's police with vehicles, equipment, and water. READ MORE

2 Case Scenario

X Group is a group of extractive companies. Parent Co is the parent company of X Group which is responsible for the overall management of X Group's business. X Group's extractive operations are carried out by its subsidiaries. Every subsidiary is incorporated as a separate legal entity and is responsible for an individual project. Subsidiary Co is a licence holder and operator of a major extractive project. Parent Co is the sole shareholder of Subsidiary Co.

X Group has been accused of severe environmental pollution arising from oil spills caused by Subsidiary Co's extractive project. Oil extracted by Subsidiary Co leaked and flowed into local rivers and farmland in the neighbourhood of the project site, destroying crops and killing fish. The result was that the food and water supplies of the local population were severely affected, and in addition members of the local community also experienced breathing problems and skin lesions. Journalists and environmental activists publicised the harm done to the local environment and community. Parent Co has made no statements about the oil spills but, in a recent report to its shareholders, Parent Co repeated that the X Group was committed to its policy of operating in an environmentally sound manner and ensuring the health and safety of its workers and those affected by its business operations. READ MORE

3 Case Scenario

Factory Co owns a garment factory that supplies many large international clothing retailers. The working conditions in Factory Co's factory have generally been poor and exploitative and have included physical abuse for non-compliance with production targets, sexual harassment of female workers by male supervisors, and compulsory unpaid overtime. Local trade unions have regularly accused Factory Co of poor factory workplace safety, including a lack of emergency procedures, ineffective fire safety equipment and few emergencies medical supplies. Two months ago, during a fire at Factory Co's garment factory, seventy-six workers died and fifty-eight were injured, many seriously. Preliminary investigations suggest that employees suffocated or were burned alive because windows were barred, emergency exits closed, smoke alarms did not work, and supervisors did not implement safety protocols and fire evacuation procedures.

Brand Co is the major purchaser of clothes produced by Factory Co's garment workers. It has been an enthusiastic and very public advocate for human rights standards and expressed its commitment to responsible business practices. Several civil society organisations wrote an open letter to the CEO of Brand Co calling on Brand Co to demonstrate leadership in preventing, addressing, and remedying adverse human rights impacts in its supply chain. READ MORE

Case**Scenario 1**

Q1 **Could injured or unlawfully arrested protesters bring civil claims against the police and/or Security Co (and/or its personnel) in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.**

40. Under Turkish law, protesters can sue both the police and Security Co for **pecuniary and/or non-pecuniary damages** due to their unlawful arrest and/or injuries.

Claims against police

41. As explained in [7] above, claims concerning the actions of the **police** will be brought against the **relevant public authority**. This would be the Ministry of Interior Affairs in Case Scenario 1.

42. The police in Case Scenario 1 have apparently committed **wrongful acts** within the scope of their public duty. It will be deemed that there is a direct link between the public authority of the police, the performance of a public service and the harms suffered by the protesters. Accordingly, the abuse will be deemed a **fault of public service** and the **administration** will be sued due to the wrongful acts of its public officials. The administration may then have recourse to action against the relevant public officer based on the general provisions of tort law as explained in [7] above.

Claims against Security Co

43. In order to determine whether there may be any potential **civil liability for Security Co staff**, the provision of vehicles, equipment and water to police should be assessed in terms of the elements of tort liability. It might be difficult to prove that the mere action of providing water to police constitutes an **unlawful act** with a **causal link** to the **harm** suffered by the protesters due to police violence. Hence it would be challenging, if not impossible, to successfully claim civil liability for the personnel due to the provision of water to police. Having said that, if it can be proved that the police used high-pressured water on the protesters, which caused physical harm, and that Security Co staff provided a large amount of water to the police knowing of such intended use, then the analysis in [44]-[46] below will be relevant to hold Security Co liable.

44. It would be necessary to check if equipment and vehicles provided by Security Co were used by the police to engage in violent acts towards the protesters and harm them in any way. If the answer is affirmative, it might be claimed that the police

and Security Co staff acted in complicity and that their actions have **jointly caused harm** to the protesters. Accordingly, they would be **jointly and severally liable** for the damage caused.

45. In this context, for the staff of Security Co to be held **jointly and severally liable** for the harm together with the police, the staff and the police should have a **common fault**. In other words, their actions should aim for the same unlawful result, which is, in this case, violating the physical integrity of the protesters through the acts of violence. All elements of tort liability must also be present in the acts of both the police and the personnel of Security Co.

46. If the tort liability of Security Co staff is established, Security Co might also be held liable for the damage incurred under the objective liability provision of article 66 of the TCO **as an employer**. This provides that the employer will be obliged to compensate the damage caused by their staff to others during the performance of the work assigned to them, **without need to prove employer's fault**. In the case of such a claim, the employer might escape liability if it can prove that it has shown the care required to prevent the relevant damage by its selection, instruction, monitoring and supervision of the relevant employee/s. In the case of a business enterprise, the employer shall also have to prove that the organisation of the enterprise is suitable for preventing the damage. Otherwise, the employer shall be obliged to compensate the damage caused by the activities of the enterprise.

Q2 **If civil claims would not be the preferred route for holding perpetrators in Case Scenario 1 to account, please indicate any other legal avenues available to the protesters.**

47. Measures such as arrest, detention, capture and seizure are called 'protective measures' in criminal proceedings. If such measures are not implemented in accordance with the Criminal Procedure Law No 5271 (CPL),[36] unjust detention, capture or arrest will occur. In this case, the protesters who have been detained, captured and arrested unjustly will be entitled to file a **lawsuit against the State** for recovery of their **pecuniary and non-pecuniary losses** in **criminal courts** (article 141 of the CPL) (see [7] above). However, the effectiveness of this remedy is contested, as it does not put an end to the unjust implementation of the so-called protective measures, but merely offers a possibility of compensation. The European Court of Human Rights (ECHR) has held in claims of breach of article 5.1(c) of the European Convention on Human Rights (Convention) that although article 141 of the CPL merely offers the possibility of compensation, it is still considered to be efficient and the claimants should exhaust available domestic legal remedies before applying to the ECHR[37]. It should be noted, however, that the ECHR handles this issue cautiously, and it may release the applicants from the requirement to exhaust domestic legal remedies in cases where unjust detention (and thus a violation of article 5.1(c) of the Convention) is determined.[38]

36 Criminal Procedure Law No 5271, OJ 17.12.2004/25673.

37 *Demir v Turkey*, 51770/07 [2012] ECHR (16.10.2012).

38 *Mergen and Others v Turkey*, 44062/09, 55832/09, 55834/09, 55841/09, 55844/09 [2016] ECHR (31.05.2016); *Lütfiye Zengin and Others v Turkey*, 36443/06 [2015] ECHR (14.05.2015).

48. On the other hand, in the event that the courts of first instance do not rule in favour of the protesters, an **individual application** can be made to the Constitutional Court based on claims of violation of human rights. The **Constitutional Court** might rule for a retrial if it determines that the alleged violations were present in the relevant case. If the ruling of the Constitutional Court goes against the protester, then, having exhausted all judicial remedies under Turkish law, an application can be made before the ECHR.

49. The physical injuries suffered by the protesters due to the acts of the police might be considered as wilful injury, provided that the police fail to prove that they have acted within the limits and the requirements of their duty. The crime of wilful injury is the infliction of harm by inflicting pain on a person's body, by committing an act that causes the deterioration of a person's health or ability to perceive (articles 86-87 of the Turkish Criminal Code No 5237 (Criminal Code)).[39] In this respect, protestors can file **criminal complaints** against the **police** in relation to the **crime of injury**.

Q3 Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 1?

50. In the Gezi Park protests in 2013, the victims filed lawsuits for pecuniary and non-pecuniary damages before administrative courts in relation to injuries and other harms caused by gas canisters used during the police intervention. As explained in [7] above, the relevant public body, in this case the Ministry of Internal Affairs, should be responsible for damages caused by the unjust acts of the police in the performance of their duties. Accordingly, various lawsuits were brought against the Ministry by those injured due to **the police intervention**. In some of these lawsuits, civil claims for damages for victims were approved by the Council of State, albeit with a reduced amount.[40] **Impunity** is considered a major problem in such cases in Turkey. A recent high-profile example is the lawsuit filed by the family of a protester who was shot dead by the police during Gezi resistance protests in Ankara. Here the Constitutional Court has found no violation, stating that the judicial fine imposed on the police officer that was set just above the lower limit was proportionate.[41]

39 Criminal Code (n 26).

40 10th Chamber, Council of State, Decision dated 07.03.2016 and numbered E 2015/4045, K 2016/1139; 10th Chamber, Council of State, Decision dated 07.03.2016 and numbered E 2015/3946, K 2016/1140; 10th Chamber, Council of State, Decision dated 05.10.2020 and numbered E 2015/4284, K 2020/3434). A version of this case report is not publicly available (n 7).

41 It is worth noting that the President of the Constitutional Court submitted a dissenting opinion in this case, stating that there was a violation of the deceased person's right to life and that the imposition of a judicial fine close to the lower limit led to impunity. See *Cem Sarısülük and Others*, Constitutional Court, 2015/16451 (15.12.2021), OJ 04.03.2022/ 31768/.

Case**Scenario 2**

Q1 **Could the local community, or its representatives, or someone acting on their behalf, bring civil claims against Parent Co and Subsidiary Co in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.**

51. According to article 113 of the CPC which regulates **class actions**, associations or other legal entities may file a lawsuit on their own behalf, within the framework of their status, in order to protect the interests of their members or members of the community they represent, in order to determine the rights of the persons concerned, or to eliminate an unlawful situation, or to prevent the violation of the future rights of the persons concerned.[42] Under Turkish law, only **legal entities** are allowed to initiate class actions. The aim of the lawsuit should be the protection of the **collective legal interests** of the members of the association or legal entity. In other words, a class action cannot be filed in order to protect personal interests. However, article 46/1 of the Code on the Establishment and Rules of Procedure of the Constitutional Court[43] **prevents filing of class actions before the Constitutional Court**. For example, the Constitutional Court found the application of an environmental organisation seeking ecological protection in the face of plans for a hydroelectric power plant to be built in Turkey to be inadmissible. It ruled that the NGO did not have the capacity to file a constitutional complaint, as its rights as a legal entity were not violated, and as an admissible claim should refer to the violation of a personal right.[44] This situation prevents NGOs bringing lawsuits before the Constitutional Court with claims of unconstitutionality.

52. In Case Scenario 2, any **legal entity** (such as an NGO) can file a **class action** representing the local community in the area, provided that the lawsuit is filed: (i) by an association or other legal entity, (ii) within the framework of the legal status of the association or the legal entity, and (iii) within the scope of protecting collective legal interests.

General tort liability

53. It will be necessary to examine whether the criteria for tort liability exist in respect of both Parent Co and Subsidiary Co. Considering that the alleged harms occurred due to the activities of Subsidiary Co, the analysis for tort liability will be relatively straightforward. Accordingly, it will be assessed whether Subsidiary Co knew or

42 CPC art 113 (n 24).

43 Code on Establishment and Rules of Procedures of the Constitutional Court No 6216, OJ 03.04.2011/27894. English translation is available at: https://www.anayasa.gov.tr/en/legislation/law-on-constitutional-court/.

44 Constitutional Court, 2013/1212 (12.09.2013).

could possibly have known the risks of oil leakage into local rivers and farmland, whether it has taken the measures required to **eliminate or mitigate these risks**, and also if there was an appropriate causal link between its activities and the damage that occurred. Taking into account the experience of the X Group in extraction of oil, it would be reasonable to expect that Subsidiary Co was aware of the risks of leakage and yet did not take the required measures for prevention. Therefore, Subsidiary Co could be held liable to compensate the harms suffered by the local community due to the leakage of oil from its project site.

54. The responsibility of Parent Co would be more challenging to address successfully. There is no provision or case law in Turkish law that would impose a duty of care on a parent company towards third parties that might suffer harms due to the activities of subsidiaries, including transnational ones. As also mentioned at [24] above, the grounds for piercing the corporate veil are very limited and not adequate in Case Scenario 2.

Liability for dangerous activities

55. Referring to our explanations on **strict liability for dangerous activities** (article 71 of the TCO) in [8] above, Subsidiary Co would be deemed liable for damages as the operator of an enterprise that is engaged in dangerous activities – the extraction of oil would be deemed dangerous within the aim and context of this provision.

56. As for **Parent Co**, the situation would be more complicated. To claim Parent Co's liability under the strict liability for dangerous activities, it would be necessary to prove that Parent Co had acted as the owner of the relevant enterprise, which was actually operated by Subsidiary Co. We assume that in this case the owner of the enterprise is Subsidiary Co. However, in light of an opinion in Turkish legal doctrine,[45] it might be possible to claim that Parent Co had control over the relevant enterprise's important financial and operational decisions and therefore was the beneficial owner; hence, it could be held liable under article 71 of the TCO as the owner of the enterprise. This would still be a rather difficult argument to prove in practice, and it has not been tried before.

Strict liability under Environmental Law

57. **Liability of Subsidiary Co** and **Parent Co** might also be considered in terms of the strict **liability of polluters**, which is regulated under the Environmental Law and explained in more detail in [9] above. Unless Subsidiary Co can effectively prove that the **causal link** between its oil excavation activities and the environmental pollution was broken, it will be held strictly liable as the polluter. Proving the discontinuation of a causal link could be challenging, as the required analysis might also reveal other elements of tort liability, such as fault, which is not required to establish a polluter's strict liability. For instance, if Subsidiary Co claims that the leakage of oil occurred due to third party sabotage, it might be relevant to question whether as an experienced business owner it should have foreseen the risk of sabotage and whether it should have taken the required measures for prevention – hence it might be argued that the relevant questions should refer to the element of fault rather than causation and Subsidiary Co could be held liable regardless.

45 Başak Başoğlu, *Çevre Zararlarından Doğan Hukuki Sorumluluk (Civil Liability Arising From Environmental Damages)* (1st edn, Vedat Kitapçılık 2016) 199-200; Pinar Kara, *Tort Liability in Corporate Groups: A Comparative Analysis with Particular Focus on Turkey* (PhD Thesis, 2021) 228-229.

58. The liability of the **Parent Co** would be more difficult to demonstrate. However, article 2 of the Environmental Law does not delimit the definition of 'polluter' as the owner or the operator of the enterprise that caused the pollution. Thus, while under normal circumstances Subsidiary Co would prima facie be the polluter, in a case where the pollution occurred due to the activities of an enterprise carrying out dangerous activities, it might be possible to adopt a similar interpretation as suggested in [56] whereby a joint liability is established for Parent Co as the owner (who receives economic benefit) and Subsidiary Co as the operator of the enterprise.[46] However, this might be difficult to prove in practice.

Q2 **If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 2 to account, please indicate any other legal avenues available to the local population.**

59. In addition, and as complementary mechanisms to civil law remedies, **administrative and criminal action** is also possible in Case Scenario 2.

Administrative fines

60. Article 8 of the Environmental Law prohibits leaving waste or other substances in the environment that will harm the environment or be in violation of the standards and methods for disposal set out in the relevant regulations. Administrative fines will apply for violations of this norm and for polluting the environment, including polluting soil and water.

Criminal sanctions

61. Moreover, under article 181/1 of the Criminal Code, a person who deliberately disposes of waste or harmful residues in the soil, water or air in violation of the technical procedures for disposal determined by the relevant laws, and in a way that harms the environment, shall be sentenced to imprisonment from six months to two years. If the act of polluting the environment is committed in relation to wastes or residues that may cause diseases for humans or animals that are difficult to treat, cause atrophy of reproductive ability, and change the natural characteristics of animals or plants, the sentence shall be imprisonment of not less than five years and a judicial fine (article 181/4 of the Criminal Code).[47]

46 Başoğlu (n 45) 199-200; Kara (n 45) 228-229.

47 If the crimes are committed negligently, the sentences will be a judicial fine, imprisonment of two months to one year, or imprisonment of one year to five years respectively (Criminal Code art 182).

Q3 Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 2?

62. The use of cyanide in the activities of a gold mine operating in the Bergama-Izmir region in the 1990s led to protests by local people. Due to the fact that article 113 of the CPC was not in force and there was no class action mechanism in Turkish law at the time, the villagers of Bergama filed a lawsuit under the 'joinder of parties' system. Pursuant to article 43 of the previous Turkish Civil Procedure Law No 1086,[48] more than one person could file a lawsuit together as co-claimants through this system if the subject matter of the cases consisted of a common right. The joinder of parties mechanism, now regulated under article 57 of the CPC, makes it possible for persons with common cause to be accepted as co-claimants if the facts and legal reasons that form the basis of the cases are the same or similar to each other.

63. The court of first instance dismissed the case filed by the villagers of Bergama seeking the cancellation of the mining licence of the company. Thereafter, the Council of State considered reports on the environmental effects of cyanide and decided that its use posed a risk to the environment and to human health, and that it would not be in the public interest to allow the gold mine to be operated for purely economic reasons. It reversed the decision of the court of first instance.[49] In line with the decision of the Council of State, the lower court decided to cancel the mining license of the company.

64. Despite the decisions of both bodies to cancel the company's mining licence, its operations and the use of cyanide continued as the Turkish State continued to issue the required operations permits. In various applications made to the ECHR by the villagers of Bergama (joined under *Taskin and Others v Turkey*), decisions were taken regarding the violation of the right to a fair trial and right to respect for private and family life of the applicants due to the non-implementation of court decisions and the continuation of mining activities despite court decisions.[50]

48 Civil Procedure Code No 1086 (abolished), OJ 02.07.1927/622.

49 6th Chamber, Council of State, Decision dated 13.05.1997 and numbered E 1996/5477, K 1997/2312). A version of this case report is not publicly available (n 7).

50 *Taskin and Others v Turkey*, 46117/99 [2004] ECHR (10.11.2004).

CaseScenario 3

Q1 **Would it be possible to bring a civil claim against Factory Co and/or Brand Co? Please also indicate the key elements of liability to be shown by the claimants to hold Factory Co and/or Brand Co liable.**

Liability of Factory Co

65. Considering that the fire occurred at the factory while the employees were at the workplace carrying out work determined by the employer, it is possible to consider it an **occupational (work-related) accident** under Labour L No 4857.[51] In occupational accidents, the liability of the employer can be based on both tortious acts and breach of contract, and these two responsibilities can coexist.

66. In the event that occupational accidents are caused by failure to comply with occupational safety measures, a non-compliant employer is held responsible on the grounds that the employer has acted in violation of its duty of supervision. The **employer's obligation to supervise the employee** is defined as the obligation to take protective/preventive measures against work and workplace risks that may harm the material and moral integrity of the employee. The legal grounds for the employer's obligation to supervise the worker, which is the basis of the **contractual responsibility**, are the employment contract, the TCO and the regulations related to Labour Law.

67. While the claimant is obliged to prove the fault of the defendant in claims based on tort, the burden of proof is reversed in claims filed due to **breach of contract**. In other words, in such cases, the defendant is obliged to prove his/her faultlessness. While the statute of limitations for tort claims is two years from the date on which the victim became aware of the loss and ten years from the date of the commitment of the tortious act, claims based on breach of contract are subject to a ten-year statute of limitations. It is, therefore, possible to state that claims based on breach of contract would be more advantageous for claimants in this case.

68. On the other hand, the basis and scope of legal **liability of employers** is still quite controversial under Turkish law. There are conflicting decisions of the Supreme Court and disagreement in legal doctrine as to whether the employer's responsibility is **fault liability** or **strict liability**. For this reason, each case is evaluated within the framework of its own conditions, and the characteristics and risks of the work done at the workplace. Fault refers to the employer's violation of the obligations imposed on them. However, the employer is obliged to take all

51 Labour Law No 4857, OJ 10/6/2003/25134 4857.

the measures that are not only in accordance with the written rules in the legislation, but also in accordance with the unwritten measures necessitated by technology. Failure to take such wide-ranging measures and the employer's failure to act meticulously in this regard is regarded as a **fault**, and the resulting damage should be compensated by the employer.

69. Furthermore, if it might be possible to consider the factory as an **enterprise that poses a significant danger**, the **employer's strict liability** pursuant to article 71 of the TCO might also be claimed. The conditions for this were explained in [9] and [56].

70. Employees who were harmed in the fire may request both **pecuniary and non-pecuniary damages** from Factory Co, as the employer, based on tort and/or breach of contract.

Liability of Brand Co

71. As for Brand Co's responsibility, it might be alleged that a **subcontractor and principal employer relationship** exists between Factory Co and Brand Co. According to article 2 of the Labour Law, the connection between an employer and a subcontractor who undertakes to carry out work in auxiliary tasks related to the production of goods and services, or in a certain section of the main activity due to operational requirements, or for reasons of technological expertise in the establishment of the main employer (the principal employer), and who engages employees recruited for this purpose exclusively in the establishment of the main employer, is called 'the principal employer-subcontractor relationship'. The principal employer is jointly liable with the subcontractor for the obligations ensuing from occupational accidents.

72. For a legally **valid principal employer-subcontractor relationship**, the subcontractor must employ the workers *only* for performing the job it has taken from the relevant principal employer (Brand Co in Case Scenario 3). If such an exclusive relationship exists between Brand Co and Factory Co, Brand Co may be considered as the principal employer and may be held liable for damages. However, proving this exclusive relationship would be difficult in Case Scenario 3, as Factory Co does not exclusively manufacture for Brand Co.

Social security mechanism

73. In addition to claims for damages addressed against the employer in the event of an occupational accident or disease, the following monetary benefits can be provided by the **Turkish Social Security Institution** to insured workers or their relatives, in accordance with article 16 of the Social Security and General Health Insurance Law No 5510:[52]

    - Daily compensation to the insured throughout the period of temporary incapacity for work,
    - Financing of permanent incapacity income to the insured,
    - Contribution of income to the relatives of the insured person who died as a result of an occupational accident or disease,

52 Social Security and General Health Insurance Law No 5510, OJ 16.06.2006/26200.

- Marriage allowance to the daughter of an insured person who died as a result of an occupational accident or disease,
- Funeral allowance for an insured person who died because of the occupational accident and occupational disease.

74. If the occupational accident or disease occurred as a result of the employer's intention or an act contrary to the occupational safety legislation of the insured, the sum of (i) the payments made by the Social Security Institution to the insured or their relatives and (ii) the first cash capital value of the income of the insured shall be imposed on the employer. This payment amount shall be limited to the amounts that the right holders may request from the employer (article 21/1 of Social Security and General Health Insurance Law No 5510).

Q2 If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 3 to account, please indicate any other available legal avenues available to the victims and/or their families?

75. In the event of the death of an employee who is exposed to an occupational accident due to failure to take occupational health and safety measures, those who are deprived of the employee's support can claim compensation from the employer, through **compensation for loss of support** (article 53/3 of the TCO). Not only family members or close relatives of the deceased but also others might claim compensation for loss of support, as long as the required conditions are fulfilled (eg those who live in the same house with the deceased or those who have been receiving regular support from the deceased).

76. In the event of the injury of an employee who is exposed to an occupational accident, **pecuniary damages** can be claimed from the employer. In this case, the cost of medical treatment for the injury and the loss of income during the time that the worker cannot work can be claimed as pecuniary damages. In addition, these losses can also be claimed if a worker has lost productive capacity compared to their situation before the accident, or if the likelihood of gain in their profession has decreased after returning to working life. Those injured as a result of occupational accidents can also claim **non-pecuniary damages** for deterioration of their mental state.

77. Furthermore, if an occupational accident resulting in the death or injury of the worker has occurred due to the employer or other relevant persons acting contrary to their occupational health and safety obligations, these persons will also be held criminally liable. **Criminal liability** of the employer or other relevant persons depends on the presence of negligent acts, such as not taking occupational safety measures in the relevant workplace.

78. An alternative way to hold **Brand Co** liable for damages is to resort to a **voluntary mediation** with support from the relevant trade union. A settlement might be sought with Brand Co with the support of campaigns by workers and unions. This method might be advantageous for the victims as it will be less costly and potentially faster than judiciary proceedings.

79. Finally, a complaint against Brand Co can be raised with the **NCP**. However, as mentioned at [33] above, this is a non-mandatory and advisory procedure, which will not be binding on the defendant.

Q3 Are there any high-profile lawsuits in your jurisdiction relevant for Case Scenario 3?

80. There have been a number of decisions of the Supreme Court and the Court of Cassation concerning the liability of employers, pecuniary and non-pecuniary damages, and compensation for loss of support following occupational accidents in Turkey. In 2005, five workers, including some child labourers, lost their lives and four workers were injured in a fire that broke out in a textile factory where workers were employed without insurance, the required occupational health and safety measures were not taken, and the workers were locked up on night shifts. In addition to adjudicating a criminal case brought against the employer, the court decided that the employer would pay pecuniary and non-pecuniary damages to the workers' families in line with their claims.[53]

81. It would be relevant to also note the example of a **non-judicial mechanism** concerning the **responsibility of the brand** in relation to its supplier, although this case does not involve an occupational accident. Bravo Tekstil, which manufactured goods in Turkey for big international brands such as Inditex, Next and Mango, went bankrupt in July 2016. The company was abruptly closed, and its owner fled the country. Its employees, who were unable to receive salaries during the company's bankruptcy process, started an international campaign to demand that Inditex cover their unpaid salaries and severance payments. However, Inditex stated that all payments had been made to Bravo Tekstil on time, that there was no outstanding payment, and that the failure to pay the employees' salaries should be the responsibility of Bravo Tekstil. As a result of the global impact of the workers' campaign over nearly two years, and the signatures of 309,000 consumers, a fund was created by three of the brands that purchased products from Bravo Tekstil. Through this, the employees were able to receive their rights. Although out-of-court and non-judicial, this case was the first in Turkey where brands agreed to cover the receivables of employees of a local supplier in their global supply chain.

53 30th Civil Chamber, Court of Cassation, Decision dated 25.02.2019 and numbered E 2017/3353, K 2019/96. A version of this case report is not publicly available (n 7).

Report design by Garlic Agency