

Business & Human Rights 2021

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Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

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First published 2020
Second edition
ISBN 978-1-83862-631-0

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



Business & Human Rights

2021

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Lexology Getting The Deal Through is delighted to publish the second edition of *Business & Human Rights*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Armenia, Finland and Japan.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Roger Leese and Anna Kirkpatrick of Clifford Chance, for their continued assistance with this volume.



London
March 2021

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This article was first published in April 2021
For further information please contact editorial@gettingthedealthrough.com

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Armenia

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LEGAL AND POLICY FRAMEWORK

International law

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

Armenia has ratified almost all human rights treaties. The following treaties are mentioned as more reliable in the protection of human rights.

- The International Covenant on Civil and Political Rights was ratified on 23 June 1993 and came into force on 23 September 1993.
- The Optional Protocol to the International Covenant on Civil and Political Rights (1976) was ratified on 23 June 1993, and the Second Optional Protocol to the International Covenant on Civil and Political Rights was signed on 2019 but has not been ratified yet.
- The International Covenant on Economic, Social and Cultural Rights was ratified on 13 September 1993 and came into force on 13 December 1993.
- The International Convention on the Elimination of All Forms of Racial Discrimination was ratified on 23 July 1993 and came into force on 23 July 1993.
- The International Convention on the Elimination of All Forms of Discrimination against Women was ratified on 9 June 1993 and came into force on 9 September 1993.
- The International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified on 13 October 1993 and came into force on 13 October 1993.
- The International Convention on the Rights of the Child, which Armenia ratified on 5 October 1992, came into force on 22 July 1993.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which Armenia signed on 26 September 2013, has not been ratified yet.
- The International Convention for the Protection of all Persons from Enforced Disappearance was ratified on 23 February 2011 and came into force on 23 February 2011.
- The International Convention on the Rights of Persons with Disabilities was ratified on 22 October 2010 and came into force on 22 October 2010.
- The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) entered into force 26 April 2002. Armenia made a reservation that the provisions of article 5 shall not affect the operation of the Disciplinary Regulations of its Armed Forces approved by Decree No. 247 of 12 August 1996 of the government of Armenia, under which arrest and isolation as disciplinary penalties may be imposed on soldiers, sergeants, ensigns and officers.
- The European Social Charter and the European Social Charter (revised) came into force on 31 December 2003 and 11 January 2018 respectively. In accordance with subparagraphs b and c of paragraph 1 of article A, Part III of the revised Charter, Armenia

considers itself bound by articles 1, 5–8, 17–20, 22, 24, 27 and 28, as well as by the following paragraphs: paragraphs 1–6 of article 2, paragraph 1 of article 3, paragraphs 2–5 of article 4, paragraphs 1 and 3 of article 12, paragraphs 1 and 2 of article 13, paragraph 2 of article 14, paragraphs 2 and 3 of article 15.

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

- ILOs – all eight fundamental conventions ratified and in force;
- C029 – Forced Labour Convention, 1930 (No. 29), 17 December 2004 in force;
- C087 – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), 2 January 2006 in force;
- C098 – Right to Organise and Collective Bargaining Convention, 1949 (No. 98) 12 November 2003 in force;
- C100 – Equal Remuneration Convention, 1951 (No. 100), 29 July 1994 in force;
- C105 – Abolition of Forced Labour Convention, 1957 (No. 105), 17 December 2004 in force;
- C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111), 29 July 1994, in force;
- C138 – Minimum Age Convention, 1973 (No. 138) Minimum age specified: 16 years, 27 January 2006, in force; and
- C182 – Worst Forms of Child Labour Convention, 1999 (No. 182), 2 January 2006, in force.

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

Based on recommendations included in the Report of the Working Group on the Universal Periodic Review: Armenia (18 March 2020), Armenia must complete the signature and ratification of the remaining main international conventions as well as the optional protocols thereof. It is also recommended to ratify the Rome Statute of the International Criminal Court and its amendments and fully implement them into national law; the European Convention on Preventing and Combating Violence against Women and Domestic Violence and continue the efforts to prevent and combat domestic violence; and the European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The issues related to discrimination against women and sexual minorities, hate speech, exploitation and trafficking were also a focus of recommendations

The Committee on the Elimination of Racial Discrimination, in its last report on Armenia (2017), raised concerns that Armenia's legislation did not, at that time, give full effect to all the articles of the International Convention on the Elimination of All Forms of Racial Discrimination; for instance, the state was given the recommendation to take measures

against the promotion of hate speech and racial propaganda, and for the protection of rights of minority women and girls and participation in public life for all groups.

On 26 January 2017, a report on Armenia by the Committee Against Torture welcomed the legislative measures taken by Armenia in the areas of relevance to the Convention, including the adoption of amendments to the Criminal Code (article 309.1), providing for a definition and criminalisation of torture, in accordance with article 1 of the Convention, on 8 June 2015.

In concluding observations (2016) CEDAW/C/ARM/CO/5-6, the Committee on the Elimination of Discrimination against Women welcomed the progress achieved since the consideration in 2009 of Armenia. Nevertheless, it was concerned about persistent vertical and horizontal gender segregation in the labour market, the high unemployment rate among women and the concentration of women in part-time work and low-paid jobs in the informal sector.

The Committee on Enforced Disappearances welcomed the report submitted by Armenia and the information contained in the report. The Committee appreciated the constructive dialogue held with the delegation of Armenia on the measures taken to implement the provisions of the Convention.

In concluding observations (2014) E/C.12/ARM/CO/2-3, the Committee on Economic, Social and Cultural Rights noted that the international conventions on human rights ratified or acceded to by Armenia, including the Covenant, have direct effect in the state and that, under article 6 of the Constitution, in the event of conflicting legislation, the provisions of the international conventions prevail. The Committee recommended to empower women, through gender-sensitive labour policies, to enhance their access to employment in all sectors of the economy and ensure equal treatment for women and men in the labour market, including equal pay for work of equal value in all sectors.

In concluding observations (2013) CRC/C/ARM/CO/3-4, the Committee on the Rights of the Child expressed concerns that significant numbers of children, including those below the age of 14, were dropping out of schools to work in informal sectors such as agriculture, car servicing, construction and gathering of waste metal and family businesses. The Committee urged the state party to ensure that labour legislation and practices comply with article 32 of the Convention, including the effective implementation of existing laws, the strengthening and involvement of labour inspectorates and the establishment of child labour reporting mechanisms.

In concluding observations (2012) CCPR/C/ARM/CO/2, the Human Rights Committee expressed concerns about information questioning the vigilance of the national human rights institution in monitoring, promoting and protecting human rights in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights.

Non-governmental organisations in Armenia have been focusing on mostly state-related human rights protection issues; they rarely consider the organisation and the protection of human rights in and by the organisations.

4 | 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?

International treaties that are ratified by Armenia become part of state's legal system. In the case of any conflict between those international treaties and national laws, the international treaties will be applied. While interpreting basic rights and freedom defined in the Constitution, the practice of bodies operating based on ratified international treaties on human rights shall be taken into account.

Current Armenian legislation allows the state to perform in general terms with regard to the state's obligation to protect against human rights abuses by non-state parties. Nonetheless, there is no specific regulation related to business and human rights in Armenian law: for example, no national action plan on business and human rights, no procedures to oversee the transnational operation of Armenian companies, no direct requirement for organisations to protect human rights and compliance or implementation procedures inside and by companies as well as no specific consequences for breach of human rights by companies (general obligations for breach of the law are prescribed).

With respect to international bodies, in the Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, one of the first steps that the Armenian government should take is to carry out genuine consultations so that the Amulsar project (epithermal-type gold mineralisation) aligns with the Guiding Principles on Business and Human Rights and respects human rights.

National law

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

Such requirements are defined by the Labour Code. The purpose of the Code is to establish state guarantees on labour rights and freedoms of individuals.

The Code sets out the principles for international human rights, such as prohibition on discrimination, the prohibition on forced labour of any kind, violence against workers, the right to employment for every person (including safety and hygiene requirements and the right to rest), protection of an employee's personal data and protection of other fundamental rights that are the responsibility of businesses.

Material liability is defined when the employer (the same is defined for the employee), by not performing or improperly performing his or her duties, causes harm to the employee.

Material liability of an employer emerges when:

- the employee not insured from accidents at work and from occupational diseases has contracted an occupational disease, has been maimed or has died;
- the damage has been caused as a result of loss, elimination of property or becoming unfit for use; and
- other violations of the property rights of employees or other persons have been committed.

The employer must compensate for the damage caused by him or her in the manner prescribed by the Civil Code (ie, compensation for damage).

There are other examples in Armenian legislation too. There are requirements for excluding possible negative effects on human health or the environment. According to the Subsoil Code of Armenia, the subsoil user is responsible for ensuring the safety of the entrails waste facilities, developing and applying safety management procedures, as well as for increasing the safety, reducing the risk and using the management systems.

Subsoil users or their officials are liable for violating these rules, and liability may be administrative, civil or criminal.

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

Armenia has not published a national action plan on business and human rights.

CORPORATE REPORTING AND DISCLOSURE

Statutory and regulatory requirements

- 7 | Are businesses in your jurisdiction subject to any statutory or regulatory human rights-related reporting or disclosure requirements?

There are no classic examples of human rights-related reporting or disclosure in Armenian legislation, but there are some provisions that are similar. There are similar requirements in the case of crime; for example, under article 335 of the Criminal Code, it is considered a crime not to report a serious or particularly serious crime that is definitely being prepared, but it cannot be considered as a serious or particularly serious crime if there has been no death or other serious consequences as a result of the above actions.

In the Labour Code, there is a requirement to obtain the written consent of one of the parents, the adoptive parent or the guardian or custodian if a minor under the age of 16 is employed.

A subsoil user who has received a permit for mining must, in accordance with the procedure established by the government, submit an annual public report on the entrails use activities to the Prime Minister's Office, which includes monitoring of the mining area, the location of the production landfill generated during extraction, the safety of the population of adjacent communities or healthcare (ie, environmental issues). For example, in the field of subsoil use, within the frame of the Extractive Industries Transparency Initiative (EITI), the first national EITI report publicised the financial reports of the metallic mining companies operating in Armenia for 2016 and 2017, including the financial reports of GeoProMining LLC operating Sotq gold mining. Data relating to, in particular, the production, export, payment of taxes, payment of environmental and nature management fees, social programmes, etc, have been publicised.

In respect of the Mining Law, the Law on Environmental Impact Assessment and Expertise requires public hearings and discussions to be conducted before granting mining rights. The same is relevant to developers before granting a construction permit.

The Law on Electronic Communications provides that at least once per calendar year, the Regulator require service providers whose tariffs are subject to adjustment to submit an audited report on the cost of public electronic communications services. The Regulator must ensure that the damages, penalties or fines attributed to the service provider subject to tariff regulation are not borne by its competitors or end users.

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

There are no obligations of reporting or disclosure, so there is no clearly defined nature or extent to reporting or disclosure.

Further, companies that operate in Armenia but are subsidiaries of a foreign company operating in a country that has obligations of reporting or disclosure may be obliged to report or disclose by virtue of the existing obligation to the parent company, whose nature and extent are defined by the law of the country in which the parent company operates.

In the case of similar obligations, businesses are required to report information that is required by regulatory law. For example, in the case of mining law, subsoil users must report information regarding the annual volume of extraction, exports, amounts paid to the budget, monitoring of the mining area, the location of production landfill generated during extraction, the safety of the population of adjacent communities and healthcare.

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

For most cases, the bodies that enforce these requirements are regulatory bodies. In the case of mining, it is the Ministry of Environment, and for electronic communications, it is the Public Services Regulatory Commission of Armenia. The extent of their powers is to require reports and, in the case of failure to provide reports, to take responsible measures, which may be a warning, suspension of the relevant right or termination of that right.

Voluntary standards

- 10 | What voluntary standards should businesses refer to for guidance on best practice in relation to any applicable human rights-related corporate reporting and disclosure regimes?

There is no soft law for voluntary human rights-related reporting or disclosure for businesses in the Armenian jurisdiction.

However, companies that operate in Armenia but are a subsidiary of a foreign company that operates in a country that has obligations of reporting or disclosure may be obliged to report or disclose, by virtue of the existing obligation to the parent company being guided by the best practice of the parent company's state jurisdiction. The subsidiaries of foreign companies who are willing to voluntarily report or disclose must follow best practices of the country in which the foreign company operates.

CORPORATE DUE DILIGENCE

Statutory and regulatory requirements

- 11 | Are businesses in your jurisdiction subject to any statutory or regulatory human rights-related due diligence requirements?

At present, there is no such requirement under Armenian legislation.

There are similar requirements for subsoil users for monitoring. According to the Subsoil Code, subsoil users must complete planned monitoring to reduce environmental losses and prevent irreversible impact owing to the use of entrails, monitoring of the extracted mineral area, the location of production landfill generated during extraction, the safety of the population of the adjacent communities and ensuring public health.

- 12 | What is the nature and extent of the required due diligence?

Taking subsoil users as an example, the nature and extent of the required due diligence is the monitoring by those users of the extracted mineral area provided, the location of production landfill generated during extraction, the safety of the population of the adjacent communities and health. Monitoring includes checking compliance of the current situation with the legislative regulations and standards, including human rights in the case of the safety of population and health.

In the case of discovery, the subsoil user must immediately stop the operation of the mine and submit the results of the monitoring within two days to the Ministry of Environment.

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

In the case of mining, the body to enforce those requirements is the Ministry of Environment. When inconsistencies or violations are discovered as a result of monitoring, and mining operations have not immediately been stopped, it is grounds for the Ministry of Environment to terminate the mining right.

14 | What voluntary standards should businesses refer to for guidance on best practice in relation to any applicable human-rights related corporate due diligence regimes?

There are no established voluntary human rights-related due diligence regimes in Armenia. Nevertheless, companies that operate in Armenia but are a subsidiary of a foreign company operating in a country that has obligations of human-rights related due diligence may be obliged to do due diligence by virtue of the existing obligation to the parent company, whose nature and extent are defined by the law of the country in which the parent company operates.

CRIMINAL LIABILITY

Primary liability

15 | What criminal charges can be asserted against businesses for the commission of human rights abuses or involvement or complicity in abuses? What elements are required to establish guilt?

Legal entities are not liable for crime under Armenian criminal law. However, if, for instance, a person dies as a result of non-compliance with health and safety rules established in the corporation (which can be considered as a breach of human rights), the individual responsible for maintenance will be held responsible for committing a crime rather than the legal entity, if actus reus and mens rea of the person engaged is established (article 157, Criminal Code (Violation of labour protection rules)).

The new Criminal Code Bill (draft law, which has been sent to Parliament for preliminary hearings) provides that the following types of organisations can be held directly criminally liable for offences:

- all types of legal persons, except for legal entities whose shareholder is the state of Armenia;
- international organisations (except organisations that have immunity); and
- non-resident legal persons, including their branches.

The offences for which legal persons can be held criminally liable are listed in the Criminal Code Bill (article 127 of the Draft). The following offences relate to business and human rights:

- breach of safety rules at nuclear energy facilities (article 329);
- violation of security rules during construction, mining or other works (article 333);
- breach of safety rules in explosive atmospheric objects (article 334); and
- breach of fire safety rules (article 335).

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

General defences are applicable. The main defences are listed in articles 72–75 of the Criminal Code and include exemption from criminal liability:

- in the case of repentance: a person who has committed a minor or medium-gravity offence for the first time can be exempted from criminal liability if they have voluntarily pleaded guilty, cooperated in investigations and compensated for the harm caused by the offence (article 72);
- in the case of reconciliation with the victim: a person who has committed a minor offence can be exempted from criminal liability if he or she has reconciled with the victim and has compensated for the harm caused to the victim (article 73);

- owing to change of situation: a person who has committed a minor or medium-gravity offence for the first time can be exempted from criminal liability if his or her acts have ceased to be dangerous to the public as a result of a change in the situation (article 74); and
- because of the expiry of the period of the limitation: a person will be exempted from criminal liability if the statute of limitation for the crime has expired since the date on which the offence has been deemed committed (article 75).

These defences are not relevant in situations when a person dies as a result of non-compliance with safety rules of the corporation.

Director and officer liability

17 | In what circumstances and to what extent can directors and officers be held criminally liable for involvement or complicity in human rights abuses? What elements are required to establish liability?

Certain officers, such as directors (heads of executive bodies), can be responsible for committing offences that result from implementing their decisions. These include:

- crimes listed in the Criminal Code, such as article 157;
- breach of labour protection rules (article 230);
- breach of safety regulations during mining, construction or other works (article 231);
- breach of safety regulations at facilities with an explosion hazard (article 232); and
- breach of fire-safety regulations.

The director is not held criminally liable for any death in the corporation, but an employee who is responsible for the maintenance of health and safety rules is. The director may be accused of a named crime if it relates to a violation of his or her duties.

Piercing the corporate veil

18 | When can 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?

For Armenia, the issue is more of civil law nature.

In criminal law, acts or omissions that led to human rights violations, such as torture, murder, inflicting heavy damage to health or destroying property, are crimes for which legal entities cannot be held liable. In this case, the director or shareholder may be held liable if all the elements of a crime are present (actus reus and mens rea).

Secondary liability

19 | In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties?

Not applicable.

Prosecution

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

According to article 175 of the Criminal Procedure Code, it is up to the prosecutor, the investigator or the investigative body (all mentioned are state bodies) to commence a criminal procedure against a director or employee of the business (the business is not subject to criminal

investigation). Discretion is minimal as these bodies must, within their jurisdiction, institute a criminal case, on discovering the elements of crime, to take all measures envisaged by law to disclose the crime and to discover the culprits.

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

According to article 175 of the Criminal Procedure Code, the prosecutor, the investigator and the investigative body (all mentioned are state bodies) must institute criminal prosecution, within their authority, provided there are reasons and grounds for the initiation of criminal prosecution envisaged in the Code. Those bodies must, within their jurisdiction, institute a criminal case, whenever the elements of crime are discovered, to take all measures envisaged by law to reveal the crime and to discover the criminals.

After instituting a criminal prosecution, in criminal cases where enough evidence is collected against the offender, the offender shall be officially accused, and the court can arrest the person suspected in the commission of the crime, interrogate them and charge them.

No specific procedure is established by Criminal Procedure Code for human rights-related cases.

CIVIL LIABILITY

Primary liability

22 | What civil law causes of action are available against businesses for human rights abuses?

According to article 12 of the Civil Procedure Code, the court shall institute a civil case only based on a statement of claim or an application; therefore, the only possible way to bring a business to civil liability is to bring a claim (lawsuit) against the business.

The business will be liable for the failure to fulfil or improper fulfilment of an obligation where there is fault, unless otherwise provided for by law or contract.

The Civil Code enshrines general ways of protecting civil rights, among which are recognition of the right, restoration of the situation that existed before the violation of the right and compensation for damage.

The above-mentioned ways of protection may be used against businesses as an action for violating human rights. The most common remedy for human rights violations is compensation for damage.

A person whose right has been violated may require full compensation for the damage caused thereto, unless a lesser amount for the compensation of damage is provided for by law or by contract. Damages comprise the expenses incurred by the person whose right has been violated, which have been or must be covered by the person to restore the violated right, the loss of or harm to the property thereof (actual damage), unearned income that the person would have received under the usual conditions of civil practices had the right thereof not been violated (lost benefit), as well as intangible damage (article 17 of the Civil Code).

Additional remedies are available for employees, such as restoration at work and payment of downtime.

The defences are general (eg, substantiation that there is no guilt or causal link). No specific defences are available.

Director and officer liability

23 | In what circumstances and to what extent are directors and officers of businesses subject to civil liability for involvement or complicity in human rights abuses?

In the Armenian legal system, certain officers, such as the directors (heads of executive bodies) and officers of businesses (officer responsible for certain actions or omissions), can be responsible for committing offences that result from the implementation of their decisions. They are liable for the failure to fulfil or improper fulfilment of an obligation where there is fault, unless otherwise provided for by law or contract.

In this regard, article 1074 of the Civil Code provides that a person who has compensated the damage caused by another person (the employee while performing service, official or other employment duties, transport, etc) shall have a right to be repaid by this person in the amount of the compensation paid by him or her, unless the law defines a different amount.

Accordingly, the directors or officers are subject to civil liability even if the damage they caused was compensated by the business; for example, if the director of a mining company issues an order to use force against protesters, as a result of which the company compensates the damage caused to health, but it then turns out that the company did not endow the director with such authority, repayment may be obtained from the director.

Piercing the corporate veil

24 | When can 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?

For the Armenian jurisdiction, the issue is more of civil law nature. The parent company that has the right to give mandatory instructions to the subsidiary is jointly liable with the subsidiary for the execution of transactions concluded in accordance with its instructions. It follows that the parent company is liable only for execution of transactions; therefore, in the case of human rights violations, the parent company may be liable if the transaction was concluded in accordance with its instructions.

For that, the courts will establish that the parent company had the power to give instructions to a subsidiary, for example, by virtue of dominant participation in its statutory capital or in accordance with a contract entered into between them. This means the decisions of the company can be predetermined.

The defence is general; the parent company may object that there was no such provision in the contract with the subsidiary, which is a mandatory condition, or prove that there is no causal link. The remedy is also general (ie, compensation for damage).

Secondary liability

25 | In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties?

A legal person or a citizen (business) must compensate for the damage caused by its employees while performing their work (service or official) duties. An employee is deemed a citizen working under an employment contract, as well as under a civil law contract, where he or she acted or should have acted on the assignment of the relevant legal person or citizen and under its supervision over the safe conduct of works. Only general defences and remedies are available (eg, the employee does not act on the assignment of the relevant business) (article 1062 of the Civil Code).

This article does not apply to damage caused by a person working for a business under a service provision contract, such as a security service. It follows that when a breach of security caused damage, a legal person or a citizen (business) shall not compensate for the damage.

It is stated that the general contractor shall bear liability to the customer for non-performance or improper performance of obligations by the subcontractor, and shall bear liability regarding the subcontractor for non-fulfilment or improper fulfilment of obligations by the customer under the contractor agreement. No further specifications are prescribed (article 704 of the Civil Code).

Shareholder liability

26 | In what circumstances can shareholders be held liable for involvement or complicity in human rights abuses?

In the Armenian legal system, shareholders may be held responsible only if the activities (omission) of shareholders or other persons who have the right to instruct the company or are necessary for execution of the company's activities are the reason for the insolvency (bankruptcy) of a company.

If the shareholders or other persons have the opportunity, other than that stated above, to otherwise determine the activities of the company, in the case of insufficiency of the property belonging to the company, accessorial (subsidiary) liability in accordance with the obligation of companies can be conferred (article 3 of the Law on Joint Stock Companies). No specific options are available to make shareholders bear responsibility for human rights violations.

Shareholders of a subsidiary company have the right to require from the principal partnership or company compensation for the damage caused to the subsidiary company through its fault. Damage is considered as caused by the fault of the principal partnership or company, where it has occurred as a consequence of the subsidiary company's execution of mandatory instructions of the principal partnership or company.

JUDICIAL REDRESS

Jurisdiction

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

According to article 175 of the Criminal Procedure Code, the prosecutor, the investigator and the investigative body must institute criminal prosecution, within their authority, provided there are reasons and grounds for the initiation of criminal prosecution envisaged in the Code. No specific procedure is established by the Criminal Procedure Code for human rights-related cases.

In the case of civil courts, the case must be of a civil nature; there must be grounds for starting a lawsuit and the procedure for the exercise of the right of ownership and other property rights, exclusive rights to the results of intellectual activity (intellectual property), contractual and other obligations as well as other property relations and personal non-property relations. This also includes labour relations. The precondition for initiating a case is a lawsuit. After submitting a lawsuit against the person responsible for the human rights violation, the court accepts the claim for examination, and the proceedings start.

28 | 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?

The Civil Procedure Code allows claims to be brought against businesses in the scenario described.

Class and collective actions

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

The Civil Procedure Code established an opportunity for bringing collective lawsuits (claim). According to article 224, a claim submitted jointly by at least 20 co-plaintiffs shall be deemed to be a group action, where a claim is initiated against the same respondent (co-respondents) and the subject matter and the grounds of the claim are the same. Therefore, it is possible to bring a collective lawsuit against businesses for human rights violations.

Public interest litigation

30 | Are any public interest litigation mechanisms available for human rights cases against businesses?

There is an option described by the Administrative Procedure Code that provides that non-governmental organisations represent the legal interests of their beneficiaries in court in the field of environmental protection.

An organisation may file a lawsuit if:

- the lawsuit derives from the statutory goals of the organisation;
- it was deprived of the opportunity to participate in the public discussions on the envisaged activities within the framework of the Law on Environmental Impact Assessment and Expertise; and
- it has been active in the field of environmental protection for at least two years prior to the filing of the claim.

STATE-BASED NON-JUDICIAL GRIEVANCE MECHANISMS

Available mechanisms

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

There are no typical non-judicial grievance mechanisms but the following are mechanisms that may play some role in hearing business-related human rights complaints.

The Office of the Human Rights Defender of Armenia contains the Department of Civil, Socio-Economic and Cultural Rights Protection, which to some extent may be considered as a non-judicial grievance mechanism. It hears claims by persons whose rights were allegedly violated. This body may find that there was a breach of human rights and advise state bodies to eliminate violations.

There is a Standing Committee on Protection of Human Rights and Public Affairs in the National Assembly. This body is responsible for developing human rights legislation and policy on human rights protection.

The Health and Labour Inspectorate is an inspectorate body established by the prime minister in 2018, which has the following powers:

- investigation and analysis of the causes of occupational accidents and diseases in cases prescribed by law;
- organisation of methodological assistance in ensuring labour safety for employers and trade unions in the implementation of

labour legislation and other legal acts, provision of relevant information and advice;

- control over the provision of labour law guarantees for persons under 18 years of age, as well as pregnant or breastfeeding women and childcare workers; and
- in cases defined by the Labour Code, temporary suspension of work until the elimination of violations.

Filing complaints

32 | What is the procedure for filing complaints under these mechanisms?

In practice, complaints directly against companies can be brought only in the case of the Inspectorate, although this is not sufficient to initiate proceedings as the inspections are initiated on the instruction of the head of the Inspectorate. In the case of the Human Rights Defender and Committee, complaints may not be presented directly against companies.

According to the Armenian Ombudsman's 2019 report, a number of citizens have complained to them about alleged violations of their labour rights. Most of them were related to non-finalisation, unjustified dismissal, early termination of the employment contract, failure to notify employees within the time frame set by law, etc. The Office of the Human Rights Defender has prepared reports on those cases and submitted them to both the Ministry of Labour and Social Affairs and the National Assembly to take appropriate legislative measures on these issues.

Remedies

33 | What remedies are provided under these mechanisms?

In this scenario, there are no remedies in the classical meaning of the term. The inspectorate may impose fines on businesses violating labour rights, and the Ombudsman may issue recommendations for the elimination of the violation or its consequences.

Enforcement

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

The Office of the Human Rights Defender of Armenia contains the Department of Civil, Socio-Economic and Cultural Rights Protection, a Standing Committee on Protection of Human Rights and Public Affairs in the National Assembly and the Health and Labour Inspectorate, which are investigative bodies. Their decisions are not rendered enforceable by the relevant bodies.

Publication

35 | Are these processes public and are decisions published?

Yes, the processes are public, and the decisions are published, unless the law states the contrary (in the case of a state secret, etc).

NON-JUDICIAL NON-STATE-BASED GRIEVANCE MECHANISMS

Available mechanisms

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

There are no typical grievance mechanisms.

The activity of trade unions is regulated by the Law on Trade Unions. According to the Law, the trade union is a public association that, in accordance with the law, unites employees to represent their labour and related professional, economic, social rights and interests, and to protect them in their employment.



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There are no internal organisational mechanisms in Armenian corporations, but the situation is different for foreign capital corporations, which must comply with the regulations of the country in which the parent company operates.

As a non-state-based mechanism, there is also the European Court of Human Rights, which hears cases related to violations of relevant articles (right to ownership, right to private life, etc) in a manner described by the European Convention on Human Rights and Fundamental Freedoms.

UPDATE AND TRENDS

Recent developments

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

According to the explanations submitted to the Human Rights Defender by the Ministry of Labour and Social Affairs, as a result of cooperation with the ministers of the National Assembly, legal bases envisaging the expansion of state control over the fulfilment of the requirements of the labour legislation were adopted, which are vital for complying with business and human rights standards.

In particular, from 1 July 2021, in addition to control over the application of healthcare and safety norms, control will be exercised over the fulfilment of the requirements of labour legislation, other labour law norms and collective employment contracts. According to the explanation given by the Ministry in January 2020, the list of measures to ensure the implementation of those laws is being developed and agreed upon with the interested bodies.

Coronavirus

38 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

During 2020, a number of social programmes were adopted by the government to support employees affected by the covid-19 pandemic. The programmes provide financial assistance to a number of categories of persons, for example: those who were made redundant between 13 and 30 March 2020, and pregnant women whose husbands were made redundant.

A number of amendments have been made to the Labour Code, which have adopted the possibility of working remotely and the regulations of that.

The government has adopted regulations on working in office, which include multiple rules in respect of sanitation. Those are the best practices being advised for clients.

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