Submitted: 16/02/2024 - Accepted: 16/04/2024 - Published: 30/06/2024

The Integration of Business Ethics Principles into Corporate Governance and Director Liability: A Turkish Legal Perspective

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Abstract

This study explores the foundational relationship between business ethics principles and their practical integration into corporate governance frameworks, particularly examining the implications for director liability. Initially, the paper defines business ethics and elucidates its core principles, including integrity, fairness, trust, openness, and truthfulness. Subsequently, it analyzes various facets of business ethics, with a specific focus on its legal ramifications and the extent to which these ethical considerations have been codified into law. The study posits that business ethics significantly influences business law and corporate governance, becoming "legalized" through corporate codes of conduct. A central aim is to clarify the explicit mention of business ethics within Turkish law, particularly in the Code of Corporate Governance pertaining to public companies, and to discuss the legal impact of this regulation. This legal inclusion raises critical questions, notably whether ethical standards can serve as a direct source of liability for boards and directors. The paper then examines the intricate interrelation between ethical standards, corporate governance codes, and director liability. It concludes by illustrating how business ethics acts as a foundational concept, informing fields such as corporate governance, corporate social responsibility, director liability, and human rights in business (especially concerning employee working conditions), demonstrating its significant intersection with all these areas. Finally, the study clarifies the specific adoption of business ethics into the Turkish legal system and its impact on business practices.

Keywords: Business Ethics, Corporate Governance, Director Liability, Ethical Principles, Turkish Law, Corporate Social Responsibility, Legal Integration

Introduction

How can we Describe Business Ethics, Which Principles are Inherent to it?

Although is not easy to give a common uniform description of business ethics it can be described as "*ethically right way to run business*" and similarly as "*to apply ethical principles and values to business practices*". Business ethics emphasizes moral values and stand on principles such as fairness or equality, trust, honesty, integrity, openness and truthfulness[1]. Trust requiring by nature two parties, is considered to be a both moral and legal concept. It can be described as legal concept especially in the context law of confidentiality for example. However honesty is considered to be a purely moral value. The remuneration of directors is given as an example that should comply with fairness and honesty[2]. Integrity can be described as committing to accept and follow moral values of a company. For example whistle blowing in a company, that an employee communicates its concerns about unlawful or unethical acts or transactions within the company serves to integrity[3].

Business ethics covers a wide range area and is related to all kind of business relationships of the company. Business ethics is not related only to customers, but all the stakeholders which comprise suppliers, creditors, employees, competitors, the society, the environment, the state and as insider interests, the shareholders.

How Business Ethics Relates To Law?

Some authors mention that BE begin where law ends. Is this true? How business ethics relates to law? What is the interrelation of these two domains? What is the role of business ethics in shaping law[4]? There are mainly two different opinions and approaches concerning this question. **The 1st approach** followers explain that business ethics includes the law but extends beyond it[5]. These authors mention that there is an intersection area between business and law. According to this approach, "*the law is essentially an institutionalization or codification of ethics into specific regulations and proscriptions*[6]." With this respect, some authors also mention that law is an instrument for translating morality into guidelines and practices[7].

The 2nd approach followers considers business ethics as a grey area and mention that business ethics begin where law ends[8], meaning that business ethics is primarily concerned with issues that are not covered by the law. They believe that business ethics is concerned with an area that is not covered by the law and that does not cover a common area with law. The followers of this approach don't consider principles or rules as part of business ethics which have been translated into law. They consider as typical ethical dilemmas mostly issues such as, high pressure sales techniques, whistle blowing, advertising to children, employee privacy, gift giving, which are not regulated in the law[9].

It can be concluded that, in recent years, there is more tendency to integrate ethical principles into legislative systems at national level or in the international guidelines. Depending on the

[1] **Rosamund Thomas**, Business Ethics, Chapter 2, in Corporate Social Responsibility:The Corporate Governance of the 21st Century, 2011, p.35-36-37.; **Julia Casson**, A Review of the Ethical Aspects of Corporate Governance Regulation and Guidance in the EU, London, 2013, p.8.
[2] **Rosamund,** p.36-37.
[3] **Rosamund,** p.38.
[4] **Andrew Crane/Dirk Matten**, Questioning the Domain of the Business Ethics Curriculum, Journal of Business Ethics, p.357-369; p.357
[5] (Trevino/Nelson fikri, **Crane/Matten**, p.358 aynen); This approach seems to be adopted in the G20/OECD Principles of Corporate Governance, 2015, p.47. There is mentioned that "*an overall framework for ethical conduct goes beyond compliance with the law, which should always be a fundamental requirement*."
[6] **Andrew Crane/Dirk Matten**, Business Ethics, fourth edition, Glasgow 2010, p.5-6.
[7] **T.L. Beauchamp, / N.E. Bowie**, 2004, Ethical Theory and Business., 7th edition, 2004, p.4; **Crane/Matten**, p.359 para. 2.
[8] **Crane/Matten**, p.359 para. 2.
[9] **Crane/Matten**, p.359 para.3.

legal system and legal culture of each state, ethical principles for business, might be integrated into the legal system and adopted either as soft law or hard law with a mandatory effect.

The Concept and Principles of Corporate Governance

On the other side, the aim of corporate governance is to maximize shareholders holdings and establish an efficient management and control mechanism for the company, for the best interest of stakeholders. The ultimate purpose is to assure business efficiency and assure an equal use of resources[1].

Corporate governance provides various legal mechanisms such as separation of management and board of directors. This allows two-tier board system rather than a unitary board. The requirement of independent board members and committees are other legal tools of corporate governance.

This system is based on the separation of powers and aim to assure a management system which will make self-control as well, in addition to other control mechanisms such as the internal control or auditing. Corporate governance includes rules and legal tools which will ensure that the company is well directed and controlled[2]. The center of the attention is mostly the board of directors and the management.

Corporate governance is based on several basic principles which can be categorized under four main pillars. Although these pillars might vary upon national legislative system of each country, can be categorized **"accountability", "transparency", "fairness",** and **"Independence".** Corporate governance ensures the application of best practices and legal mechanisms under the umbrella of these main principles.

Accountability ensures that management is accountable to the board, and that the board is accountable to shareholders and the company.

Equal treatment or fairness, indicates that all shareholders, including minorities should be treated equitably. Thus, this principle protects shareholders' rights and addresses to board of directors. Principle of equal treatment or fairness is closely related to concepts such as good faith, diligence, integrity and trust which are standards to define liability of directors as well. Especially board members carry out their duties in a way that reflects values such as integrity, fairness and honesty[3].

Transparency and disclosure ensure timely, accurate disclosure on all business-related matters including the financial situation, performance, ownership and corporate governance.

Independence indicates that independent directors and advisers, free from the influence of any group within the company or outer company, should be assigned.

In this respect, corporate governance follows some of the ethical standards such as integrity, transparency, independence, accountability in the dealings with stakeholders. Some of the

[1] **Casson**, p.20; **Ann K.Buchholtz/Jill A. Brown/ Kareem M. Shabana**, Corporate Governance And Corporate Social Responsibility, Chapter 14, in The Oxford Handbook of Corporate Social Responsibility, p.327.
[2] **Casson**, p.6.
[3] **Casson**, p.8.

corporate governance principles are closely related and overlap with principles of business ethics.

How Business Ethics relates to Principles of Corporate Governance?

Most of the Codification Concerning Corporate Governance is of Soft-law Nature

There are several codifications concerning corporate governance in the EU member states, which have basis on ethical principles as well, such as insider trading[1] or regulations against bribery. A part of the ethical issues concerning business and companies, such as bribery, corruption, money-laundering, fiscal policy, are all related to public economic interests[2]. These issues concern public interests such as the society and the state, which make part of external stakeholders. Concerning the application of ethical values in business practices, there should be made a distinction between internal and external stakeholders. Unethical issues against insider interests, such as employees, shareholders, are not always codified as part of the mandatory legal system.

Disclosure and transparency, one of the four main pillars of corporate governance, by setting up mostly preventive rules, support criminal law regulations as well. In the EU Corporate Governance Plan, transparency and disclosure of financial or non-financial data is mentioned as a way to respond the need to prevent both unethical and criminal issues such as fraud, bribery, money-laundering, corruption and similar unlawful acts[3]. The before mentioned unethical issues are mostly part of criminal law regulations, since they are unlawful acts against the state.

EU regulations and the national legislations of the EU member states are mostly principle-based. These rules are relevant to certain basic issues such as board structure, shareholders' right, audit and disclosure of financial data. Most governance measures are principle-based soft law, and allow discretion in their application to member states, which may in turn ensure that provisions **are not mandatory** for companies[4].

Direct link or reference to Business Ethics in the Codes of Corporate Governance?

There have been carried researches concerning the question to what extend ethical values are adopted into the codes of corporate governance. Depending on national legislative systems, business ethics might have an impact on corporate governance and the implementation of business ethics could help good governance. Although corporate governance in the continental corporate European law is mostly principle-based, does not usually include nor address ethical principles to be applied to business. In the EU there is primary focus on processes and procedures for improving governance, rather than on ethical standards for governance[5].

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[1] This act can be described as to share confidential data with third persons which allow them to make a profit by selling or buying company shares.
[2] **Casson**, p.28.
[3] EU Corporate Governance Plan, "Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies", 12.12.2012, p.5.
[4] **Casson**, p.13.
[5] **Casson**, p.8, 13, 18.

The Corporate Governance Action Plan, published in 2012, did not mention any ethical values or principles. This regulation displays a set of rules and principles in order to enhance transparency and shareholders' rights mostly[1].

As a result of researches conducted in the EU and the UK by an institute of business ethics, has been revealed that there is no explicit reference to ethical principles in the codes concerning corporate governance, both at the EU level and within member states, except Belgium and the UK[2].

We can conclude that although some of the four pillars of corporate governance find its routs somehow partially in business ethical principles, in most of the EU states' legislations, there have not been established any direct link between business ethics principles and corporate governance principles.

On the contrary, G20/OECD Principles of Corporate Governance (OECD Principles 2015) [3] concerning responsibilities of the board make a reference to ethical standards stating that "*the board should apply high ethical standards and it should take into account the interests of shareholders fairly.*"

In a similar manner in Turkish law, the Code of Corporate Governance (the TCCG) concerning public companies, which ground on OECD principles, make reference and displays explicitly business ethics under the paragraph number 3.5 of the third pillar concerning stakeholders[4].

Turkish Code of Corporate Governance and Principles of Business Ethics

In Turkish corporate law, the Turkish Code of Corporate Governance (the TCCG) in public companies[5] displays four main pillars. First pillar pertain to "**shareholders**", second pillar is related to "**disclosure and transparency**", third pillar pertain to "**stakeholders**", and fourth pillar concerns "**board of directors**". This codification has mostly a soft-law nature, although it displays mandatory rules concerning mostly board of directors, transparency and the general assembly.

The third pillar involve **stakeholders**, which include all the persons or group of interests related to company such as workers, creditors, customers, suppliers, syndicates, NGOs, other than shareholders. Third pillar aims that the company carry out its business in a way to protect and balance the interests of all the parties and groups related to the company.

At the paragraph number 3.5 of the third pillar, business ethics is codified explicitly under the title of "*Ethical Rules and Social Responsibility*". According to **first paragraph** number 3.5.1, "*companies carry out their activities within the scope of ethical rules which are announced to the public via company's website*".

The second paragraph number 3.5.2, pertains essentially to social responsibility. However it refers again to "ethical rules" as well as at the first paragraph. The second paragraph mentions that "*a company is sensible to its social responsibilities and follows the legal regulations*

[1] See EU Corporate Governance Plan; **Casson**, p.16.
[2] **Casson**, p.4.
[3] G20/ OECD Principles of Corporate Governance, 2015 version, p.46 (https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en.).
[4] See below under "Turkish Code of Corporate Governance and Principles of Business Ethics".
[5] Code concerning Corporate Governance dated 3.01.2014, with number II-17.1 (The TCCG).

concerning the environment, consumers, public health and ethical rules"[1]. This paragraph draw the framework of the social responsibility for public companies and displays different areas to be protected under the concept of social responsibility, which can be defined as a new type of responsibility for companies. Thus in the second paragraph ethical rules are mentioned in a way that they constitute one of the sub-fields and make part of corporate social responsibility[2].

Another reference to ethical rules is made again at the paragraph 3.1.4 of the same 3rd pillar. According to paragraph number 3.1.4 of the 3rd pillar companies establish necessary mechanisms for stakeholders to allow them communicate to the committees their concerns about unlawful and unethical transactions of the company.

Another last quotation is regarding independent directors. In the paragraph number 4.3.6 of the 4th pillar, is mentioned explicitly that independent directors, have to possess strong ethical standards. However this quotation is not under the form of a duty of the directors, rather it is formulated as a qualification that director have to possess.

In contrary to most of EU states, in Turkish corporate law, ethical principles are codified explicitly with regard to public companies activities and independent directors. Consequently this would reveal certain questions concerning legal impact of such an explicit codification.

First question would be regarding the extent and the content of ethical principles displayed in the TCCG. What are the content and the boundaries of the ethical rules and how can we specify them? Which are the ethical principles according to paragraph 3.5 of the third pillar? Concerning this first question can be said that ethical principles are not listed nor specified in the TCCG. However, ethical standards are treated on a larger scale in the G20/OECD Principles of Corporate Governance which constitutes the basis of the TCCG[3]. The standards suggested in the G20/OECD Principles could be referred as a guideline to clarify the ethical rules under the TCCG. Companies have a discretionary power on defining their ethical rules and are suggested to adopt their own ethical codes[4].

Secondly, we could ask whether this paragraph is mandatory and whether ethical principles could have any impact concerning liability of directors. Ethical principles might have role especially in the discretionary decisions of the board of directors. The board is expected to follow ethical principles while taking decisions. Board decisions have consequences for all internal and external stakeholders[5]. Consequently there could be legal question whether ethical principles might constitute a source of liability of directors in public companies.

With regard to this second question article 5 of the TCCG which regulate and demonstrate mandatory principles, can be helpful. Among the mandatory rules the biggest part belongs to fourth pillar concerning board of directors. On the contrary third pillar concerning ethical rules is not among the mandatory principles. In this respect according to paragraph number 3.5.1 of TCCG, companies are not obliged but encouraged to prepare their own ethical rules

[1] At the following part of the second paragraph is mentioned that "A company support and respects human rights recognized internationally and combat all kind of fraud including corruption and bribery".
[2] However is mentioned that in reverse to business ethics, corporate social responsibility focuses more on the social, environmental and sustainability issues than on morality. See **Rosamund,** p.36.
[3] See G20/ OECD Principles of Corporate Governance, 2015 version, p.47, 50.
[4] In the OECD Principles 2015, is sugested that a company might also voluntarily commit to comply with the OECD Guidelines for Multinational Enterprises. See p.47.
[5] **Casson**, p.6.

and announce them on their website. But a public company is not obliged to adopt ethical rules and if the company does not adopt such ethical rules, has to explain in the company's annual report the reasons of the abstinence. According to article 8 of the TCCG, public companies have to announce whether principles of corporate governance in the TCCG are applied or not, if not companies have to give an explanation with a justification in their annual report.

But in case a public company adopt ethical rules, there follows the question whether this kind of self-made principles or rules have binding effects on the stakeholders and whether board members can be held liable. This question is very much controversial within the context of corporate social responsibility[1].

Another point is that, whether the company adopts its own ethical rules or not, taking in consideration the explicit indication of ethical standards in the TCCG, concerning the qualities of the independent directors, it can be raised the question if solely unethical decisions or transactions of the company can be a source of liability for independent directors of public companies. In this respect, it should be point out that, although in the TCCG ethical rules are explicitly mentioned, it is still not regulated within the context of the liability of the board of directors or independent directors.

Whereas in the OECD Principles 2015, "*to apply high ethical standards*", is explicitly displayed as a duty of the board and in a way that board members might be held liable on the ground that they are not respecting ethical standards[2]. Under this approach of the OECD Principles, "to apply ethical standards", addresses to directors as part of their responsibility[3]. At the international level it is mentioned similarly that, the morality of the board and the directors should underlie ethical standards[4].

Conclusion

To conclude about how business ethics connects to corporate governance, we can summarize concerning Turkish law that; although ethical rules are explicitly mentioned and codified in the Turkish Code of Corporate Governance concerning public companies, since the so-called regulation is of soft-law nature, has no binding effects for companies, and would not constitute a source of liability of the board and the directors.

However companies might choose to adopt their own ethical codes and constitute their ethical rules. The standards suggested in the G20/OECD Principles could serve as a reference and a guideline to specify the ethical rules under the TCCG. The TCCG has its basis on an older version of OECD Principles which have been renewed and adopted to the recent need in business. Consequently the most recent G20/OECD Principles on Corporate Governance can be taken as reference to develop the TCCG.

[1] For these discussions see **Anna Beckers**, Enforcing Corporate Social Responsibility Codes:On Global Self-Regulation and National Private Law, 2015; **Liesbeth F.H. Enneking**, Foreign Direct Liability and Beyond, 2012; **Tineke Lambooy**, Legal Aspects of Corporate Social Responsibility, 2014, Utrecht Journal of International and European Law 1.
[2] See G20/ OECD Principles of Corporate Governance, 2015, p.46.
[3] **Casson**, p.24.
[4] **Rosamund**, p.36. The author mentions that corporate governance is a key part of business ethics.

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[1] Andrew Crane/Dirk Matten, Business Ethics, fourth edition, Glasgow 2010, p.5-6.

[2] Andrew Crane/Dirk Matten, Questioning the Domain of the Business Ethics Curriculum, Journal of Business Ethics, p.357-369; p.357

[3] Ann K.Buchholtz/Jill A. Brown/ Kareem M. Shabana, Corporate Governance And Corporate Social Responsibility, Chapter 14, in The Oxford Handbook of Corporate Social Responsibility, p.327.

[4] Anna Beckers, Enforcing Corporate Social Responsibility Codes:On Global Self-Regulation and National Private Law, 2015

[5] EU Corporate Governance Plan, "Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies", 12.12.2012, p.5.

[6] G20/ OECD Principles of Corporate Governance, 2015 version, p.46

[7] G20/ OECD Principles of Corporate Governance, 2015 version, p.47, 50.

[8] Liesbeth F.H. Enneking, Foreign Direct Liability and Beyond, 2012;

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[10] Rosamund, p.36. The author mentions that corporate governance is a key part of business ethics.

[11] T.L. Beauchamp, / N.E. Bowie, 2004, Ethical Theory and Business., 7th edition, 2004, p.4; Crane/Matten, p.359 para. 2.

[12] Tineke Lambooy, Legal Aspects of Corporate Social Responsibility, 2014, Utrecht Journal of International and European Law 1.