

## Chapter XX

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# TURKEY

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### I INTRODUCTION TO THE PRODUCT LIABILITY FRAMEWORK

In Turkey, there is no specific law on product liability but the provisions related to product liability are set out within various basic codes in Turkey: the Law of Obligations No. 6098 and the new Turkish Consumer Protection Law No. 6502 (the TCP Law), which was published in the Official Gazette on 28 November 2013 and entered into force on 28 May 2014.<sup>2</sup>

In addition to the above codes, the Law on the Preparation and Implementation of Technical Legislation on Products No. 4703 (the Technical Legislation Law), which aims to determine the procedures and principles for the launch of products on the market, evaluation of conformity, market surveillance and audit, also includes provisions regarding product liability.

Additionally, the Regulation of Liability for Damages arising from Defective Goods, which is based on the TCP Law, contains almost the same provisions as the EU Product Liability Directive No. 85/374 and details the product liability provisions as set out in the TCP Law.

As for criminal legislation, the Turkish Criminal Law sets out the liabilities in cases of selling, supplying or keeping food materials or drugs that endanger human health, as well as producing or selling medical or other substances that endanger human life. Intentionally or negligently killing or injuring third parties is also regulated under Turkish criminal law.

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2 The new Turkish Consumer Protection Law No. 6502 replaced Turkish Protection Law No. 4077.

## II REGULATORY OVERSIGHT

In Turkey, there is no specific authority overseeing product liability. The fundamental governmental authorities concerned with product liability and defects, and consumer problems are as follows:

- a* the Ministry of Customs and Trade and the Directorate General for Consumer Protection and Market Surveillance (the Directorate) under the Ministry;
- b* the Ministry of Industry, Science and Technology, the Ministry of Health, the Ministry of Food, Agriculture and Livestock and other relevant ministries (depending on the nature of the product or service);
- c* consumer arbitration committees; and
- d* the Turkish Standards Institute.

The Directorate, which is the most effective authority for product liability matters, was formed under the Ministry of Customs and Trade by Decree-Law No. 640. Upon the provisions of the Decree-Law, the main purpose of the Directorate is to set out policies concerning protection of consumers, to take measures for consumers' economic interests as well as their health and safety, and to eliminate their losses, to make quality assurances in order to improve the quality of items and services brought to market, and to conduct market surveillance and governance for the goods that are directly presented to the consumers without any regulations. Consumers and companies are entitled to notify, ask official questions and lodge complaints with the Directorate about defective or unsafe products.

The same rule applies for the other aforementioned ministries depending on the nature of the challenged product.

The Turkish Standards Institute is subject to the control of the Ministry of Customs and Trade. The standards determined by the Turkish Standards Institute are facultative, but upon the approval of the relevant ministry (depending on the standard) they can be made compulsory. The standards that are considered compulsory are published in the Official Gazette.

Last, the Regulation on Consumer Arbitration Committees was prepared in line with the new TCP Law, and entered into force after being published in the Official Gazette No. 29188 dated 27 November 2014, abolished the preceding regulation and amending the structure of the consumer arbitration committees. These were founded under the supervision of the Ministry of Customs and Trade and are authorised to settle the disputes arising from consumer problems of any kind. The Turkish ministries are very stringent on product safety issues, especially on certain types of products that relate to human health or children directly (pharmaceuticals, food and food supplements, toys, etc.). Therefore, it is always advisable to follow all the necessary procedures to launch a safe product on the market, as well as to honour all of the aforementioned liabilities towards consumers in the case of a defective good or service so as not to face any legal, criminal or administrative sanctions.

### III CAUSES OF ACTION

#### i Relevant laws

##### *Law of Obligations*

Liability for defective goods is set out in Articles 219 to 231 of the Law of Obligations.

Under Article 219 of the Law, the seller is responsible to the buyer for the product if it does not possess the qualities that are indicated to the buyer during the purchase. Liability also attaches in cases where the good bears defects that affect the quality or quantity of the product, or its value in terms of its purpose, or that affect the benefits expected from the product. The seller is responsible for these defects regardless of whether he or she knew that the product was defective.

Under Article 221 of the Law, if the seller commits a gross fault in selling the product in a defective state, then any kind of agreements limiting or removing the seller's liability are null and void.

Under Article 222 of the Law, the seller is not responsible for defects that are known to the buyer at the time of the purchase. As for the damages arising from any defects that could be detected by the buyer during a sufficient examination of the product, the seller would be responsible for these damages only if the seller specifically undertook that there were no such defects on the product.

Under Article 223 of the Law the buyer is obliged to examine the good after the transfer of possession and give notice of any defects to the seller within a reasonable time. In the event that the buyer neglects to review the good, the buyer is deemed to have accepted any defects in the goods; however, if a regular review of the goods would not have been sufficient to reveal such defect, this rule does not apply. In such a case, any defect must be immediately reported to the seller once it becomes apparent, and failure to do so will be deemed as accepting the defect in the goods.

Article 227 of the Law sets out the optional rights of the buyer in the case of a defect. The buyer can request any of the following remedies:

- a* termination of the agreement by notifying the seller that he or she is ready to return the product to the seller;
- b* retaining the product but requesting a discount on the purchase price proportionate to the amount of the defect;
- c* unless excessive expense would be incurred, requesting the reparation of the product free of charge; or
- d* if possible, requesting that the product be swapped for another product that is free from defects.

The buyer is also entitled to claim compensation under the general provisions of the Law (see Section III, *infra*).

The seller can avoid the buyer exercising his or her optional rights by providing the buyer with a new product free from defects and compensating his or her damages immediately. If the buyer chooses to terminate the agreement but the judge does not assess that this is fair under the specific circumstances of the case, the judge can hold for reparation of the product or reduction of the purchase price in proportion to the defect.

Under Article 231 of the Law of Obligations, the statutory period of limitation envisaged for defect liability is two years as of the date the product was sold to the buyer,

unless the seller undertakes a longer liability period. The same period applies even if the defect occurs after the date of purchase. If the seller has committed a gross fault in selling the defective good to the buyer, he or she cannot benefit from the two-year statutory period of limitation.

### *The Turkish Consumer Protection Law*

The TCP Law is the specific law that regulates defect liability to the consumer, whereas the Law of Obligations is a general code that regulates the general rules for product liability regardless of whether to the consumer or a trader. Before addressing the general principles, it is worth outlining some important definitions under the TCP Law.

- a* A consumer is a real or legal person who acts for non-professional or non-commercial purposes.<sup>3</sup>
- b* A seller is a real or legal person, including public legal entities, who provides goods to consumers for commercial or professional purposes, or who acts on behalf of those who provide goods.<sup>4</sup> The definition of ‘supplier’ is the same except that a supplier is a real or legal person who provides services instead of goods.
- c* A producer is a real or legal person – including public legal entities – who produces the goods provided to consumers or produces the raw materials or intermediate parts for these goods, as well as a person who puts its distinctive sign, trademark or title on the goods and represents itself as the producer.<sup>5</sup>
- d* An importer is a person – including public legal entities – who imports goods or services or the raw materials or intermediate goods for these goods and services from abroad for commercial or business purposes and launches to market by way of sale, renting, leasing or similar.<sup>6</sup>

The general principles for defect liability under the TCP Law can be set out as follows:

- a* A defective good is a good that is incongruous to the sample or example accepted between the consumer and the seller or that does not bear the objectively expected qualities; hence, it is incongruous to the agreement concluded between the consumer and the seller.<sup>7</sup> A good that is incongruous to the quality specified on the packaging, label, promotion and operating manual, website or advertisement or declared by the seller or determined in their standards or technical formulation, that does not meet usage purpose provided by its equivalents, or that have material, legal or economical deficiencies, is also classed as defective.<sup>8</sup>
- b* A defective service is a service that is not performed in the time determined by the agreement or that does not conform to the specifics agreed by the parties that

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3 Article 3/k.

4 Article 3/i.

5 Article 3/n.

6 Article 3/e.

7 Article 8/1.

8 Article 8/2.

it should objectively bear, and is accordingly incongruous to the agreement.<sup>9</sup> A service that does not bear the qualities declared by the service provider, mentioned on the website or in its advertisements or announcements, or that bears defects that affect the quality of the service or its value in terms of its purpose, or that affect the benefits expected from the service, or that has a material, legal or economical deficiency, is also classed as defective.<sup>10</sup>

- c It is presumed that a defect that occurred in a good within six months of its delivery date was present at the date of delivery. In such a case, the seller should prove that the good was not defective for the exclusion of liability.<sup>11</sup>
- d If a good is defective, the consumer has the right to terminate the agreement and demand a refund, or to demand replacement of the defective good, a reduction in the purchase price in proportion to the defect, or repair of the defect.<sup>12</sup> In the event that the consumer prefers replacement of the defective good by a new good or repair of the defect, the seller, producer and importer of the good will be jointly and severally liable. If the producer or importer proves that the defect occurred after the product was launched, then they cannot be held liable.
- e Where the replacement of the defective good or repair of the defect results in inconvenience and disproportionate difficulties for the seller, the consumer can demand a refund or reduction in the purchase price in proportion to the defect or terminate the agreement. Where the consumer demands replacement of the defective good or repair of the defect, the seller, producer or importer must perform their obligation within 30 business days of the notification of the consumer's request.
- f If a service is defective, the consumer has the right to terminate the agreement, demand re-performance of the service, reduction of the purchase price in proportion to the defect or free repair of the work created as result of the service.<sup>13</sup> The aforementioned provisions for defective products also apply to defective services.

### *The Technical Legislation Law*

The Technical Legislation Law sets out the principles for launching the products on the market, compliance assessments, market surveillance and the necessary official notifications on these matters.

Under Article 3/g, the producer is defined as the real or legal person who produces, manufactures, treats a product or presents him or herself as the producer of the product by putting its name, brand or distinctive sign on the product and, in cases where the producer is abroad, the representative or importer authorised by the producer as well as the real or legal person who is within the supply chain of the product and whose activities affect the safety of the product.

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9 Article 13/1.

10 Article 13/2.

11 Article 10.

12 Article 11.

13 Article 15/1.

Under Article 3/h, the distributor is defined as the real or legal person within the supply chain of the product and whose activities do not affect the safety of the product.

The product liability-related provisions are set out in Article 5 of the Technical Legislation Law. Under Article 5, the producer is obliged to launch safe products onto the market. If a product complies with the technical regulations, it is regarded as being safe. If there is no technical regulation for a product, then the national or international standards are considered. Where there are no national or international standards either, the code of good practice or the level of science or technology in the relevant sector or the reasonable expectation of the consumer regarding the safety of the product is considered.

The producer can be released from liability when he or she proves that the unsafe product has not been produced by him or her or the unsafe nature of the product derives from compliance with the technical legislation.

Similarly, the distributor also cannot knowingly launch unsafe products. The distributor is obliged to notify the concerned parties of any risks of the unsafe product as well as any precautions to be taken. Where the producer of the unsafe product cannot be determined and the distributor fails to notify the authorised governmental bodies about the identity of the producer or supplier of the unsafe product within the requested period of time, the distributor will be regarded as the producer.

## ii Types of causes of action

### *Civil route*

Under the TCP Law, the conditions required to constitute defect liability are the establishment of:

- a* the defect in the product;<sup>14</sup>
- b* occurrence of damage;<sup>15</sup>
- c* a causal connection between the defect and the damage.

Consumers are entitled to use their optional rights against any of the concerned parties (the manufacturer or producer, importer, dealer, etc.) and claim damages arising from the defective product or service. General compensation rules for both defective and unsafe products are predominantly laid out in the specific provisions of the Law of Obligations.

Under Article 49 of the Law of Obligations, the person who harms another by committing an unlawful act due to his or her fault should compensate the damage he or she causes. As per Article 50, the burden of proof rests with the person who suffers damages.

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14 The defect may either be a production defect, design defect or notification defect. A production defect is a defect arising from the non-conformity between the production standards of a certain producer and the end product. A design defect is a defect arising from the non-conformity between the alternative production design of a certain product and the end product itself. Finally, a notification defect is the defect arising from the failure to inform the consumer in respect of the usage, maintenance and reparation conditions of the product.

15 The damage may either be damage to a person, to a good (materially), or may be an immaterial damage (due to death or injury).

The scope, amount and payment form of the compensation is determined by the judge by taking into consideration the circumstances of the case and especially the severity of the fault.

In the event of death, Article 53 sets out that funeral expenses, hospital expenses and losses suffered by people who are deprived of the support of the decedent should be added within the scope of material compensation.

In the event of physical injuries, Article 54 sets out that the treatment expenses, loss of income and the damages arising from the loss of the ability to work as well as damages arising from the impact on the economic future of the injured party should be added within the scope of material compensation.

With regard to moral compensation, Article 56 sets out that in the event of a physical injury, the judge may also hold for a reasonable amount of moral compensation depending on the circumstances of the case. In the event of severe injury or death, the judge can also hold for a reasonable amount of moral compensation to the injured party or to the decedent's relatives.

The statutory period of limitation envisaged for compensation claims is determined as two years as of the date the damage and the liable party was learned of and 10 years in any case as of the date the unlawful act was committed. If there is a longer statutory period of limitation in criminal law, this period applies to the case.

### *Criminal route*

Criminal liability may arise under certain conditions in the event of injury or death due to the products or services. The follows relevant provisions of the Turkish Criminal Law can be summarised as follows:

- a* Under Article 186, those who sell, supply or keep food materials or drugs that endanger human health are sentenced to imprisonment of one year to five years and a judicial fine corresponding to up to 1,500 days is imposed.<sup>16</sup>
- b* Under Article 187, those who produce or sell medical products that endanger human life and health are sentenced to imprisonment of one year to five years and a judicial fine is also imposed.
- c* Under Article 194, those who give or present substances endangering human health for consumption are sentenced to imprisonment of six months to one year.

### *Administrative route*

Administrative sanctions are set out in the TCP Law and the Technical Legislation Law.

Under Article 55/3 of the TCP Law, if the products presented to the consumer may have harmful effects on human health as well as on the environment as per its relevant technical legislation, then the necessary information and warnings should be

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<sup>16</sup> Judicial fine is defined by Article 52 of the Turkish Criminal Law. A judicial fine is a kind of administrative monetary fine calculated by multiplying the full number of days subject to penalty with the amount fixed per day. The amount of officially determined judicial fine is at least 20 lira, at most 100 lira per day, which is assessed by the judge in consideration of the private and economic conditions of the person.

put on the labels or instruction manuals. If this obligation is violated, an administrative monetary fine of 220 lira per product launched to market is imposed on the producer or the importer. In such a case, the administrative monetary fine to be imposed on the seller is 220 lira per product sold to consumers.

Under Article 76 of the TCP Law, the goods and services to be provided to consumers should not be harmful to human health or to the environment. In addition, these goods and services should be in compliance with the relevant administrative and technical legislation or standards. The Ministry may periodically monitor compliance by undertaking inspections. Where this provision is violated, an administrative monetary fine of 220 lira per consumer transaction is imposed on the violators.

The administrative fines under the Technical Legislation Law can be summarised as follows:

Where a product is determined to be unsafe by the authorised governmental body (depending on the nature of the product), the authorised body is either entitled to:

- a* prohibit the sale of the product in the market;
- b* take the unsafe products off the market; or
- c* where it is impossible to make the product safe, destroy the unsafe products entirely or partially depending on the level of risk; and

Any of the aforementioned measures may be announced in two national newspapers and on two television stations within Turkey. The relevant expenses for the aforementioned proceedings are covered by the producer.

Article 12 of the Technical Legislation Law sets out the sanctions and the amounts of administrative monetary fines for infringement of the obligations provided by Article 5. Under Article 5/3, the producer is obliged to bring safe products to the market and where this obligation is violated, an administrative monetary fine of between 16,765 and 41,918 lira is imposed on the producer.

Under Article 5/7, the producer is also obliged to undertake the necessary tests and examinations of the product before launch in order to avoid risks, assess and resolve complaints regarding the product, and duly inform the consumer and other participants in the sale chain of the possible risks of the product (by making notifications, labelling, etc.). Where this obligation is violated, an administrative monetary fine of between 3,350 and 8,381 lira is imposed on the producer.

Under Article 5/9, the distributor is obliged not to bring products that he or she knows to be unsafe to the market. Additionally, the distributor is also obliged to notify the concerned parties regarding any possible risks from the products and the necessary measures to be taken. Where this obligation is violated, an administrative monetary fine of between 673 and 4,188 lira is imposed on the distributor.

If the same violation is repeated within one year, all of these amounts are doubled. The fines envisaged in the Technical Legislation Law are applied by the authorised governmental bodies.

In terms of the statutory period of limitation, the period for the administrative monetary fines mentioned above is five years as of the date of the violation and one year as of the date the authorised governmental body became aware of the violation.

## **IV LITIGATION**

### **i Forum**

Under Article 66 of the TCP Law, the Ministry of Customs and Trade is obliged to establish at least one consumer arbitration committee at the centre of provinces and upon fulfilment of legal requirements, one in each district, which will be authorised to settle disputes arising from application of the TCP Law. The committees consist of five members and the chairman of the committee should be the Provincial Director of Customs and Trade in a province, a district governor or a public servant assigned by the district governors. Other members of the committee should include an expert from the municipality, a lawyer to be appointed by the bar association, a member to be selected by consumer organisations, and a member to be appointed by Chamber of Trade and Industry and Chamber of Tradesmen and Craftsmen.

In the districts, it is mandatory to submit disputes of a value lower than 2,200 lira to the consumer arbitration committee and, in the provinces, to submit disputes with a value lower than 3,300 lira to the consumer arbitration committee. The committee's decision is binding on the parties, but the parties are entitled to appeal the decision before the consumer court within 15 days and the committee's decision becomes final upon review of the consumer court. In disputes concerning values higher than the aforementioned, the consumer must apply to the consumer court.

Civil courts (including consumer courts) consist of civil judges. As for criminal cases, if the public prosecutor decides to issue an indictment and the case matures into an official criminal case, then the criminal courts also have criminal judges.

Turkey does not have juries in its judicial system.

### **ii Burden of proof**

In line with the general principle of the Law of Obligations and the Turkish Civil Procedural Law, a person who brings a claim bears the burden of proof unless there is a specific provision by law.

In this context the burden of proof is on the consumer for any compensation claims in that the consumer must prove the damage resulting from the defect. As such, according to Article 6/2 of the Regulation of Liability for Damages arising from Defective Goods the claimant must prove the defect in the product, the damage he or she suffered, and the causal relationship between the defect and the damage.

There is no specific regulation under the TCP Law, the Law of Obligations or the Technical Legislation Law regarding the burden of proof in the case of an unsafe product launched on the market, so it can be interpreted that the general burden of proof rule applies in this situation as well.

### **iii Defences**

As per Article 7 of the Regulation of Liability for Damages arising from Defective Goods the producer or manufacturer will not be liable if it proves that:

- a* the product was not launched onto the market by the producer;
- b* the product was not defective at the time of being launched on the market;

- c* the product was not produced for the purpose of selling, or commercial or professional activities;
- d* the defect arose from a technical mistake at the stage of production due to a breach of the statutory principles of production; or
- e* the realisation of the defect was not possible at the time of production due to technological or scientific insufficiencies.

Furthermore, if the defect is attributable to the design of the product in which the component has been fitted due to the instructions of the manufacturer or producer, the manufacturer or producer of the component will not be liable for the product's defect.

With regard to the intermediate goods producers and raw material producers, they may only be released from liability provided that they prove that the defect in the end product arose from erroneous design or inappropriate instructions from the end producer.

Concerning restrictions of the producer's liability, in line with the EU Product Liability Directive No. 85/374, agreements restricting or removing the producer's liability are null and void. Moreover, the provisions stating that the consumer waives his or her alternative rights are deemed invalid and have no legal effect.

In line with Article 6/III of the Regulation of Liability for Damages arising from Defective Goods, in the event that the damage arises from the fault of the consumer or a third party for whom the consumer is liable, the amount of possible compensation may be reduced considering the conditions of the case, an application parallel with the provision in the EU Directive.

Under Article 5/4 of the Technical Legislation Law the producer can be released from liability if it can prove that it did not launch the unsafe product onto the market, or that the unsafe nature of the product derived from being in compliance with the relevant technical regulations.

As for the statutory period of limitations and specific product categories, see Sections I, II and III, *supra*.

#### **iv Personal jurisdiction**

Under the TCP Law, the seller is principally liable for any defects in goods or services and is responsible for performance of consumers' rights arising from the Law of Obligations and the TCP Law. On the other hand, the producer and importer of the goods will be jointly and severally responsible along with the seller for replacement of the defective good or repair of the defect free of charge.

In this context, if the product manufacturer is in a foreign country but its authorised importer, distributor or seller is in Turkey, then the addressee of the product liability would be the party or parties in Turkey and the consumer is entitled to initiate proceedings against the party or parties in Turkey under Turkish law.

Where the product manufacturer merely advertises its product on the internet and the advertisement is accessible in Turkey, which means it targets Turkish consumers, then the TCP Law will apply. If the manufacturer is abroad, the authorised distributor, seller or importer in Turkey can be held liable. However, if there is no such addressee in Turkey, then the manufacturer will be considered as seller as per definition of the TCP Law; however, pursuit of such a case would be very difficult and impractical. The most common

way to approach such a case is for a consumer, a company or a public authority to file a complaint regarding the website in question before either the Advertisement Board (under the Ministry of Customs and Trade) or the Turkish Directorate of Telecommunications seeking a ruling to ban import of the applicable product into Turkey or for the infringing content (the advertisement of the challenged product) to be removed from the website.

**v Expert witnesses**

The legal issues regarding testimonies and evidence from expert witnesses are regulated by the Civil Procedure Law No. 6100. Expert reports and witness testimonies are permitted by Turkish law.

In most cases, the Turkish courts assign experts or expert committees from the relevant industry to examine the technical aspects of the file. Pursuant to Article 266 of the Civil Procedure Law, the court is entitled to request an expert opinion at the request of the parties or at its own discretion for technical matters that require specialised knowledge. However, the judge cannot decide to have an expert opinion on legal issues. The outcome of the expert report does not bind the judge.

The parties can propose witnesses to the courts by submitting a list of the witnesses and outlining the reasons why the court should take the statements of these witnesses into consideration. If the court is convinced as to the reasons, it will hear the witnesses. This is a general rule that is valid for all proceedings held before the Turkish courts.

**vi Discovery**

Since there is no specific legal term or specific provision regarding discovery on product liability matters under Turkish law, reference is made to the general procedural provisions.

The practice is formed under provisions of the Law of Obligations, the TCP Law and the Civil Procedure Law. In this context, the products and services presented to the consumer must always be in accordance with the technical arrangements and standards published in the Official Gazette by relevant ministries. These relevant ministries have the duty to conduct investigations and audits as well as market surveillance to control the conformity of the products. With regard to consumer problems, the Ministry of Customs and Trade is entitled to conduct surveillance of and investigations in the related sectors regarding the product subject to the consumer complaint. In such a case the Ministry might address questions to the manufacturer/producer and request detailed information and documents in order to determine whether the production process complies with instructions and technical standards. The Ministry initially conducts its discovery by reviewing the files and documents and if it deems it necessary, it is also authorised to conduct discovery at the premises of the producer.

Additionally, under Article 288 of the Civil Procedure Law, the judge can – either *ex officio* or at the request of the parties – decide upon discovery regarding the dispute matter in the court or in the relevant place of dispute. During the discovery, the judge can also decide to have expert assistance.

Discovery may take place under a procedure called ‘determination of evidence’ pursuant to the Civil Procedure Law. Under Article 400 of the Law, the parties to the dispute can request determination of evidence via discovery, expert examination or witness statements to be used in an ongoing or possible future action.

There is no specific area of discovery commonly explored in product liability cases. As for apex witnesses, on the one hand there is no specific regulation on this, but on the other hand, there is no provision under Turkish law that restricts the application to a company's chief executive officer's testimony if it is found necessary by the court.

Regarding cross-border discovery, according to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, a judicial authority of a contracting state may, in accordance with the provisions of the law of that state, request the competent authority of another contracting state, by means of a letter of request, to obtain evidence, or to perform some other judicial act. Since Turkey is a contracting state to this Convention dated 1970, Turkish courts may request another contracting state's competent authorities to conduct discovery or obtain expert opinions on necessary matters for the purpose of evidence gathering should this state also be a party to the Convention.

### **vii Appportionment**

Under the TCP Law, joint and several liability exists between the producer, seller and importer for the optional rights of the consumer in the event of a product being defective as explained above. As for defective services, the supplier is liable for the consumer's optional rights. These parties cannot be released from the liability even when they are not aware of the defect in the product or service.

Article 11 of the TCP Law foresees that general rules of the Law of Obligations apply for compensation demands of the consumer due to the defective product. Therefore, the consumer is also entitled to demand compensation of its material or moral damage from the manufacturer or producer, or seller (or both). The same rule applies for defective services.

As a result of the joint and several liability of the aforementioned persons, the consumer is entitled to raise its claims against any of them for any defect without needing to identify the party primarily at fault. The person who is exposed to the claims of the consumer and incurs the damages of the consumer has the right to take recourse against the other liable persons as per their internal relationship *pro rata* to their contribution to the defect.

Unless a longer period of time is agreed between the parties, the defect liability towards the consumer expires within two years as of the date the good was delivered to the consumer. This period is five years for immovable properties for housing or vacation purposes. For a defective service, unless a longer period of time is agreed between the parties, liability towards the consumer expires within two years as of the date the service was performed.

For claims regarding the damages arising from defective goods, the statutory period of limitation is two years as of the delivery date of the good if there is no longer period of time in the applicable laws or in the agreement between the parties. In any case, the compensation claims due to the defected product are eliminated after ten years from the date the product was launched on the market. However, if the defect is hidden from the consumer due to the seller's gross fault or deception, the statutory period of limitations does not apply.

As for claims regarding the damages arising from defective services, the statutory period of limitation is two years as of the date of service if there is no longer period

of time in the applicable laws or in the agreement between the parties. If the defect is hidden from the consumer due to the seller's gross fault or deception, the statutory period of limitations does not apply.

Except for claims regarding the damages due to the defective goods, the above-mentioned rules do not apply if the buyer is aware of the defect during the time of the purchase. The same applies to defective services.

Concerning succession, when a company acquires the product manufacturer, distributor or seller, the company will be held liable for the claims and responsibilities since merger with or acquisition of a company results in the transfer of all rights and liabilities to the assignee company unless otherwise agreed in the merger or acquisition agreements between the companies.

#### **viii Mass tort actions**

In Turkish law, mass actions are regulated for the first time by the Civil Procedure Law No. 6100, which entered into force on 2 October 2011. Under Article 113 of the Civil Procedure Law, associations and other legal persons can file mass actions in their own names within the scope of their statutes in order to protect the interests of their members. In these mass actions, determination of the concerned parties' rights as well as cessation and elimination of the unlawful acts and prevention of the future unlawful acts can be claimed.

Additionally, as per Article 73/6 and 74 of the TCP Law, the Ministry of Customs and Trade and consumer organisations are entitled to file mass actions requesting the elimination of unlawful acts regarding matters that concern the general interest of consumers. Article 74 rules that the Ministry of Customs and Trade, consumer organisations and consumers are entitled to file mass actions requesting the cessation of production and sale of defective series of goods as well as withdrawal of the defective series of goods from the market.

Where this action is filed, the decision of the court is applicable to all the consumers who will benefit from the decision.

The judgment rendered in the mass action may be based on the similar actions filed solely by other consumers.

For consumer-related cases, mass actions seem to be advantageous; however, for other civil cases, we shall see the settled practice in time. Nevertheless, we are of the opinion that these developments will be a positive step towards obtaining more effective and faster results in Turkish courts.

#### **ix Damages**

Please refer to our explanations under Section III, *supra*.

The Turkish courts are very strict regarding non-economical (moral) damages and they do not award large amounts for this type of damages. Claimants should therefore request a reasonable compensation amount so as not to be rejected.

According to the general principals of Turkish compensation law, the amount of the compensation is limited in proportion to the amount of the damages incurred. Turkish law does not allow for compensation exceeding the amount of the damage that would lead to the claimant's enrichment.

As the TCP Law does not set out any special provisions regarding injunctive relief the general rules of Civil Procedure Law apply. On the other hand Article 73/6 foresees that Ministry of Customs and Trade, consumer organisations and relevant public institutions can request injunctive relief for the elimination of unlawful acts in terms of matters that concern the general interest of consumers.

If deemed necessary, the courts can decide on injunctive relief, such as collection and seizure of the defective or unsafe good from the market, correction of price tags, and cessation of the defective or unsafe service.

## **V YEAR IN REVIEW**

The new Consumer Protection Law No. 6502 entered into force on 28 May 2014.

In the new law, provisions are almost parallel with the current TCP regarding defect liability. It should also be noted that there are no specific product liability provisions in the new law.

Food, food supplements, pharmaceuticals and any kind of direct sales sectors have been under surveillance by the relevant ministries – especially the Ministry of Customs and Trade – over the past few years. These sectors are very open to abuse and as they directly affect human health, the government intends that they should be strictly regulated.

Regarding the issue of insurers, most companies have insurance; however, on the consumer side, life or health insurance are not very widespread in Turkey except in some parts of the public (i.e., white-collar workers or people whose work is potentially hazardous). Nevertheless, product liability insurance is used in Turkey. If the coverage agreed by the parties encompasses third-party damage arising from defective goods or services, the insurer is obliged to compensate any damages should all the conditions in the insurance policy be met.

Product recalls do not occur frequently in Turkey so major product recalls cannot be listed. The only recalls of note in the past few years have been those of a prominent medical device company in Turkey as well as one by a well-known car company.

In recent years Turkish consumers have become more conscious of their rights. As a result of this, submissions for consumer disputes before the consumer arbitration committees and consumer courts have gradually increased (given that all these consumer applications are free of charge).

Considering the increasing awareness of consumers, producers and other parties in the sales chain have also become more vigilant and sensitive to consumer problems and feedback. The key points for the producer, importer and seller here would be (1) to be highly responsive to consumer problems and feedback; and (2) to comply with all legal and administrative requirements before launching a product or service, as well as cooperating with the governmental authorities in the event of market surveillance or audit.

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Uğur Aktekin is a partner at Gün + Partners specialising in intellectual property law, and co-chairs the IP department of the firm. His practice concentrates on trademark, design, copyright, information technology, unfair competition, domain names, advertising, media and consumer laws.

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On the information technology side, he advises on software copyright, data protection, data privacy and internet domain names. He also advises on all aspects of advertising and media legislation to various local and multinational food and beverages, technology, media, telecom and entertainment companies. Mr Aktekin is the author and co-author of numerous articles on intellectual property, information technology, media and advertising issues and frequently speaks at and moderates domestic and international seminars and conferences. He is a member of the leading international associations such as INTA, FICPI, IBA, ITECHLAW, MARQUES and ECTA and contributes to their committees and publications.

Mr Aktekin's practice has been recognised by many independent guides to the legal profession including the *Legal 500*, *Expert Guides* (Euromoney), *WTR 1000* and *Best Lawyers* and guides by *Who's Who Legal* and *Chambers & Partners*.

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Within IP law she has acted as counsellor and litigator on numerous projects and court actions involving trademarks, copyrights, domain names, broadcasting principles, unfair competition, advertising and media law, and consumer law.

Within advertisement, media and consumer law, she has advised various national and multinational companies in relation to trademarks, copyright, broadcasting, advertisement, marketing and sweepstakes issues, data protection, product liability, internet law, packaging, labelling, direct selling issues and consumer matters, and has defended clients before the relevant official bodies such as the Advertisement Board, the Supreme Council of Radio and Television, and the ministries.

Ms Gürbüz regularly writes articles and updates for *IBA*, *GALA*, *World Media Law Reports*, *Mondaq* and *Entertainment Law Review* with the aim of sharing her knowledge and expertise on these matters.

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Baran Güney is an associate at Gün + Partners specialising in intellectual property and is a member of the IP and TMT practice groups of the firm. His practice concentrates on trademark, design, information technology, domain names, advertising, media and consumer laws.

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