

Product liability and safety in Turkey: overview

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A Q&A guide to product liability and safety in Turkey.

The Q&A gives a high level overview of the sources of product liability law, establishing liability, liable persons, defences, excluding/limiting liability, court proceedings, evidence, class actions, litigation funding, remedies, product safety, product recall and reporting requirements.

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Sources of law

1. What are the main areas of law and regulation relating to product liability?

Turkey does not currently have specific legislation on product liability. However, the Product Safety and Technical Regulations Law 7223, which will enter into force on 12 March 2021, introduces a specific liability regime. This answer refers both to the current law and to the new product liability regime under Law 7223.

Product liability claims of a commercial nature are based mainly on tort law and contract law provisions under the Turkish Code of Obligations 6098 (TCO). Consumers bringing product liability claims can rely on the Consumer Protection Law 6502 (Consumer Protection Law), enacted in light of EU directives, including:

- Directive 2002/65/EC on distance marketing of consumer financial services.
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market.
- Directive 2008/48/EC on credit agreements for consumers.
- Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.

The term consumer is defined in the Consumer Protection Law broadly as "any natural and legal person who is acting for purposes that are not related to their trade, business or profession".

The Regulation of Liability for Damages arising from Defective Goods, published in the *Official Gazette* on 13 June 2003, contains similar provisions to that of the Product Liability Directive (85/374/EEC). However, the Regulation's validity became controversial following the introduction of certain contradictory provisions in 2013 by the Consumer Protection Law.

For administrative regulation, the Law on the Preparation and Implementation of Technical Legislation on Products 4703 (Technical Legislation Law) sets out general principles on:

- The supply of products on the market.
- Assessment of compliance with technical regulations.
- Market surveillance and audit.
- Administrative fines for breach of product liability and safety rules.

The Technical Legislation Law is set to be replaced by the Product Safety and Technical Regulations Law 7223 on 12 March 2021, which introduces new measures against unsafe products (such as banning access to websites where such products are sold). Law 7223 also provides that:

- No product can be put on the market before it is certified by the Ministry of Trade or the private certification institutions authorised by the Ministry of Trade (and accredited by the Turkish Accreditation Agency affiliated to the Ministry of Foreign Affairs).
- Mandatory product recall must be carried out for unsafe products whose risks cannot be addressed by any other measures.

The new law does not only introduce detailed rules on administrative aspects of product safety, but also establishes a specific regime of product liability. Article 6 of Law 7223, which was modelled on the Product Liability Directive, recognises the non-contractual liability of producers and/or exporters for damages caused by a defective product. Law 7223 seeks to codify rules that were previously set out in regulations, but which could not be enforced due to the hierarchy of norms. Law 7223 also introduces a new three-year limitation period to bring product liability claims, instead of two years under the TCO and Consumer Protection Law.

The Turkish Criminal Code 5237 (Turkish Criminal Code) sets out a number of criminal offences relating to product liability under the sections Offences against Public Health and Offences Relating to Economy, Industry and Commerce, such as:

- Selling, supplying or keeping food materials or drugs endangering human health and life (*Articles 186 and 187*).
- Producing, providing and selling poisonous products without obtaining necessary permissions (*Article 193*).
- Influencing the prices of various products in the market (*Article 237*).

2. What are the most common causes of action and what is required to establish liability under them?
When is a product defective?

The most common causes of action relating to product liability are described below.

Defect liability under the Code of Obligations (TCO)

Under the provisions of the TCO relating to sales contracts, the seller is liable to the buyer for any breach of warranty of quality and for any defects that would materially or legally negate or substantially reduce the value of the object or its fitness for its designated purpose. The seller is liable even if they were not aware of the defects.

To establish the seller's liability, the buyer must examine the purchased goods as soon as reasonably possible and inform the seller of any defects that would cause the seller to be liable under the TCO. Otherwise, the buyer will be deemed to have accepted the defect. However, the seller cannot be discharged from liability relying on the buyer's failure to timely inspect the purchased good if either:

- The good contains a hidden defect that cannot be detected on a regular inspection (*Article 223/2, TCO*).
- The seller was at gross fault when selling the defective product (*Article 225, TCO*).

In this context, the TCO provides alternative remedies to the buyer relating to the defective goods, which apply regardless of the seller's fault. To obtain compensation for indirect losses (for example, loss of profit), the buyer must prove the seller's fault.

Defect liability under the Consumer Protection Law

Under the Consumer Protection Law, defective goods are goods that do not conform to the sample or model agreed by the parties, or do not have the objectively necessary qualities. The Consumer Protection Law states that goods are also deemed defective if they:

- Do not have one or more qualities appearing on their packaging, tag, user manual, website, adverts and announcements.
- Do not have the qualities made known by the seller or stated in the relevant technical legislation.
- Are unable to carry through their designated use.
- Have defects that would materially or legally negate or substantially reduce the fitness of the goods for their designated purpose.

In a sale of a defective good, the buyer is entitled to certain alternative remedies against the seller regardless of fault. Some of these remedies, in particular requesting repair or delivery of a replacement good, can be asserted against the producer and the importer as well as the seller.

Tortious/non-contractual liability

Tortious liability is regulated by the TCO, and does not distinguish between consumers and non-consumers. Tortious liability can be used to establish the liability of producers against end-users and other injured parties in the absence of a contractual relationship. In principle, to establish liability the injured party must prove:

- Injury.
- The defendant's fault.
- A causal link between the defendant's act and the injury.

To determine fault, the courts tend to examine whether the product in question complies with the applicable technical standards and safety measures. Although both the Technical Legislation Law and the new Product Safety and Technical Regulations Law provide that products compliant with the applicable technical standards are presumably safe, it is possible in theory for the injured party to prove the contrary.

3. Who is potentially liable for a defective product? What obligations or duties do they owe and to whom?

Under the TCO, in the context of a sales contract, the seller is liable to the buyer for defective goods. If the product purchased has any defects as described under the TCO (*see Question 2*), the buyer can claim the following alternative remedies:

- Rescind the agreement, by informing the seller that they are ready to return the goods.
- Retain the defective goods, and request a discount on the purchase price in proportion to the defect.
- Request repair of the defective goods free of charge at the seller's full expense, provided that the repair does not impose an excessive cost on the seller.

- Request replacement of the defective goods.

(Article 227, TCO.)

The buyer can also claim compensation for any further (indirect) loss, unless the seller can prove that they are not at fault.

If the buyer opts to rescind the sale agreement, they must return the product to the seller and claim:

- Reimbursement for the purchase price paid together with interest.
- Expenses incurred due to the delivery and safeguarding of the defective product, and all other damages directly caused by the defective product.

The seller can prevent the buyer from using these remedies by immediately providing goods of the same kind which are free from defects and indemnifying the buyer for all their losses.

The Consumer Protection Law provides consumers with four alternative remedies, which are the same as those in Article 227 of the TCO. Consumers can request all of these remedies from the seller. They can also enforce their requests for free repair and a replacement for the defective goods against the producer and importer.

The Consumer Protection Law imposes specific obligations and duties on producers and importers, as follows:

- Producers/importers must issue a guarantee certificate for certain goods which provides that the statute of limitation is at least two years.
- With respect to goods sold with a guarantee certificate, producers, importers and sellers are jointly liable to the buyer, if the seller:
 - fails to repair the defective good in a timely way, or the good becomes broken after being repaired by the seller; and/or
 - rejects the buyer's request for any alternative remedies.
- Producers/importers must provide after-sales service during the expected life of the goods.

Under the tort law provisions of the TCO, the producer, manufacturer and any other relevant parties who do not have a contractual relationship with the buyer can be liable for damages caused by a defective product. Sellers and other potential parties may be liable not only to the buyer but to injured third parties, such as the buyer's household.

Defences



4. What are the defences to a product liability claim?

Under the contract law provisions of the TCO, the seller is not liable for defects that the buyer was aware of at the time of contracting (*Article 223/2, TCO*).

Another defence is the buyer's failure to perform inspection and notification, in which case the buyer is deemed to have accepted the defect unless the defect is latent or hidden (*Article 223, TCO*).

Under the tort law provisions of the TCO, the seller or any other liable party can raise the defence that they are not at fault, or that the defect has no relation to the alleged damage.

Defences for the seller under the Consumer Protection Law are similar to those under the TCO. Additionally, the Consumer Protection Law provides that:

- The seller is not liable for the content of an advert if:
 - they prove that they do not know about the advert and cannot be reasonably expected to know the content of the advert;
 - the content of the advert was rectified at the time of the sale agreement; or
 - the advert had no impact on the buyer's intent to conclude the sale agreement.
- If the buyer enforces its request for repair or a replacement good against the producer and/or importer, the defendants can avoid liability by proving that the defect occurred after they released the good into the market.

5. Is there a time limit in which proceedings can be brought?

The time limitation period for sale contracts is two years from delivery, unless the seller undertakes liability for a longer term. The seller cannot benefit from this limitation period if they were at gross fault in providing the defective product. If so, the general limitation period of ten years applies (*Articles 146 and 149, TCO*). The same limitation periods apply under the Consumer Protection Law (*Articles 12, Consumer Protection Law*).

The limitation period under tort law is two years from the date when the injured party finds out about the injury and the party causing the injury. The limitation period ends at the latest ten years from the tortious act, which can be the manufacture or sale of the defective good, depending on who the defendant is (*Article 72, TCO*).

If the tortious act is an offence for which criminal law imposes a longer limitation period, the longer period will also apply to the civil law claim.

Excluding/limiting liability

6. Can a supplier limit its liability for defective products and are there statutory restrictions on a supplier doing this? Do consumer protection laws apply? Are guarantees or warranties as to quality implied by law? Is there a mandatory or minimum warranty period for consumer products?

Under the contract law provisions of the TCO, the seller's liability can be limited under an agreement between the buyer and the seller. Any limitation of liability is void where the seller is at gross fault in providing the defective goods (*Article 221, TCO*).

However, if the activities of the seller require specialisation and an authorisation to be granted by the relevant legislation or the administrative authorities, it is not possible to limit the seller's liability, irrespective of any degree of fault (*Article 115, TCO*).

The Consumer Protection Law does not have any provisions on limitation of the seller's liability relating to defective goods. However, the above provisions of the TCO apply by analogy.

The Product Safety and Technical Regulations Law 7223, which will enter into force on 12 March 2021, prohibits any contractual provision limiting the liability of manufacturers and importers.

The definition of defect under the TCO and the Consumer Protection Law has an implied warranty that the seller is responsible for defects that would materially or legally negate or substantially reduce the value of the good or its fitness for the designated purpose. The Consumer Protection Law also provides that certain goods to be specified under secondary legislation must be supplied with a guarantee certificate of at least two years. However, the guarantee period may vary under the annex attached to the Warranty Certificate Regulation. For example, cars are subject to a two-year guarantee period but the guarantee ceases to apply as soon as they reach 60,000 kilometres of mileage.

Product liability litigation

7. In which courts are product liability cases brought? Are product liability disputes generally decided by a judge or a panel of judges? Are juries used in certain circumstances?

Matters regulated by the Turkish Commercial Code 6102 (TCC) and all business-related transactions/activities are commercial transactions, and all related disputes are commercial cases. Unless otherwise provided, all commercial cases are brought before the Commercial Court of First Instance, regardless of their value or amount.

Under the Consumer Protection Law, a consumer is a real or legal person acting for non-professional and non-commercial purposes. Cases relating to consumer transactions are brought before the Consumer Court. Where a consumer concludes a contract that is a commercial transaction for the counterparty, the transaction is a consumer transaction.

In consumer transactions, instead of filing a lawsuit, the consumer can consult with the competent Consumer Arbitration Committee (consumer boards) regarding defective goods or services, if the consumer is unable to settle the dispute amicably. Under the Regulation on Consumer Arbitration Committees published in the *Official Gazette 29188* dated 27 November 2014, these committees can settle disputes arising from all types of consumer problems, if they fall within the monetary thresholds. The thresholds for 2020 are as follows:

- District consumer arbitration committee: the dispute must be under TRY6,920.
- Provincial consumer arbitration committees located in metropolitan cities: the dispute must be between TRY6,920 and TRY10,390.
- Provincial consumer arbitration committees located in the centre of non-metropolitan cities: the dispute must be under TRY10,390.
- Provincial consumer arbitration committees located in the districts of non-metropolitan cities: the dispute must be between TRY6,920 and TRY10,390.

Disputes over these thresholds cannot be brought before the consumer arbitration committees and instead must be heard by the consumer courts. A recent law that came into force on 22 July 2020 introduces mandatory mediation before any consumer dispute can be brought before consumer courts (*see Question 8*).

Product liability cases tried before commercial courts are decided by one president and two members. In consumer courts, a sole judge renders the judgment. A consumer arbitration committee has five members, including a:

- President.
- Member to be appointed by the mayor among expert personnel of the municipality.
- Lawyer to be appointed by the bar of the relevant province.
- Member appointed by the Chamber of Commerce and Industry where the seller and/or the provider is a merchant, or a member appointed by the Union of the Chamber of Merchants and Craftsmen where the seller and/or the provider are tradesmen or craftsmen.
- Member appointed by consumer organisations.

8. How does a party initiate proceedings?

Commercial lawsuits that concern the payment of a certain sum and all other compensation claims are subject to mandatory mediation (*Article 5/A, TCC*). This means that the mediation process must be exhausted for any lawsuit to be brought. In principle, the mediator must finalise the process within six weeks, subject to a two-week extension.

Consumer disputes recently became subject to mandatory mediation. From 22 July 2020, claimants in a consumer dispute first need to apply for mediation. If no solution is reached by the parties during the mediation proceedings, the claimant will be able to bring a lawsuit before the consumer courts. The amendment excludes consumer arbitration committees applications.

The commercial court hears cases according to the written procedure rules, whereas the consumer court follows a simplified procedure. The main difference is the number of submissions that must be filed before the court progresses to trial on the merits. Under the written procedure rules, the parties can exchange two submissions. In simplified proceedings, only one submission can be exchanged.

In either case, proceedings start with a written plaint petition and deposit of an advance payment for the court fees and expenses. The claim petition must include some elements such as the:

- Name of the competent court.
- Names and addresses of the parties.
- Turkish ID number of the claimant and passport numbers of non-Turkish claimants.
- Names and addresses of the attorneys, if any.
- Subject matter of the claim and claim amount.
- Summary of the material facts.
- Explanatory notes in relation to evidence, if any.
- Legal grounds.
- Precise explanation of the claim.
- Signature of the claimant or their attorney.

9. Who has the burden of proof and to what standard?

The burden of proof is on the party who brings the claim, unless otherwise provided by law.

The provisions related to tortious liability under the TCO state that the injured party must prove the damage, the fault of the counterparty and a causal nexus. However, the Supreme Court does not always strictly apply this principle in product liability cases, and shifts the burden of proof so that the producer must prove that the good is free of defects. The reasoning is the "unwritten principle that those who pose a danger have to take necessary preventive measures"

and that buyers are often deprived of access to necessary evidence showing the complex production stage (*Supreme Court Assembly of Civil Chambers; 27.11.1996, merits no. 1996/4-588, decision no. 1996/831*).

In a breach of contract, the defendant (seller) must prove that they are not at fault. Sales contracts provisions further stipulate that the seller is responsible for alternative remedies (including indemnification of direct loss) provided under Article 227 of the TCO, even if they did not know that the good supplied had defects (*see Question 3*).

10. How is evidence given in proceedings and are witnesses cross-examined?

Unlike in criminal proceedings, parties to a civil law dispute are responsible for determination of the facts and collection of evidence. Parties should indicate all the evidence during the exchange of petitions before the court continues with the trial on the merits.

On request of the parties, the court can order public bodies, third parties and even the counterparty to submit the requested evidence. If a party does not submit the documents within the time granted by the court, the court can accept the allegation of the other party as an undisputed fact, so that the respondent who did not obey the court order is no longer allowed to bring any other evidence.

The court also has power to:

- Conduct an investigation on site.
- Obtain an expert opinion on technical aspects.
- Hear witnesses presented by the parties.

Cross-examination of witnesses is not available in civil proceedings. Only the court is authorised to ask questions during witness testimony. Usually, the court allows the parties' counsel to ask questions to clarify and remedy deficiencies in witness evidence.

11. Are parties able to rely on expert opinion evidence and are there special rules or procedures for it?

The parties can submit expert opinion evidence to the court. After submitting the expert evidence, on request or on their own initiative, the judge can invite the expert and examine the expert during the trial.

12. Is pre-trial disclosure/discovery required and which rules apply? If not, are there other ways to obtain evidence from a party or a third party?

There is no comprehensive discovery and disclosure procedure. The Attorneys Act as amended in 2001 improved lawyers' role in collecting evidence. Lawyers can gather information and evidence from public and private bodies. However, this power is not widely used due to lack of procedural rules and the respondents' unco-operative attitude.

Therefore, it is mainly the court that can collect evidence on the claimant's request, particularly evidence held by the counterparty. The claimant is merely expected to set out the importance and relevance of the evidence not in their possession.

The counterparty holding the evidence is mainly obliged to disclose all evidence requested by the court. If the counterparty does not provide the court with the evidence/documents, or does not reasonably show that it does not possess it, the court can accept the statement of the party who requested disclosure about the evidence/document.

An official authority or third party that does not provide the court with the evidence must give reasons for this. If the court does not find the reasoning sufficient, the court can hear the relevant authority or third party as a witness.

13. Is there liability for spoliation of evidence/a remedy for destruction of or failure to preserve evidence (in particular, the product)?

In criminal product liability cases, a person who destroys, hides, modifies or disrupts evidence of the crime is punished with imprisonment for six months to five years. However, the person who committed the criminal offence cannot be punished for spoliation of evidence.

There is no express provision in the Code of Civil Procedure in this respect. However, the court has discretion to accept the allegation of the other party as an undisputed fact against the party who spoiled the evidence.

If a counterparty, authority or third party attempts to prevent an onsite examination, the court can execute the proceeding by force and impose an administrative fine and compensation to cover the court's expenses.

14. What types of interim relief are available before a full trial and in what circumstances?

The main temporary legal protections that can be requested from the court before a full trial are as follows.

Preliminary injunction

This can be ordered from the court, if there is a concern that a change in the current situation (status quo) would result in difficulty or impossibility to enforce a right at the end of the full trial. If it is necessary to protect the rights of the claimant immediately, the judge can order the preliminary injunction without hearing the other party.

To obtain a preliminary injunction, the applicant must make a security deposit payment to compensate possible damage to the other party and third parties as a result of the injunction. There is no specific provision on the amount of the deposit. In practice, the deposit is about 15% of the dispute value.

After the preliminary injunction is issued, a lawsuit must be filed within two weeks, otherwise the preliminary injunction will terminate automatically.

Preliminary attachment

Preliminary attachment is subject to conditions similar to a preliminary injunction. Preliminary attachment can be used to seize the debtor's assets as protection if the applicant succeeds at the end of the trial.

Recovery of evidence

Requests for recovery of evidence are commonly applied for before trial, especially in product liability cases. Each party can request discovery, expert examination and witness statements to determine the facts to be set out in the case.

A legal interest is required to bring this action. The applicant will be deemed to have a legal interest if setting out the evidence is considerably difficult, or the evidence is likely to be spoiled unless an order is made immediately.

15. Can the successful party recover its costs associated with the litigation, such as legal fees and experts costs and to what extent?

The main costs of civil proceedings are application fees, litigation expenses (such as notification fees, expert fees and witness fees) and official attorney fees. The successful party can generally recover these costs from the losing party. If both parties partially succeed, costs are allocated proportionally.

Under a recent amendment of the Attorney Fee Tariff applicable from 2020, any statutory attorney fees in compensation actions that are awarded to the defendant in proportion to their success in a lawsuit cannot exceed the statutory attorney fees that are awarded to the claimant (*Article 13/3, Attorney Fee Tariff General Provisions*). This means that, if the claimant loses the case entirely, the statutory attorney fee awarded to the defendant will be the minimum fee under the Attorney Fee Tariff. Before this change, the defendant was awarded attorney fees in proportion to the portion of the claims rejected by the court.

The contractual professional fee agreed between a party and their attorney is generally not recoverable under Turkish law.

16. What types of appeal are available?

Under the Code of Civil Procedure, decisions of the courts can be appealed to the regional courts of appeal. However, actions concerning material rights of less than TRY5,390 cannot be appealed.

Decisions on a preliminary injunction and preliminary attachment can also be appealed to the regional courts of appeal.

Decisions of the consumer courts on objections to awards of a consumer arbitration committee are final and cannot be appealed.

The grounds for an appeal to a regional court of appeal are not limited. Any wrong application of procedural or substantive law or factual error can be appealed. Regional appellate courts will also consider a breach of public order, even if not challenged by the parties.

In principle, decisions of regional appellate courts can be appealed to the Court of Cassation. However, decisions on material rights of less than TRY72,070 cannot be appealed to the Court of Cassation.

The grounds for appeal to the Court of Cassation are:

- Wrongful application of the law or agreement between the parties.
- Absence of preliminary requirements to file an action.
- Unlawful dismissal of evidence.
- Procedural mistakes or deficiencies affecting the judgment.

17. How long does it typically take to litigate a product liability action from start to finish?

Generally, consumer arbitration committees issue their final decisions within six months. If not appealed before a consumer court, the decision of the committee becomes final. If appealed, or if a lawsuit is lodged with the consumer court directly, it generally takes the court an average of 450 days to issue its final decision, according to judicial statistics of the Ministry of Justice.

A regional court of appeal may take about two years to render its final decision. An appeal before the Court of Cassation may take another two years from start to finish.

However, most product liability cases are finalised within two years, as the monetary appeal thresholds are generally not met (see [Question 16](#)).

18. Is it common for product liability actions to settle? Are there any rules or procedures that govern settlements (for example, for minors or class actions)?

According to judicial statistics for 2018 (data for 2019 is yet to be published), only 34 lawsuits out of over 100,000 were settled during proceedings. Therefore, it is not common for consumer disputes, including product liability actions, to settle.

If a case is settled during ongoing proceedings, the parties can request the court to approve the settlement, in which case the settlement becomes a final court decision binding on both parties. Alternatively, the parties can request the court to end the proceedings without any decision on the merits (*Article 315, Civil Procedural Code*). The parties' counsel can only settle if they are specifically authorised to do so by their clients (*Article 74, Civil Procedural Code*).

Class actions are not recognised in Turkey. However, there are "community actions" that can be brought by associations and other legal entities on their own behalf (see [Question 19](#)). As the legal consequences of these actions do not have any binding effect on the affected consumers, the applicant entity cannot enter into settlement agreements on their behalf.

Class actions/representative proceedings

19. Are class actions, representative proceedings or co-ordinated proceedings available? If so, what are the basic requirements? Are they commonly used?

Consumer organisations, relevant public institutions and organisations, and the Ministry of Customs and Trade, except in cases of unfair commercial practices and commercial adverts, can apply to the consumer courts for:

- An interim measure to prevent or stop activities in violation of the relevant law.
- An action to determine an activity as unlawful and prevent or stop the relevant action.

(*Article 73/6, Consumer Protection Law.*)

The Consumer Protection Law designates the consumer groups and public bodies that can file these community actions for consumer-related infringements.

The Ministry of Customs and Trade, consumers or consumer organisations can file a lawsuit for discovery of a series of defective goods on sale, suspension of production or sale, removal of a defect, and recall of goods retained for sale (*Article 74, Consumer Protection Law*).

Consumer protection institutions and associations are active in enforcing consumer rights. There are many lawsuits reported in the media that are brought for the benefit of consumers. Generally, these lawsuits focus on matters that affect the general public. Examples include actions brought against banks for unlawful fees charged to consumers and against electricity distribution and/or telecoms companies for overbilling.

Litigation funding

20. Is litigation funding by third parties allowed? Is it common? Are contingency fee or no win no fee arrangements allowed?

Turkish legislation does not regulate this matter. There is no statutory obstacle for parties to resort to third party funding in litigation proceedings, and it is possible to obtain such funding under the freedom of contract principle and general provisions of the TCO. However, third party funding is not common, especially because court fees are relatively low.

Providing funding in litigation does not automatically entitle the funding third party to any rights in the lawsuit.

Litigation funding by the state for people with difficulties paying the fees is set out in the Code of Civil Procedure.

Contingency fees or no win no fee arrangements are not allowed under Turkish law.

Remedies

21. What remedies are available to a successful party in a product liability claim?

A buyer who succeeds on the merits can exercise one of four alternative remedies stipulated under the TCO and/or the Consumer Protection Law (*see Question 3*). If the seller is proven to be at fault when providing the defective good, the buyer can also claim compensation for indirect (positive) damages, which in most cases are loss of profit.

A party can also claim compensation for immaterial (moral) damages. In this case, the court has discretion to determine the amount of compensation according to the matter of the dispute.

The successful party in a product liability claim can recover the costs associated with the litigation (*see Question 15*).

22. How are damages calculated and are there limitations on them? Are punitive or exemplary damages available and in what circumstances?

Punitive or exemplary damages are not available under Turkish law.

Pecuniary damages are losses that can be quantified in monetary terms. In principle, a person claiming damages must prove that loss or damage occurred. However, in practice, such claims are mostly calculated by an expert appointed by the court during the proceedings.

If the exact value of the loss or damage cannot be quantified, the court will estimate the value at its discretion in light of the normal course of events and steps taken by the injured party.

The court can also take into account the following when calculating compensation:

- The degree of fault.
- Whether the injured party consented to the action that caused the loss, or circumstances attributable to them contributed to the loss or damage, or otherwise exacerbated the position of the liable party.
- Whether the liable party will gain from the transaction.

23. Is liability joint and several/how is liability apportioned, including where a partially responsible entity is not a party to the proceedings?

Liability arising out of a sale contract under the Consumer Protection Law and TCO mainly attaches to the seller as the party to the sale contract. Except for a few cases, this liability is not joint and several with the producer and/or importer.

However, the buyer can hold the seller and the producer and/or importer jointly and severally liable on different grounds. In particular, it is possible to hold the seller liable relying on the contractual relationship, and the producer and/or importer liable in tort. If the seller, the producer and/or the importer are the defendants, the compensation ordered by the court can be enforced against any of them due to their joint and several liability. Therefore, the court will not apportion liability among the defendants.

If only one of the potentially liable parties is the defendant, the defendant can choose to notify the other liable parties of the claims. The notified parties can choose to submit their defences to the court, but cannot be party to the dispute. The defendant benefits from notifying other potentially liable parties when then file a recourse action against the other liable parties within two years after they compensate the buyer. If the respondents of the recourse action have been notified of the lawsuit initiated by the buyer, they cannot argue that the award of compensation is unlawful. Instead, the respondents can argue that:

- The notification of the buyer's claims was too late for them to properly exercise their defence.
- The defendant failed to defend its case properly against the buyer.

During the recourse action, the court will apportion the liability of each jointly and severally liable party.

Product safety

24. What are the main laws and regulations for product safety?

The Technical Legislation Law is the main law regarding product safety. It was issued in 2001 to harmonise Turkish product safety legislation with EU legislation at that time. It is the basis for more specific technical regulations issued by various public institutions and ministries. It covers all types of products released on the market, whether consumer products or not.

In addition, the Regulation on Market Surveillance and Inspection of Products dated 17 January 2002 (promulgated by the Council of Ministers) provides details on inspection of products, their safety and compliance with technical legislation and measures to be adopted.

There are more detailed regulations on market surveillance and inspection of products promulgated by the Ministry of Science, Industry and Technology, Ministry of Customs and Trade, and Ministry of Labour and Social Security.

25. Are there general regulators of product safety issues? Are there specific regulators for particular goods or services? Briefly outline their role and powers.

The Ministry of Economy is the co-ordinating body for product safety issues. Under the General Directorate of Product Safety and Surveillance of the Ministry of Economy, ten different public entities conduct product safety and market surveillance activities for different product groups. These are the:

- Ministry of Science, Industry and Technology (www.sanayi.gov.tr).
- Ministry of Customs and Trade (www.gtb.gov.tr).
- Ministry of Health (www.saglik.gov.tr).
- Ministry of Food, Agriculture and Livestock (www.tarim.gov.tr).
- Ministry of Environment and Urban Planning (www.csb.gov.tr).
- Ministry of Labour and Social Security (www.esgb.gov.tr).
- Ministry of Transportation, Communication and Maritime Affairs (www.ubak.gov.tr).
- Information and Communication Technologies Authority (www.btk.gov.tr).
- Tobacco and Alcohol Market Regulatory Authority (www.tapdk.gov.tr).
- Energy Market Regulatory Authority (www.epdk.org.tr).

These entities can prepare detailed technical legislation under the supervision of the Ministry of Economy. They regularly conduct market inspections. If certain goods or services do not comply with the technical standards and legislation, these entities can impose required measures, for example:

- Goods can be withdrawn from circulation.
- Marketing of goods can be limited or banned.
- They can order producers to withdraw and dispose of goods.

Product recall

26. Do rules or regulations specify when a product recall is required or how companies should make decisions regarding product recalls and other corrective actions? Are any criteria specified?

As a general rule under the Technical Legislation Law, producers cannot put on the market any products that are not safe. If a public entity mentioned in [Question 25](#) determines that a certain product is unsafe, it can order the product to be recalled, ban its supply to the market or order its destruction due to the risks it poses. The law and regulations on market surveillance and inspection of products do not contain specific criteria on which measure to apply. It is up to the relevant public entity to determine the measure.

For certain product groups, a company can voluntarily decide to recall a product and take other corrective actions without a decision of the relevant public entity. There are no detailed criteria on voluntary recall except that the:

- Product must be unsafe or non-compliant with the technical requirements.
- Company looking to conduct voluntary product recall and/or other corrective actions must inform the relevant authorised public entity.

27. Are there mandatory advertising requirements for product recalls? Are there other rules governing how a product recall should be conducted?

Under the Technical Legislation Law, if the relevant public authority decides to conduct a product recall or other corrective action, the producer must inform the public about the corrective action and nature of the incompatibility with the technical standards using effective means.

If the public authority finds that the means used by the producer are insufficient or unfit for the specific corrective action, it can order a product recall or other corrective action to be announced to those at risk in two national newspapers or national television channels. If it is possible to inform those at risk through local newspapers or television channels, this may be sufficient. As an alternative, if possible, the persons at risk can be directly contacted and informed of the risks (*Article 11, Technical Legislation Law*).

Under the regulation on market surveillance and product recall promulgated by the Ministry of Science, Industry and Technology, a producer conducting a voluntary product recall must inform the provincial directorate of the Ministry. The directorate then imposes an appropriate period of time for the producer to complete the recall. In the meantime, the Ministry announces the recall on its website. The regulations promulgated by the Ministry of Customs and Trade and the Ministry of Labour and Social Security adopt similar principles, but may also prescribe different requirements (for example, the producer may be required to announce the recall on its website).

28. Is there a mandatory obligation to report dangerous products or safety issues to the regulatory authorities?

There are no specific mandatory reporting obligations under the Technical Legislation Law or the relevant regulations. However, some of the more detailed regulations on specific product groups (for example, the Regulation on Electrical Equipment Designed for Use Within Certain Voltage Limits) state that companies must immediately inform the relevant public entity if they become aware that a certain product is unsafe or non-compliant with the technical regulations.

Because the legislation on product safety is very scattered, reporting obligations and penalties for non-compliance may vary depending on the product type. Relevant ministries that are responsible for market monitoring and product compliance matters generally decide on the ban and recall of products. These decisions are regularly announced on ministries' websites. For example, the Ministry of Industry and Technology published the list of recalled products in

2020 on its website, which includes electrical devices that pose significant risks of injury (such as certain lamps, cables, and scooters).

29. Is there a specific requirement to provide progress reports and/or keep the authorities updated about the progress of corrective actions? In practice, do authorities expect periodic update reports?

Each public authority prepares detailed legislation on market surveillance and product inspection for specific products in its jurisdiction. While the Technical Legislation Law does not impose any reporting obligations and update reports, some of the more detailed and product-oriented legislation may require such reports. For example, the Regulation on Market Surveillance and Audit promulgated by the Ministry of Science, Industry and Technology specifically requires the producer to share periodic progress reports of corrective actions with the provincial directorate of the Ministry.

Recent trends and reform

30. Are there any recent trends in product liability and safety law? Have there been any recent significant changes or important cases? Are there any legal or procedural issues that are attracting particular interest in your jurisdiction?

In the past few years, authorised public entities have gradually increased the number of inspections, particularly attributing a greater importance to chemical testing. In particular, toys, stationery equipment, shoes, bags and clothing items for children have come under close scrutiny.

31. Are there any proposals for reform and when are they likely to come into force?

Turkish product liability and safety legislation is very scattered. Different authorities promulgate similar but different regulations, resulting in a lack of uniform approach. There is also a growing need to harmonise legislation with current EU product safety and liability legislation. To this end, the Product Safety and Technical Regulations Law 7223 was enacted and is expected to enter into force on 12 March 2021 (see [Question 1](#)).

Contributor profiles

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Professional qualifications. Lawyer, Turkey

Areas of practice. Insurance and reinsurance; dispute resolution; international commercial arbitration.

Non-professional qualifications. Law Faculty, Ruprecht-Karls University, Heidelberg, Germany, LL.M., 2005; Law Faculty, Ankara University, Ankara, Turkey LL.B., 2001

Recent litigation and transactions

- Advising and representing a multinational technology company on multiple product liability claims during both settlement negotiations and litigation proceedings. Advising the same company on product recall procedures.
- Advising a multinational technology company in a multi-district class action before US courts to the extent it relates to Turkish law.
- Advising a multinational medical equipment manufacturing company on a product liability case filed against its local distributor. The case related to medical devices manufactured by the client broken during a surgical operation, and the client participating in the court proceedings as the notified party.
- Representing an agricultural company in several product liability cases with a specific focus on agriculture regulations.

Languages. English, Turkish, German

- **Professional associations/memberships**
- International Bar Association (IBA), Secretary of Insurance Committee.
- International Insurance Law Association (AIDA).
- The Federation of Defense and Corporate Counsel (FDCC).
- Ethics and Reputation Society of Turkey (TEID).
- Istanbul Arbitration Association (ISTA).

Publications

- *Insurance Litigation 2019 in Turkey, GTDT, Co-Author, 6 March 2019.*
- *International Insurance Law and Regulation, Thomson Reuters (West), Co-Author, 26 October 2018.*
- *The Insurance and Reinsurance Law Review, 6th Edition, Turkey Chapter, The Law Reviews, Co-Author, 8 June 2018.*
- *Arbitration procedures and practice in Turkey: overview, Arbitration Global Guide 2017, Practical Law, Co-Author.*
- *Litigation and enforcement in Turkey: overview, Practical Law, Dispute Resolution Global Guide, Co-Author, 2017.*
- *The Reinsurance Market in Turkey, Gün + Partners, Co-Author, 12 December 2017.*
- *The Insurance and Reinsurance Law Review, 5th Edition, Turkey Chapter, the Law Reviews, Co-Author, 2017.*
- *Insurance Litigation 2017, Turkey Chapter, Getting the Deal Through, Co-Author, 2017.*
- *PLAC's webinar on "Key developments in consumer law and regulatory risks in India, the Middle East and Turkey", Speaker, 2016.*
- *Foreign Enforcement of ICA Awards, Liverpool, Panellist, October 2016.*
- *CDR Autumn Litigation Symposium, London, Speaker, September 2016.*
- *Enforcement of foreign awards under Turkish Law, American Bar Association Section of International Law, ILEX Delegation to Turkey, Istanbul, Speaker, May 2016.*

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Professional qualifications. Lawyer, Turkey

Areas of practice. Insurance and reinsurance; dispute resolution; international commercial arbitration.

Non-professional qualifications. Faculty of Law, Koc University, Istanbul, LLB, 2013

Recent litigation and transactions

- Advised multinational manufacturing companies active in a wide range of markets including electronics, cosmetics and ready wear sectors, in relation to preventive measures such as product recall actions in Turkey and monitoring such actions.
- Advised a multinational manufacturer of electronic components in relation to product liability and alternative remedies to be pursued by end-users.
- Advising and representing international reinsurance companies with respect to the risks covered in Turkey.
- Actively involved in high-profile ICC arbitrations relating to M&A disputes and international sales.

Languages. English, Turkish, German

Publications

- *Insurance Litigation 2019 in Turkey, GTDT, Co-Author, 6 March 2019.*
- *International Insurance Law and Regulation, Thomson Reuters (West), Co-Author, 26 October 2018.*
- *The Insurance and Reinsurance Law Review, 6th Edition, Turkey Chapter, The Law Reviews, Co-Author, 8 June 2018.*
- *The Risks and Regulations Driving the Turkish Insurance Market's Growth, Insurance Post, Co-Author, 6 March 2018.*
- *The Reinsurance Market in Turkey, Gün + Partners, Co-Author, 12 December 2017.*
- *Litigation and enforcement in Turkey: overview, Dispute Resolution Global Guide, Practical Law, Co-Author, 2017.*
- *The Insurance and Reinsurance Law Review, 5th Edition, Turkey Chapter, The Law Reviews, Co-Author, 2017.*
- *Insurance Litigation 2017, Turkey Chapter, Getting the Deal Through, Co-Author 2017.*

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