

# Product liability and safety in Turkey: overview

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

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## Resource Type

Country Q&A

## Jurisdictions

International

Turkey

## Sources of law

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

Turkish law does not have specific legislation for product liability. Product liability claims are based mainly on tort law and contract law provisions in the Code of Obligations 6098.

In addition, consumers can base product liability claims on the Consumer Protection Law 6502, enacted in light of EU directives, including:

- Directive 2002/65/EC concerning 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 under the Consumer Protection Law broadly as "any natural and legal person who is acting for purposes which are not related to his trade, business or profession".

The Regulation of Liability for Damages arising from Defective Goods, published in the Official Gazette on 13 June 2003 (Regulation), contains almost the same provisions as Directive 85/374/EEC on liability for defective products (Product Liability Directive). However, the Regulation's validity became controversial due to certain contradictory provisions introduced in 2013 with the enactment of the Consumer Protection Law.

The Criminal Code 5237 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*).

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 into the market.
- Assessment of compliance with technical regulations.

- Market surveillance and audit.
- Administrative fines for breach of product liability and safety rules.

## 2. What is required to establish liability under the most common causes of action? When is a product defective? Does strict liability apply in certain circumstances?

The most common causes of action relating to product liability are as follows.

### Defect liability under the Code of Obligations

Under the articles of the Code of Obligations 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 he/she was 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 Code of Obligations. 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 which cannot be detected on a regular inspection (*Article 223/2, Code of Obligations*).
- The seller was at fault when selling the defective product (*Article 225, Code of Obligations*).

In this context, the Code of Obligations provides alternative remedies to the buyer relating to the defective goods, which apply regardless of the seller's fault. To establish the seller's fault 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 which do not conform to the sample or model agreed by the parties, or which do not have the objectively necessary qualities. Further, the Consumer Protection Law states that the following goods are also deemed defective:

- Not having one or more qualities appearing on their packaging, tag, user manual, website, adverts and announcements.
- Not having the qualities made known by the seller or stated in the relevant technical legislation.
- Cannot carry through their designated use.
- With defects which 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 liability

Tortious liability is regulated under the Code of Obligations, regardless of any distinction between consumers and non-consumers. It mainly serves to establish liability of producers against end-users in the absence of a contractual relationship. To establish liability, the injured party must prove his/her injury, the fault of the injurer and the causal link between the injurer's act and the injury.

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

Under the Code of Obligations, 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 Code of Obligations, the buyer can claim the alternative remedies under Article 227 of the Code of Obligations. Accordingly, the consumer can:

- Rescind the agreement, by informing the seller that he/she is 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.

The buyer can also claim any further (indirect) loss, unless the seller can prove that he/she is not at fault.

If the seller opts to rescind the sale agreement, the buyer 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.

Under the tort law provisions of the Code of Obligations, in addition to the seller the producer, manufacturer and any other relevant parties can be liable for damages caused by a defective product, provided that the buyer proves the causal link. Sellers and other potential parties can be liable not only to the buyer but the buyer's relatives who, for example, live in the same house as the buyer.

The Consumer Protection Law provides consumers with four alternative remedies, which are the same as those in Article 227 of the Code of Obligations. 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 provides specific obligations and duties for the producer and importers.

Accordingly:

- 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 both:
  - fails to repair the defective good in a timely way, or the good becomes broken after being repaired by the seller; and
  - rejects the buyer's request for any alternative remedies.
- Producers/importers must provide after-sales service during the expected life of the good.

## Defences

### 4. What are the defences to a product liability claim? Is there a time limit in which

## proceedings can be brought?

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

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, Code of Obligations*).

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 time limitation period if he or she is at gross fault in providing the defective product. If so, the general time limitation period of ten years applies (*Articles 146 and 149, Code of Obligations*).

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

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

If the tortious act is an offence where criminal law imposes a longer limitation period, the longer period also applies to the civil law claim.

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

- The seller is not liable for the content of an advert if either:
  - he/she proves that he/she does 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.

## Excluding/limiting liability

### **5. 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 Code of Obligations, it is possible to limit the seller's liability with an agreement between the buyer and the seller. Where the seller is at gross fault in providing the defective goods, such limitation is void (*Article 221, Code of Obligations*).

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, Code of Obligations*).

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 Code of Obligations apply by analogy.

The definition of defect under the Code of Obligations 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 with a statute of limitation of at least two years.

## Product liability litigation

### **6. 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?**

Under Article 3 of the Commercial Code 6102, matters regulated in the Commercial Code and all business-related transactions/activities are commercial transactions, and all related disputes are commercial cases. Accordingly, 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. Accordingly, cases relating to consumer transactions are brought before the Consumer Court. Where the Commercial Code and Consumer Protection Law overlap, that is, where a consumer concludes a contract which 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 Consumer Arbitration Committee 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 2018 have not been determined yet. For 2017, for a product liability dispute to be tried by a:

- District consumer arbitration committee, the dispute must be under TRY2,400.
- Provincial consumer arbitration committee, the dispute must be between TRY2,400 and TRY3,610 in metropolitan cities.
- Provincial consumer arbitration committee, the dispute must be under TRY3,610 in the centre and districts of non-metropolitan cities.

Disputes over these thresholds cannot be brought before the Consumer Arbitration Committees.

Product liability cases tried before commercial courts are decided by one president and two members. In consumer courts, a sole judge makes 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.

## 7. How are proceedings started?

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. In the written procedure rules the parties can exchange two submissions. In the 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 his or her attorney.

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

The burden of proof is on the party who brings the claim and derives rights in favour of himself/herself, unless there is a contrary provision in the law.

The provisions related to tortious liability under the Code of Obligations state that the damaged party must prove the damage, the fault of the counterparty and causal relationship between them. However, the Supreme Court does not 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 he/she is 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, even if he/she does not know that the good supplied had defects.

## 9. 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 in due 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 only regulated in the Criminal Procedures Act. Questions can be directed to the witness to clarify and remedy deficiencies in the witness evidence. This right is also applied to obtain a similar benefit in civil cases.

**10. 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 its own initiative, the judge can invite the expert and examine the expert during the trial.

**11. 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 that may be counterparties or third parties in the dispute.

Although it is mainly the claimant who bears the burden of proof, it still does not possess power to collect all evidence for this purpose. Therefore, it is mainly the court that can collect evidence on the claimant's request, particularly evidence held by the counterparty. Therefore, the claimant is merely expected to set out the importance and relevance of the evidence not in his/her 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.

If an official authority or third party does not provide the court with the evidence, they should 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.

If the counterparty/authority/third party tries to prevent examination on site, the court can execute the proceeding by force and impose an administrative fine and compensation to cover the court's expenses.

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

If a criminal offence relating to product liability is committed, a person who destroys, hides, modifies or disrupts evidence of a 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, so that the party who spoiled the evidence is no longer allowed to bring any other evidence (see *Question 9 and Question 11*).

### 13. 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 regarding acquisition of 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 the preliminary injunction, the applicant must make a security deposit payment to compensate possible damage to the other party and third parties as a result. There is no specific provision on the amount. 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**

This has conditions similar to a preliminary injunction. Preliminary attachments can also be used to seize the debtor's assets as protection in case the applicant succeeds at the end of the trial.

#### **Recovering of evidence**

These 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. If setting out the evidence is considerably difficult, or the evidence is likely to be spoiled unless an order is made immediately, the applicant should be deemed to have a legal interest.

Turkish courts generally accept a request for recovering of evidence. However, in the case of other temporary legal protections, even if the conditions are fulfilled, the courts are reluctant to grant such requests because the subject of the dispute requires judgment.

### 14. 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. In principle, litigation costs should be paid in advance by the claimant.

Litigation costs and official attorney fees determined under the Minimum Attorney Fee Tariff are paid by the losing party. If both parties partially succeed, costs are divided proportionally between the parties. The

professional fee agreed between a party and its attorney is not reimbursable under Turkish law.

### 15. 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 TRY3,110 cannot be appealed.

Decisions on a preliminary injunction and precautionary attachments can also be appealed.

Decisions by 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 Supreme Court. However, decisions on material rights of less than TRY41,530 cannot be appealed to the Supreme Court.

The grounds for appeal to the Supreme Court 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.

### Class actions/representative proceedings

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

- An interim measure to prevent or stop activities which cause a breach of the relevant law.
- An action to determine an activity as unlawful and prevent or stop the relevant action.

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*).

### Litigation funding

#### 17. 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 issue. There is no statutory obstacle for parties to have 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 Code of Obligations. 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.

## Remedies

### 18. 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 Code of Obligations 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 for indirect (positive) damages which, in most cases, are loss of profit.

A party can also claim 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 is compensated for costs associated with the litigation (see *Question 14*).

### 19. 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 which 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 the compensation:

- The degree of fault.
- Whether the injured party consented to the action which caused the loss, or circumstances attributable to him/her helped give rise to or compounded the loss or damage, or otherwise exacerbated the position of the liable party.
- Whether the liable party will gain from the transaction.

### 20. 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 Code of Obligations 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 does 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 they cannot be party to the dispute. The defendant benefits from notifying other potentially liable parties if he/she files a recourse action against the other liable parties within two years after he/she compensates 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.

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

## Product safety

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

The Technical Legislation Law is the main law regarding product safety (see *Question 1*). 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.

### 22. 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](http://www.sanayi.gov.tr)).
- Ministry of Customs and Trade ([www.gtb.gov.tr](http://www.gtb.gov.tr)).
- Ministry of Health ([www.saglik.gov.tr](http://www.saglik.gov.tr)).
- Ministry of Food, Agriculture and Livestock ([www.tarim.gov.tr](http://www.tarim.gov.tr)).
- Ministry of Environment and Urban Planning ([www.csb.gov.tr](http://www.csb.gov.tr)).

- Ministry of Labour and Social Security ([www.csgeb.gov.tr/](http://www.csgeb.gov.tr/)).
- Ministry of Transportation, Communication and Maritime Affairs ([www.ubak.gov.tr/](http://www.ubak.gov.tr/)).
- Information and Communication Technologies Authority ([www.btk.gov.tr/](http://www.btk.gov.tr/)).
- Tobacco and Alcohol Market Regulatory Authority ([www.tapdk.gov.tr/](http://www.tapdk.gov.tr/)).
- Energy Market Regulatory Authority ([www.epdk.org.tr/](http://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 impose required measures, for example:

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

## Product recall

**23. 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 onto the market any products which do not comply with technical legislation. If a public entity mentioned in *Question 22* 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 or regulations on market surveillance and inspection of products do not have 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.

**24. 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 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



prescribe different requirements (for example, the producer must also announce the recall on its website).

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

Mandatory reporting obligations are not specified under the Technical Legislation Law or the relevant regulations. However, some of the more detailed regulations for 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.

**26. 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

**27. 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.

**28. 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 the lack of a uniform approach. There is also a growing need to harmonise legislation with current EU product safety and liability legislation. There have been plans to prepare and implement a new and more comprehensive framework to replace the current Technical Legislation Law. A proposal was prepared and presented to the Prime Ministry in December 2016, and was expected to be

presented to the National Assembly shortly after the referendum in April 2017. Unfortunately, due to the complex political situation, the proposed law is yet to come before the National Assembly.

## Online resources

### Turkish Ministry of Economy

**W** [www.economy.gov.tr](http://www.economy.gov.tr)

**Description.** The website maintained by the Ministry of Economy provides links to translations of main legislation, such as Law 4703 on the Preparation and Implementation of Technical Legislation on Products.

### Turkish Ministry of Customs and Trade

**W** [www.gtb.gov.tr](http://www.gtb.gov.tr)

**Description.** The website maintained by the Ministry of Customs and Trade provides links to translations of Law 4502 on Consumer Protection and information on the relevant regulations.

## Contributor profiles

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**Professional qualifications.** Lawyer, Turkey

**Areas of practice.** Insurance and reinsurance; dispute resolution; corporate and M&A; finance; construction and real estate

**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

- Monitoring a significant number of ICC arbitration cases arising out of cross-border disputes, including mergers and acquisitions of companies (active in the insurance and industrial gas sectors) as well as breach of warranty in sales/construction contracts.
- 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 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:**

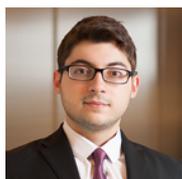
- International Bar Association (IBA), Secretary of Insurance Committee.
- International Insurance Law Association (AIDA).
- The Federation of Defense and Corporate Counsel (FDCC).
- Member of Ethics and Reputation Society of Turkey (TEID).
- Member of Istanbul Arbitration Association (ISTA).

**Publications**

- Arbitration procedures and practice in Turkey: overview, Global Guide 2017 - Arbitration - Practical Law, Co-Author, 2017.
- Litigation and enforcement in Turkey: overview, 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.
- 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; corporate and M&A.

**Non-professional qualifications.** Faculty of Law, Koc University, Istanbul LL.B., 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.
- Actively involved in a high-profile ICC arbitration relating to a dispute arising out of an acquisition of a manufacturer/seller in the industrial gas sector.

**Languages.** English, Turkish, German

#### **Publications**

- 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.