

CONSUMER REDRESS IN CIVIL PROCEEDINGS IN TURKISH LAW

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ABSTRACT

The article deals with the legal means which have been designed to secure effective access to justice for consumers in order to enforce their right to redress. One of the basic objectives of the national consumer policy is to provide the most appropriate mechanisms for consumers to seek redress for faulty products or for injury or damage from the use of goods and services. Apparently the enforcement of the right to redress requires, first of all, facilitation of effective access to justice through the development of suitable, rapid and inexpensive means of resolving consumer disputes. A major reform in the area of consumer redress, brought about by the Law on the Protection of Consumers, was the establishment of Arbitration Committees and Consumer Courts in order to reduce the cost of litigation and to avoid much of the formality associated with court proceedings. Although there are some deficiencies, both in the legal provisions and in the practice under which these two establishments operate, their contributions to achieving a high level of consumer protection cannot be ignored.

ÖZET

Bu makale, tüketicilerin tazmin edilme hakkının fiilen gerçekleşebilmesi için, onlara etkili yoldan hak aramalarını sağlamak üzere tasarlanmış hukukî araçlarla ilgilidir. Ulusal tüketici politikasının temel hedeflerinden biri de, tüketicilere, kusurlu ürünler veya yararlanılan mal ve hizmetler dolayısıyla uğranılan cismanî ya da mala ilişkin zararların telâfisi için daha etkili mekanizmaların sağlanmasıdır. Şüphesiz, tazmin edilme hakkı, öncelikle tüketicinin taraf olduğu hukukî uyuşmazlıkların

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çözümünde uygun, hızlı ve ucuz hak arama yollarının geliştirilmesini gerekli kılmaktadır.

Tüketicinin tazmin edilme hakkının sağlanması konusunda, Tüketicinin Korunması Hakkında Kanun ile getirilen büyük yenilik dava giderlerini azaltmak ve dava işlemlerine ilişkin formalitelerin bir çoğunu kaldırmak amacıyla kurulması öngörülen Tüketici Sorunları Hakem Heyeti ve Tüketici Mahkemesidir. Tüketici Sorunları Hakem Heyetleri ile Tüketici Mahkemelerinin, yasal düzenlemedeki eksikliklere ve uygulamadaki bazı aksaklıklara rağmen, tüketicilere yüksek düzeyde bir koruma sağlanmasındaki katkıları gözardı edilemez.

Keywords: *Law on the Protection of Consumers, consumers' right to redress, consumer access to justice, settlement of consumer disputes, Arbitration Committees for Consumer Problems, Consumer Courts.*

Anahtar Kelimeler: *Tüketicinin Korunması Hakkında Kanun, tüketicinin tazmin edilme hakkı, tüketicinin hakkını araması, tüketici uyuşmazlıklarının çözümü, Tüketici Sorunları Hakem Heyetleri, Tüketici Mahkemeleri*

I. Introduction

Until the adoption of the Law on the Protection of Consumers (LPC)¹ in 1995, which specifically addressed consumer protection, there were only a few rules within private and public law dealing with consumer protection, and these were scattered in different statutes and decrees, often making their application very difficult.

Consumer protection as a public policy was first introduced by Article 172 of the 1982 Constitution which granted the State the authority to take all measures necessary for the protection of consumers. The culmination of the measures taken was the adoption of the LPC, a special body of law which was aimed at the protection of consumers' interests.

The rules introduced by the LPC regarding substantive consumer law can be divided into two groups. The first group of rules are predominantly public law rules applicable to commercial activities preceding the delivery of goods or the supply of services to consumers, and administrative sanctions are often applicable in case of failure to comply with such provisions. Among these rules are those regulating advertising or establishing duties to provide information to consumers, in particular with respect to the origin, quality and price of the goods and services offered to them. The second group of rules concerns both private law and public law; they are intended to protect consumers after the

¹ Law Nr. 4077 (Official Gazette Nr. 22221 and dated 8.3.1995), amended by the Law, Nr. 4822 (Official Gazette Nr.25048 and dated 14.3.2003).

delivery of goods or the supply of services, or after damage has occurred, such as those provisions that provide compensation to consumers for damages caused by defective goods and/or services.²

The LPC also contains rules that set up new institutions for the implementation of its provisions. Specifically, the LPC reflects the belief that unless the law provides an effective and inexpensive means for consumers to enforce their rights, the protective legal system under which those rights were granted has failed consumers.

Actually, one of the fundamental rights of consumers, which lies at the heart of the national consumer policy, is the consumers' right to redress (LPC Art.1).³ For the protection of this right, there needs to be appropriate mechanisms for consumers to seek redress for faulty products or for injury or damage from the use of goods and services. The development of suitable, rapid and inexpensive means of resolving consumer disputes⁴ are therefore necessary to facilitate an effective access to justice for consumers.⁵

A major reform in the area of consumer protection brought about by the LPC was the establishment of Arbitration Committees and Consumer Courts designed to reduce the cost of litigation and to avoid much of the formality associated with court proceedings. However, the LPC provides only for small claims to go to the Arbitration Committees. For the rest, only the Consumer Courts have jurisdiction to resolve the disputes.

For disputes which fall within the exclusive judicial power of the Arbitration Committees, it is clear that the parties are not allowed to go to the courts (LPC Art.22). However, the LPC does not contain any provision to regulate whether consumers are allowed to add an arbitration clause in

² Lale Sirmen, *Consumer Protection Law in Introduction to Turkish Business Law*, Tuğrul Ansay & Eric C. Schneider (ed.), Kluwer Law International, 2001, 26.

³ In The First Consumer Protection Programme (annex to Council Resolution of 14 April 1975; O.J. 1975, (C92)1), the right to redress was defined as one of the fundamental rights of consumers of the European Community. The other fundamental rights were listed therein as the right to protection of health and safety, the right to protection of economic interests, the right to information and education, and the right of representation.

⁴ In order to promote on alternative dispute resolutions for consumers, there are two recommendations of the European Community on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes (98/257) EC, 1998 O.J. (L115), and on the principles for out-of-court bodies involved in the consensual resolutions of consumer disputes (2001/310 EC, 2001 O.J. (L109) 56). For the problems of consumer access to justice, see Stephen Weatherill, *EU Consumer Law and Policy*, Elgar European Law, 2005, 227-244.

⁵ David Oughton and John Lowry, *Textbook on Consumer Law*, 2nd Ed., London, 2002, 74-80.

consumer contracts, and by means of this clause, to designate their arbitrators instead of going to the Arbitration Committees or to the Consumer Courts. The question arose in a case before the Court of Cassation (High Appeals Court or Yargıtay) as to whether the arbitration clauses in consumer contracts were valid or not. The Court of Cassation held that the provisions in the LPC regarding the Arbitration Committees and the Consumer Courts were closely related with public order; therefore, arbitration clauses providing consensual arbitration in consumer contracts had no validity whatsoever.⁶ For this reason, it might not be wrong to say that the system of resolving consumer disputes by the Arbitration Committees can be described precisely as a compulsory arbitration process.⁷

II. Arbitration Committees for Consumer Problems

Arbitration Committees for Consumer Problems are independent bodies which are responsible for the out-of-court settlement of consumer disputes (LPC Art.22). They were established mainly with the aim of providing simple and inexpensive means for the resolution of consumer disputes arising from the application of the LPC.

Arbitration Committees for Consumer Problems were introduced by Article 22 of the LPC. The procedural rules and principles regarding the establishment and operation of Arbitration Committees were laid down by the Implementing Regulation on Arbitration Committees for Consumer Problems (IR)⁸ which was issued by the Ministry of Industry and Commerce in accordance with Article 22 of the LPC.

A. Composition of Arbitration Committees for Consumer Problems

The LPC makes it the responsibility of the Ministry of Industry and Commerce to set up at least one Arbitration Committee in the capital of each province and district (LPC Art. 22/I). Each Arbitration Committee consists of five members, including the president. The Director of Industry and Commerce of the province, or an officer appointed by him, is the president of the Committee. Where the provincial organization of the Ministry of Industry and Commerce does not exist, the presidency of the Committee will be held by the highest administrative officer or a civil servant assigned by him. Of the other members of the Committee, one is appointed by the Mayor of the Municipality

⁶ Decision of the 13th Civil Chamber of the Court of Cassation Nr.381/6638 and dated 11.5.2007: İçtihat Bilgi Bankası, Kazancı Bilişim, *available at* <http://www.kazanci.com.tr> (last visited 10.12.2007).

⁷ For the same opinion, *see* Mehmet Akif Tutumlu, Tüketici Mahkemelerinin Görev ve Yetki Sınırları (Tüketici Sorunları Hakem Heyetleri Dahil), Ankara 2006, 181 and the other authors referred in the footnote 13 on the same page).

⁸ Official Gazette Nr. 25186 and dated 1.8.2003.

from among the staff of the Municipality, one by the Bar Association from among its members, one by the Chamber of Commerce and Industry and one by the Chamber of Artisans and Craftsmen. The members appointed by the Chamber of Commerce and Industry and the Chamber of Artisans and Craftsmen participate in the Committee as alternates, depending on whether the other party to the dispute is a tradesman or an artisan or craftsman (LPC Art. 22/II). Also, consumer organizations, or consumption cooperatives in their absence, are entitled to elect a member to represent them on the Committee. If the Committee cannot be constituted as prescribed by the LPC, Municipal Councils are authorised to appoint the members *ex officio* (LPC Art. 22/III).

The members of the Committee, except the president, serve two-year terms of duty (IR Art. 7/VI).

On each Arbitration Committee for Consumer Problems, there is a reporter in charge of documentation of the dispute and whose responsibility it is to report on the matter before the Committee (LPC Art. 22/IV). The reporter is designated, for provincial Arbitration Committees, by the provincial Director of Industry and Commerce from among the officials of the provincial Directory and for district Arbitration Committees, by the district officer from among the officials of the district administration (IR Art. 10).

B. Territorial Jurisdiction of Arbitration Committees for Consumer Problems

A provincial Arbitration Committee for Consumer Problems has jurisdiction only within the boundaries of the capital of that province; a district Arbitration Committee has jurisdiction only within the boundaries of that district. In cases where a province is governed by a Metropolitan Municipality, the Arbitration Committee of the capital of the province can only deal with disputes where the value of the claim is not below a value which is determined, and announced by the Ministry of Industry and Commerce every year in December (IR Art. 5/III).⁹ Disputes involving an amount below this limit must be brought before the Arbitration Committees of the districts within the boundaries of that Metropolitan Municipality.

A consumer may bring the dispute before an Arbitration Committee either where he has purchased the goods or the service or in the place of his domicile (IR Art. 5/II). The same rule will apply even when the other party commences the proceedings. If a dispute is brought before more than one Arbitration

⁹ For the year 2007, the value of the claims which the provincial Arbitration Committees are to deal with is required to be not less than 2067.89 NTL. Official Gazette Nr.26367 and dated 5.12.2006.

Committee, a defense that a proceeding is already pending may be raised by the other party (IR Art. 11/II). In this case, the second Committee must then refuse to deal with the case.

C. Area of Operation

Arbitration Committees for Consumer Problems are empowered to deal with all disputes arising from the application of the LPC, with the exception of those which fall within the jurisdiction of Consumer Courts. However, disputes that are brought with respect to administrative penalties can only be heard in administrative courts having proper jurisdiction.

The limits of the authority of Arbitration Committees are determined by the Committee's area of operation, which is limited to matters within the scope of the LPC, with the exception of those cases which are specifically assigned to Consumer Courts by the LPC.

The scope of the LPC is indicated in Article 2 in connection with Articles 1 and 3 of the same statute. According to Article 1 of the LPC, the purpose of this statute is, consistent with the public interest, to regulate matters for the protection of the health, safety and economic interest of consumers, to enlighten and educate them, to ensure redress for their damages, as well as to protect consumers against environmental dangers, to promote consumer initiatives and to encourage the establishment of voluntary organizations in forming consumer policies. Article 2 of the LPC, states that this statute, for the purposes set out in Article 1, covers all kinds of consumer transactions made in the markets of goods and services, where one of the parties is a consumer.

A consumer transaction is defined in Article 3/h of the LPC as any transaction that is made between a consumer and a seller or a supplier in the markets of goods and services. The term "consumer" is defined in the LPC as any natural or legal person who acquires or uses goods or for whom a service is provided for purposes outside his business or profession (LPC Art. 3/e). The other party to a consumer transaction is either a seller or a supplier. A seller is any natural or legal person, including public authorities and institutions, who or which provides goods to consumers in the course of a trade or profession (LPC Art. 3/f). Likewise, a supplier is a natural or a legal person, including public authorities and institutions, who or which provides services in the course of a trade or profession (LPC Art. 3/g). According to the LPC, the term "goods" has a broader meaning than its common usage; it includes not only chattels but also houses or apartments which are either used as a residence or subject to time sharing (LPC Art. 3/c). The term service is defined as any activity, excluding the supply of goods, carried out in exchange for a price or any other consideration (LPC Art.3/d).

Where one party is a consumer and the other party is a seller providing goods or, a supplier rendering a service as defined in the LPC, the LPC governs their contract. If a dispute arises from such a contract, it falls within the judicial power of the Arbitration Committees for Consumer Problems. On the other hand, in a contract where both parties act in the course of a trade or profession, the LPC is not applicable. Therefore, disputes arising from such contracts cannot be brought before the Arbitration Committees for Consumer Problems.

The LPC is silent on whether or not a dispute can be brought before an Arbitration Committee by a party other than a consumer. However, according to the Court of Cassation, provided that the dispute is within the operating area and the exclusive jurisdiction of Arbitration Committees for Consumer Problems, both parties to the dispute, the consumer and the seller or the supplier, are required to bring it before the Arbitration Committee for Consumer Problems.¹⁰

D. Judicial Power of Arbitration Committees for Consumer Problems in Terms of Value of the Claim

The LPC sets a monetary limit and grants judicial power to Arbitration Committees for Consumer Problems only where a dispute involves a value below the relevant limit (Art.22/V). Accordingly, Arbitration Committees for Consumer Problems have exclusive power to deal with disputes valued at an amount below the monetary limit as indicated in the LPC. However, the said monetary limit is determined each year at the end of October, based on the increase in the wholesale price index of the State Statistics Institute, and is announced in the Official Gazette in December by the Ministry of Industry and Commerce (LPC Art. 22/VI).¹¹

If the claim is valued at an amount equal to or more than the monetary limit established in accordance with the LPC,¹² a claimant is not required to bring the dispute before the Arbitration Committee for Consumer Problems, and if he desires to obtain an enforceable decision, he must bring the dispute in a Consumer Court.¹³ However, if such a dispute is brought before an Arbitration

¹⁰ Decision of the 13th Civil Chamber of the Court of Cassation Nr.13486/1775 and dated 8.2.2005: İctihat Bilgi Bankası, Kazancı Bilişim, *available at* <http://www.kazanci.com.tr>.

¹¹ For the year 2007, the claims for which the Arbitration Committees have exclusive power are required to involve an amount less than 792.12 NTL. Official Gazette Nr.26367 and dated 5.12.2006.

¹² *See Id.*

¹³ In a particular case, in order to determine whether the Consumer Court has jurisdiction to hear the dispute, the value of the claim at the time of the action must be taken into consideration (decision of the 13th Civil Chamber of the Court of Cassation Nr.2216/8679 and dated

Committee, the decision constitutes evidence that can be presented in Consumer Courts (LPC Art.22/VI).

As stated above, where Arbitration Committees for Consumer Problems have exclusive power to deal with disputes, the system is characterised as a compulsory arbitration.¹⁴ Where Arbitration Committees have jurisdiction to render decisions constituting evidence, it is still more than a conciliation process according to a decision of the Court of Cassation¹⁵ which emphasises that even when a creditor brings a dispute before an Arbitration Committee which is out of its exclusive jurisdiction, the term of limitation will be interrupted and a new period for the claim will commence, just as in the case where an action is brought before a court or an arbitral tribunal. In light of the decision of the Court of Cassation, it can be argued that even where Arbitration Committees have jurisdiction to render decisions constituting evidence, the process is still an arbitration,¹⁶ but is, however, optional in nature and not compulsory.

E. Procedure

Whether an enforceable award or a decision constituting evidence is to be rendered, there is no difference with respect to the procedure under which the Arbitration Committees operate. In order to commence an action, the claimant must file a petition for the case and attach thereto all the documents and evidence on which his claim is based (IR Art. 11/I). The Committee is required to give an award within three months beginning from the date on which the claimant has filed the petition for the case. Where the circumstances justify, for example when the claimant is a tourist, either upon the request of the parties or ex officio, the Committee may accelerate the procedure by means of granting priority to such a dispute for its resolution before others (IR Art.12).

Due to the fact that the costs of the operation of the Arbitration Committees will be paid from a fund in the budget of the Ministry of Industry and Commerce (LPC Art. 29/I, IR Art. 26), the parties to the dispute are exempt from all costs.

23.05.2005): *See* Tutumlu, *supra* note 7 at 143. Also note that the value of the claim includes only the value of the primary claim. Secondary claims are not taken into account in the calculation of the value of the claim (decision of the 13th Civil Chamber of the Court of Cassation Nr.4424/4817 and dated 14.06.1999): *See* Tutumlu, *supra* note 7 at 143.

¹⁴ *See supra* note 7.

¹⁵ Decision of the 13th Civil Chamber of the Court of Cassation Nr.1534/4099 and dated 15.4.2002: *See* Tutumlu; *supra* note 7 at 181, n.14.

¹⁶ *Id.*

The Committee ordinarily meets twice a month (IR Art. 13). However, at the request of the president, an extraordinary meeting of the Committee can be held (IR Art. 14). The Committee examines the evidence and where necessary, the parties to the dispute can be summoned to appear before the Committee. This, however, has come to be identified as a procedural deficiency in that the appearance of the parties before the Committee is at the discretion of the Committee. Although it may be to the benefit of a consumer to avoid the problem of having to take time off work to attend the meeting of the Committee, it can be argued that an award based only on documentary evidence may not be an appropriate way to ensure effective access to justice for consumers since they usually cannot know how to prepare an efficient file for the case, thus important information may be omitted. As the other party can easily make use of the services of a legal representative, an ordinary consumer having a modest income cannot always afford to get assistance from a practicing lawyer.

The Arbitration Committee may also retain experts to offer an opinion on the case (IR Art.19).

In order to meet, at least three members of the Committee must be present and the Committee makes an award by majority decision. In the event that a majority opinion is not possible, the award will be based on the opinion of the members in which the president joins (IR Art. 16).

F. Enforcement of Awards Made by the Arbitration Committees for Consumer Problems

Where a consumer dispute involves a claim at an amount below the monetary limit, the award of the Committee will be binding upon the parties just like a judgement rendered by a court, and is to be executed in accordance with the provisions of the Code of Execution and Bankruptcy. Either or both of the parties having a legal interest can apply to the Consumer Court for a judicial review of the award within a period of fifteen days commencing from the date on which they are officially informed of the award. The application for a judicial review does not prevent the execution of the award of the Committee. However, upon request, the judge may decide to suspend the execution by means of a precautionary measure. The Consumer Court may either approve or disapprove the award of the Arbitration Committee. In both cases, the decision of the Consumer Court is final; in other words, no further review of the court's decision is possible (LPC Art. 22/V).¹⁷

¹⁷ Decision of the 13th Civil Chamber of the Court of Cassation Nr. 7851/8478 and dated 02.06.2004; see Tutumlu, *supra* note 7 at 134.

If the value of the claim is equal to or exceeds the amount set as the monetary limit and therefore remains out of the exclusive power of the Arbitration Committee, the consumer may still bring the dispute before the Arbitration Committee for Consumer Problems. However, if such a dispute is brought before an Arbitration Committee, the decision of the Committee is not binding upon the parties in the sense of an award, but instead constitutes evidence that can be presented in the Consumer Courts (LPC Art. 22/VI). The LPC does not indicate whether it is binding (conclusive) evidence or evidence which is left to the discretion of the judge. According to the Court of Cassation, it is strong evidence binding upon the judge unless there are sound grounds for disregarding it.¹⁸

III. Consumer Courts

Consumer Courts are special courts of first instance which deal with consumer disputes. The judicial districts for the Consumer Courts will be determined by the Supreme Board of Judges and Public Prosecutors. According to Provisional Article 1 of the LPC, the Supreme Board is authorized to determine which courts will have jurisdiction to deal with consumer disputes until Consumer Courts are actually established. Following the enactment of the LPC, the Supreme Board decided that, until the establishment of the Consumer Courts, consumer disputes would be heard in the Commercial Courts of First Instance; in default thereof, the Civil Courts of First Instance would have jurisdiction over such disputes.¹⁹ In 2001, due to another decision of the Supreme Board, the first three consumer courts, each staffed by a single judge, were set up in İstanbul, Ankara and İzmir.²⁰ At present, there are only twenty-four Consumer Courts in the entire country.

A. Jurisdiction

Consumer Courts have jurisdiction over all disputes arising from the application of the LPC, with the exception of those which fall within the jurisdiction of Arbitration Committees for Consumer Problems. Since the statutory provisions regarding the jurisdiction of the courts are rules of public order and therefore compulsory; a judge in another court must refuse to hear the case if the plaintiff brings such dispute before him. An objection to jurisdiction

¹⁸ Decision of the 13th Civil Chamber of the Court of Cassation N.5334/5952 and dated 11.6.1996; Aydın Zevkliler/Murat Aydoğdu, *Tüketicinin Korunması Hukuku*, 3rd ed., Ankara, 2004, 898.

¹⁹ Decision of the Supreme Board of Judges and Public Prosecutors Nr.437-2 and dated 22.6.1995.

²⁰ Decision of the Supreme Board of Judges and Public Prosecutors Nr.60 and dated 25.1.2001. Official Gazette Nr. 24305 and dated 1.2.2001.

can be made by the defendant at any stage of the proceedings before the judgement. However, actions that are brought with respect to administrative penalties can only be heard in the competent administrative courts.

1. Competence

The jurisdiction of Consumer Courts is limited to those matters which fall within the scope of the LPC. Article 2 of the LPC states that this statute, for the purposes set out in Article 1, covers all kinds of consumer transactions made in the markets of goods and services where one of the parties is a consumer. However, the Court of Cassation has been reluctant to treat contracts of creation and insurance contracts as consumer contracts because they were not mentioned in the LPC.²¹ Therefore, when disputes arising from these contracts are heard in Consumer Courts, the Court of Cassation considers this to be grounds for reversal, even when one party is a consumer and the other party is a supplier as they are defined in the LPC.²² However, the doctrine does not share this opinion and tries to influence the practice to pave the way for Consumer Courts to deal with such disputes as well.²³

Actually, every consumer contract is based on the law of contracts. Therefore, the Code of Obligations and the Commercial Code continue to have importance in consumer protection. Article 30 of the LPC states that if none of its provisions are applicable to a matter, the general provisions will be applicable. The “general provisions” to be applied to consumer contracts are predominantly the provisions of the Code of Obligations, Commercial Code and relevant secondary legislation.²⁴ Therefore, a contract of creation, although

²¹ The fact that no information has been yet obtained about the attitude of the Arbitration Committees with respect to the claims arising from contracts of creation and insurance contracts suggests that the claims arising from contracts of creation and insurance contracts are usually big claims which should be heard in the consumer courts.

²² For contracts of creation, see the following decisions of the 11th Civil Chamber of the Court of Cassation Nr. 5915/1689 and dated 9.4.2002; Nr. 3627/4107 and dated 23.9.2002.; Zevkliler/Aydoğdu, 978-979; *see also* decision of the General Assembly of Civil Chambers Nr.15-27/102 and dated 26.2.2003 *available at* <http://www.kazanci.com>; for insurance contracts *see* the decision of the 11th Civil Chamber of the Court of Cassation Nr. 106562/197 and dated 18.1.2001 Yargıtay Kararları Dergisi, Vol. 27/6, June 2001.

²³ Zevkliler/Aydoğdu, p.93-94; İ. Yılmaz Aslan, *Tüketici Hukuku*, second edition, Ekin Kitabevi 2004, 14 and 589.

²⁴ However, the provisions of the Code of Obligations, the Commercial Code, etc. will be applied to consumer disputes in compliance with the nature and the principles of the Consumer Law. For instance, consumer legislation has two types of rules: absolutely binding and relatively binding rules. Absolutely binding rules are those that can never be altered by the parties. It is possible for the parties to alter the relatively binding rules. However, relatively binding rules can be altered only for the benefit of the consumers. Therefore, even when a particular provision of the Code of

regulated by the provisions of the Code of Obligations, is a consumer contract if the object of the contract is performed for a consumer. In the same way, an insurance contract regulated by the provisions of the Commercial Code is still a consumer contract if the insured is a consumer. Therefore, where a dispute arises from those contracts, it should be taken as a consumer dispute to be dealt by a Consumer Court.

According to the LPC, not only consumers are entitled to initiate proceedings in the Consumer Courts, but where a dispute arising from a violation of the LPC is not of an individual kind and concerns consumers in general, the Ministry of Industry and Commerce and consumer organizations also can sue for the cessation of the violation (LPC Art. 23/IV). Class actions,²⁵ where an individual plaintiff can sue on behalf of the whole class of plaintiffs injured in the same action of the defendant, are unknown to Turkish courts. However, the LPC, based on public interest, allows an action to be brought on behalf of consumers generally by not only consumer organizations but also by the Ministry of Industry and Commerce.

Thus, the Ministry of Industry and Commerce and consumer organizations are entitled to bring an action for the cessation and prohibition of the production and the sale of defective goods that are mass-produced (LPC Art. 24). Furthermore, where a publisher of a periodical organizes a campaign which does not comply with the requisites of the LPC, the Ministry of Industry and Commerce can also sue for the cessation and prohibition of the unlawful campaign and advertisements or announcements related therewith (LPC Art 25/VII).

There is no provision in the LPC to prohibit persons other than consumers, for example sellers or suppliers, to sue consumers in the Consumer Courts. Therefore, the Court of Cassation has decided that such persons are also entitled to sue consumers in the Consumer Courts.²⁶

According to Paragraph V of Article 23, where necessary, Consumer Courts can issue precautionary measures to terminate the violation of this Law.

Obligations granting the parties the freedom to agree on the contrary is applicable to a consumer contract, the contracting parties cannot alter this rule to the detriment of the party acting as consumer.

²⁵ This procedure is available in U.S. Federal Courts and in most state courts. Black's Law Dictionary, 6th ed., St. Paul, Minn West Publishing Co., 1991, 171; *see also* Oughton/Lowry, 86 and 87. Note many U.S. state attorneys general and the Federal Trade Commission may bring a suit on behalf of the public good as well.

²⁶ Decision of the 13th Civil Chamber of the Court of Cassation Nr. 1998/4388 and dated 8.5.2000; *see also* Zevkliler/Aydoğdu, *supra* note 18 at 1057.

The LPC provides a special procedure to publicize precautionary measures. Any precautionary measure which is deemed appropriate by the Consumer Court will be announced forthwith in a national newspaper printed at large and, where such a publication exists, in a local newspaper in the district where the proceedings have been initiated. Decisions of the Consumer Courts ordering the cessation of the violation will be announced in the same way (LPC Art. 23/VI).

2. Venue

According to the Code of Civil Procedure (CCP), the general rule is that the plaintiff must bring his action in the court of the judicial district where the defendant is domiciled (CCP Art. 9). There are exceptions expanding or altering this general rule. A tort action, for example, may be brought where the tortious act took place (CCP Art. 21). If the dispute arises from a contract, the action may be brought in the court of the district where the contract is to be performed, or where it was concluded if, at the time of commencing the proceedings, either the defendant or his attorney is physically present or resides in that place (CCP Art.10). If the action involves land, the action must be brought in the court of the district where the land is situated (CCP Art. 13). According to Paragraph III of Article 23 of the LPC, actions involving consumer disputes can also be brought in the court of the district where the consumer is domiciled.

B. Procedure

In Consumer Courts, actions are heard in accordance with the provisions prescribed in the Code of Civil Procedure for a simplified procedure. Under simplified procedures, the plaintiff commences the proceeding by filing two copies of the petition. Unlike the written procedure, the simplified procedure does not require the defendant to submit the petition of reply within ten days; he can either state the principal defenses and dispute the facts orally or submit a petition of reply in the first hearing (CCP Art. 507-511).

C. Court Costs

Actions which are brought before the Consumer Courts by consumers, consumer organizations and the Ministry of Industry and Commerce are exempt from all duties and charges (LPC Art. 23/II). Since the LPC grants this exemption only to consumers, consumer organizations and the Ministry of Industry and Commerce, where a seller or a supplier commences a proceeding against a consumer, he will be charged court fees in advance. In the case where a seller or a supplier is the losing party of the action initiated by a consumer, he pays all the court costs, including the court fees, which the judge determines in the final decision. However, even if the action initiated by a consumer is

rejected, he will still not be charged court fees,²⁷ whereas he is required to pay the other court costs such as attorney fees and expert fees. If a consumer is the losing party of the action initiated by a seller or a supplier, the court fees paid in advance will be returned to the successful seller. The LPC contains a special provision (Art. 23/II) concerning the fees of experts in actions initiated by consumer organizations, stating that these will be paid from a fund in the budget of the Ministry of Industry and Commerce in accordance with Article 29/I of the LPC.

D. Effect of Judgement

Judgments of the Consumer Courts are final and binding upon the parties unless an application is made to the Court of Cassation²⁸ for reconsideration of the final decision. The plaintiff cannot sue again on the same claim based on the *res judicata* effect of a judgment. However, the losing party may exceptionally demand the re-opening of the proceeding on grounds such as a newly discovered deed or document, perjury and fraud (CCP Art. 445).

E. Appeal

After rendition of the final decision by the Consumer Court, either party having a legal interest may ask the Court of Cassation to consider it in accordance with the provisions of the Code of Civil Procedure. The competent Chamber of the Court of Cassation may either approve or disapprove (CCP Art. 428) the judgment of the Consumer Court. If the Chamber affirms the judgment of the Consumer Court, no further review is possible. Only in exceptional cases may revision of the judgment be demanded (CCP Art. 440). If the Chamber disapproves the judgment, the case is returned to the Consumer Court for retrial. If the Consumer Court insists that the original judgment was correct, which seldom occurs, the case is sent to Court of Cassation, where the judgment is considered by the General Assembly of Civil Chambers. The General Assembly may either affirm or reverse the judgment of the Consumer Court. If the General Assembly decides to reverse the judgment of the Consumer Court, the Consumer Court must follow the decision of the General Assembly (CCP Art. 429).

²⁷ Decision of the 13th Civil Chamber of the Court of Cassation Nr. 2479/3578 and dated 27.4.1998; Kamil Kadioğlu, *Tüketicinin Korunması Hakkında Kanun*, Ankara 2000, 122.

²⁸ According to the Law dated 26.9.2004, Nr. 5235 (Official Gazette dated 7.10.2004, Nr. 25606), within a period of two years commencing from 1 April 2005, the date on which the law entered into force, regional courts of justice will be established to consider appeals from the courts of first degree. Moreover, the law prescribes a monetary limit and authorizes the Court of Cassation to hear appeals from the regional courts of justice only where the value of the claim exceeds this monetary limit. At present only nine regional courts of justice (Ankara, İstanbul, İzmir, Bursa, Konya, Samsun, Adana, Erzurum and Diyarbakır) have been established, although none of them have been put in operation.

IV. Conclusion

It is important that consumers be aware of their rights, but equally important is that they can enforce their rights by seeking redress through civil proceedings, in order to facilitate more effective access to justice for consumers, easier access to courts and out-of-court mechanisms for resolving consumer disputes are necessary, by simple, inexpensive means and without delay. The Arbitration Committees and Consumer Courts that have been established to serve this purpose play a significant role in achieving a high level of consumer protection.