

Turkey

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1. LIABILITY

1.1 What are the principal sources of law and regulation relating to product liability?

There are various laws which may be applied in a product liability case depending on the circumstances of the matter. The main laws are:

- Consumer Protection Law, Law No: 4077 which was published in the Official Gazette dated 08.03.1995 numbered 28835 (Law no: 4077). It should be noted Law no 4077 has been replaced with the new Consumer Protection Law, Law No: 6502 which was published in the Official Gazette dated 28.11.2013 numbered 28835 (Law no: 6502). Law no 6502 shall be in force from 28 May 2014.
- The Law on the Preparation and Implementation of Technical Legislation on Products, Law No: 4703 which was published in the Official Gazette dated 11 July 2001 and numbered 24459 (Law no: 4703).
- The Code of Obligations, Law No: 6098 which was published in the Official Gazette dated 04 February 2011 and numbered 27836 (Law no: 6098)

There are two regulations which were enacted based on Law No: 4077 and Law No: 4703 relating to product liability. These are;

- Regulation on the Liability for Damages due to Defective Products which was enacted based on Law No: 4077 and published in the Official Gazette dated 13 June 2003 and numbered 25137 (Product Liability Regulation).
- Market Surveillance of Products published in the Official Gazette dated 17.01.2002 numbered 24643 (Market Surveillance Regulation)

There are different types of liabilities that may arise due to a defective product. Within the scope of this questionnaire, we are going to focus on civil law liabilities that may arise due to damages incurred because of the defective products. (Furthermore, although there are slight differences between rights of a consumer and a non-consumer in a product liability matter, we do not focus on these differences in this study.)

Article 4 of Law no: 4077 deals with civil law liabilities against consumers and clearly states that the consumer who has been injured because of a defective product has the right to file a lawsuit against the producer (only the producer, not the seller or the importer) and ask for compensation. If the defective product causes death or body injury or damage to other assets (not the defective product itself), then the consumer has the right to benefit

from such provision. It should be noted that the whole Product Liability Regulation is based on Article 4 of Law no: 4077. On the other hand, as described above, starting from 28 May 2014, Law no: 4077 will not be in force anymore and the replacing Law no: 6502 does not have any provision regulating liabilities that may arise due to damages incurred because of the defective products, meaning that Product Liability Regulation would not be applicable in practice, starting from 28 May 2014. It should be noted that we have confirmed this with the officers of the relevant Ministry as well. Law no: 4703 will also change in the near future (please see our explanations included under question 8.2 below) and it is expected that the replacement law to Law no: 4703 will include provisions on liabilities that may arise due to damages incurred because of the defective products. Referring to the draft text of the law that will replace Law no: 4703, we understand that the lawmaker's intention is not to change the liability structure but to redefine the location of such liability within the applicable legislation. Therefore, since the liability structure regulated in the Product Liability Regulation will not be changed dramatically, we will continue to refer to the Product Liability Regulation whenever necessary.

Please note that rights regulated in Article 4 of Law no: 4077 are only valid for injured parties that can be characterised as consumers. However, even if the injured party cannot be characterised as a consumer, he/she still has the right to file a lawsuit against the producer and ask for compensation based on general tortious act provisions regulated under Law No. 6098.

1.2 What is required to establish causation under the most common causes of action available?

In principle, under our tortious act law structure, the injured party is required to prove the defect, the damage incurred by him/her, causation link between the defect and the damage incurred and also the defendant's fault. The legislation does not specifically answer what is required to establish causation in product liability cases. However, in one of the well-known decisions of the Court of Appeals, which was a product liability case about an LPG tube, it was concluded that the injured party shall not be required to prove the causation since the production stage of the product is very complicated for the injured party and it is therefore impossible for the injured party to understand the technical details of the product and establish the causation link between the incident and the product. In such case, the Court of Appeals ruled that the producer of the product should prove that the incident and the damage had not occurred as a result of the usage of the product (YHGK, 27.11.1996, E.1996/4-588, K. 1996/831).

1.3 Is strict liability available and, if so, in what circumstances?

Under Turkish Law, strict liability arises only if a law (code, not a regulation) stipulates it. As of now, none of the laws stipulates strict liability for product liability (it is expected that the law that will replace Law no: 4703 will include strict liability for product liability cases) but the Product Liability Regulation does. It imposes strict liability on producers/manufacturers.

In the event that the defective product causes a person's death or injury, or gives damage to a property, the manufacturer/producer is obliged to indemnify such damage irrespective of the negligence of the producer/manufacturer (Article 6, Product Liability Regulation). It should be noted that since the strict liability in product liability cases is regulated in a regulation only and not in a law, it is a controversial matter under Turkish law as to whether there is strict liability for product liability cases or not. The Court of Appeals' view is that there is no strict liability for the producer, but he/she should show much more care for his duties than an ordinary party. Accordingly, the producer is obliged to take every possible precaution in order to eliminate the risks (YHGK, 27.11.1996, E.1996/4-588, K. 1996/831).

1.4 Are guarantees or warranties as to quality implied by law?

Law no. 4703 stipulates that, in principle, a product is deemed safe if it is manufactured according to its technical regulation.

There is a guarantee obligation regulated in Law no. 4077 and also in the new Law no. 6502 for the benefit of consumers. Producers and importers of certain products that are determined by the relevant Ministry are obliged to issue guarantee certificates for each of their products. In general, the guarantee period is determined as two years minimum. During the guarantee period, excluding problems which have occurred as a result of the user's fault, any problems with the product should be fixed without claiming any kinds of fees or costs.

1.5 How is a product 'defect' defined?

There are certain definitions used in Law no: 4077, new Law no: 6502, Law no: 4703, Law no: 6098 and the Product Liability Regulation. According to the definition used in the Product Liability Regulation, a product is defective when it does not provide the safety that a person is entitled to expect, taking into consideration the presentation of the product, the reasonable use and the time when the product is put into circulation.

1.6 Who in the supply chain has obligations or duties for defective products? What obligations or duties do they owe and to whom?

Obligations, responsibilities and duties that may arise due to a defective product have a wide scope. Civil claims, administrative and criminal sanctions can be applied according to the circumstances of the matter. The addressee of these claims and sanctions also differ according to the circumstances of the matter. If we limit the scope to the liability arising from damages incurred because of the defective products, such liability is placed only on the producer/manufacturer of the defective product in Law no: 4077 and the Product Liability Regulation. Once again it should be noted that, contrary to Law no: 4077, the new Law no: 6502 does not contain a special provision about the damages incurred due to the defective products and it just refers to Law no: 6098 for the compensation claims related to the defective products.

Article 4 of the Product Liability Regulation defines the producer/manufacturer as follows:

- (i) the manufacturer of a product which is presented to consumers, including public legal entities;
- (ii) the producer of raw materials and any component parts of such product;
- (iii) a person who puts a product into circulation or imports a product for such purposes by putting his name, trademark or other distinguishing feature.

Furthermore, according to the Product Liability Regulation, where two or more persons are liable for the damage, they shall be jointly liable.

In the event the defective product causes a person's death or injury, or gives damage to a property, the manufacturer/producer is obliged to indemnify such damage based on strict liability principles.

Article 4 of the Product Liability Regulation defines the injured as the consumer who has been injured due to damage caused by the defective product. Similar to Law no: 4077, law No: 6502 defines the consumer as the real or legal persons who are acting for purposes other than commercial or professional purposes. Therefore, it should once again be noted that damages given to a person who acts for commercial or professional purposes shall not be indemnified in accordance with strict liability principles within the scope of Product Liability Regulation. Such injured party would not have the opportunity to benefit from consumer legislation and would have to apply to the general provisions, such as the relevant provisions of Law no: 6098.

1.7 By what means can a supplier limit its liability for defective products?

In accordance with Article 8 of the Product Liability Regulation, any provision set forth in a contract or in any separate document which regulates that the consumer has waived his/her rights under the Product Liability Regulation, or limits or removes the liability of the producer/manufacturer arising from the Product Liability Regulation is invalid.

Therefore, it is not possible for a supplier to limit his/her strict liability arising out of the Product Liability Regulation.

1.8 Are there particular goods or services which have specific obligations or duties attached to them?

We would like to give some general information by referring to Article 71 of Law no: 6098. According to such article, which was not included in our previous Code of Obligations, strict liability principles apply to enterprises possessing significant danger. If it can be concluded that the enterprise is prone to create damages frequently or is prone to create heavy damages even if all the care that should be expected from an expert in such sector is shown, then such enterprise is considered as an enterprise possessing significant danger by the law. According to the same article, if damage occurs as a result of the operations of an enterprise possessing significant danger, both the owner of the enterprise and the operator of the enterprise are held jointly liable based on strict liability principles.

2. DEFENCES

2.1 What are the possible defences to a product liability claim?

The Product Liability Regulation gives us the possible defences that can be used against a product liability claim. According to Article 7 of the Product Liability Regulation, the producer/manufacture shall not be liable if he proves any of the below:

- (i) that he did not put the product into circulation; or
- (ii) that the product was not produced for sale or was not manufactured by him in the course of his commercial activities; or
- (iii) that, having regard to the circumstances, the defect which caused the damage did not exist at the time when the product was put into circulation by him; or
- (iv) that the defect is caused due to the compliance of the product with the relevant technical regulations; or
- (v) that the state of scientific and technical knowledge at the time when the product is put into circulation was not such as to enable the existence of the defect to be known.

The producer of a component (an element of the main product) shall not be liable if he proves that the defect is attributable to the design of the product or to the instructions given by the producer/manufacture of the product.

Furthermore, according to Article 6 of the Product Liability Regulation, the liability of the producer/manufacture may be reduced or removed, having regard to all the circumstances, if the producer/manufacture proves that the damage is caused by the consumer or any person for whom the consumer is responsible.

2.2 Is there a limit on the time in which proceedings may be brought (limitations and repose)?

If we limit the answer of this question to the claims arising out of damages incurred due to the defective products, according to Article 4 of Law no: 4077 and Article 9 of the Product Liability Regulation, the injured person must bring proceedings within three years. This term begins on the date the injured person becomes aware or should have become aware of the damage, the defect and the identity of the producer/manufacture.

Furthermore, according to Article 4 of Law no: 4077 and Article 10 of the Product Liability Regulation, in any case, the claim would be time barred after 10 years have passed since the product which has caused the damage was put into circulation.

On the other hand, as described above, contrary to Law no: 4077, the new Law no: 6502 does not regulate compensation claims related to damages arising out of a defective product and it just refers the matter to the general law, Law no. 6098. Therefore, we believe that once the new Law no: 6502 comes into effect, the prescription periods mentioned above would not be applied. Instead of them, the prescription period regulated in Law no. 6098 for tortious acts would be applicable. Accordingly, the claim should be raised before the courts within two years starting from the date on which claimant

learns of the damage and the party responsible for such damage; and in any case, the claim would be time barred 10 years after the incident occurs. Please note that the draft law (please see our explanations included under question 8.2 below), which is expected to replace Law No: 4703 and includes provisions on liabilities that may arise due to damages incurred because of the defective products, also refers to the prescription period regulated in Law no. 6098.

3. LITIGATION OF PRODUCT LIABILITY DISPUTES

3.1 In which courts are product liability proceedings brought?

If the claimant (plaintiff) can be characterised as a consumer under consumer legislation, the liability proceedings should be brought before the consumer courts. If the claimant (plaintiff) cannot be characterised as a consumer, then liability proceedings should be brought before the civil courts (commercial courts). It should be noted that if the claimant (plaintiff) can be characterised as a consumer and the claim amount does not exceed TL3000 (approximately US\$1,400), then the proceedings should be brought before the arbitration committee established by the State for the consumers. According to Law no: 4077, it is possible to apply to the arbitration committee even for claims that are higher than the threshold determined in the law (in such case, decisions of the arbitration committee shall not be binding on the parties but serve as an evidence for the trial before consumer courts). However, the replacing new Law no: 6502 clearly restrains applications to the arbitration committee for the amounts higher than the threshold.

3.2 How are proceedings commenced?

The claimant (plaintiff) applies to the court or the arbitration committee with a petition and submits all evidences he/she has. It should be noted that if the claimant (plaintiff) can be characterised as a consumer, the claimant (plaintiff) would be exempted from court fees that are calculated over the claim amount in principle. Furthermore, if the claimant (plaintiff) can be characterised as a consumer, he/she has the right to apply to the court where he/she is domiciled.

3.3 Are disputed issues decided by a judge or a jury?

There is no jury system under Turkish procedural law. Decisions are made by the judge. On the other hand, it should be noted that judges' decisions rely mainly on the expert reports received from the experts appointed by the court.

3.4 Who has the burden of proof and to what standard?

In principle, under Turkey's tortious act law structure, the plaintiff is required to prove the defect, the damage incurred by him/her, causation link between the defect and the damage incurred and also the defendant's fault. However, as described above, in one of the well-known decisions of the Court of Appeals, the Court of Appeals concluded that the injured party

shall not be required to prove the causation link since the production stage of the product is very complicated for the injured part and it is therefore impossible for the injured party to understand the technical details of the product and establish the causation link between the incident and the product. Furthermore, in the same decision, the Court of Appeals stated that a producer should show much more care for his duties than an ordinary party and thus concluded that the injured party's obligation to prove the defendant's fault in a product liability case should be diminished.

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

If the plaintiff is a consumer and the proceedings are brought before the consumer court, all evidence should be shown at the beginning of the trial while submitting the statement of claim or the response to the statement of claim. If the plaintiff or the defendant possesses the evidence, the evidence should be submitted; if it is not possessed, then the necessary information related to the evidence should be given to the court so that the court conducts the necessary procedures to bring the evidence to the file. On the other hand, if the plaintiff is not a consumer and therefore the proceedings are brought before the civil court, parties have the chance to submit some of their evidence at a later stage. Under Turkish law, there is no cross-examination procedure in civil courts; so witnesses are not cross-examined, only the judge has the right to question witnesses.

3.6 Are the parties able to rely on expert opinion evidence and, if so, are there any special rules or procedures for expert opinion evidence?

For the first time, the new Procedural Law which came into force as of October 2011 regulates expert opinion evidence. Accordingly, both parties are able to rely on expert opinion evidence, but they do not have the right to ask the court to grant additional time just for the purpose of submitting expert opinion evidence. It should be noted that the judge may decide to listen to the expert, who prepared the written opinion, on his own initiative or upon the request of the other party. Experts can be cross-examined by the parties and if the expert does not honour the court's invitation to come to the court, his/her report will not be taken into consideration.

3.7 Is pre-trial discovery permitted? If so, in what circumstances? If not, what other mechanisms, if any, are available for obtaining evidence from a party or a third party?

Pre-trial discovery is not permitted under Turkish law. After the claim is brought before the court, upon the request of any of the parties, the court has the right to force the other party or a third party to submit the evidence in his/her possession. Furthermore, if there is a risk that the evidence may disappear, both parties have the right to apply to the court (prior to the lawsuit being filed or during the trial) for the determination and recording of the relevant evidence. Within the scope of such application, the judge and/or the expert to be appointed by the judge would have the right to obtain

evidence from the other party and/or the third party.

3.8 Is there liability for spoliation of evidence/a remedy for destruction of or failure to preserve evidence (most relevantly, the product)?

There are some regulations in this respect in the Procedural Law regarding documentary evidence. Accordingly, if the party fails to show the court (with the supporting evidence) the reason for his/her failure to present the evidence, then the judge may accept the other party's allegations depending on the circumstances of the matter. We believe that such legal opportunity may also be used for non-documentary evidence such as the product.

3.9 Is interlocutory or interim relief available prior to the full trial of a proceeding?

In principle, yes, interlocutory or interim relief is available prior to the full trial of a proceeding. If the party asking for interim relief almost proves his/her claim and if there is a serious risk that the party asking for interim relief may not reach his/her goal if the interim relief is not granted, then the court may rule for an interim relief. It should be noted that Turkish courts' tendency is not to rule for an interim relief easily.

On the other hand, there is a special interim relief regulated under Law no: 6098 which can apply in product liability cases. According to Article 76 of Law no: 6098, if the injured party submits serious evidence supporting his/her claims and also if he/she is suffering from financial difficulties, then the court may rule that the defendant make temporary payments to the plaintiff. These payments would be deducted from the compensation amount to be ruled by the court at the end of the trial. If the case is dismissed at the end of the trial, the court rules that the defendant return the temporary payments together with the accrued interest.

3.10 Can the winning party recover its costs?

Yes, the winning party recovers its costs, but this does not mean that all actual legal fees paid by the winning party to his/her lawyer would be reimbursed. The amount of legal fees to be reimbursed to the winning party shall be determined according to an official tariff by taking the claim amount into consideration.

3.11 What avenues of appeal are available?

The appeal system adopted by the new Procedural Law is still not in force. Certain conditions must be met by the State to facilitate the new appeal system, thus, it is currently unknown when the new appeal system will start to function. Under the current system, if the claim amount is higher than TL1,890 (approximately US\$870), then the local court's decision is appealable before the Court of Appeals. Furthermore, if the claim amount is higher than TL11,530 (approximately US\$5,300), it is also possible to apply to the Court of Appeals for the review of Court of Appeals' decision rendered as a result of the appeal.

4. CLASS ACTIONS/REPRESENTATIVE PROCEEDINGS

4.1 Is there a mechanism for class actions or representative proceedings, or coordinated proceedings for product liability claims? If so, what are the basic mechanics?

In general, contrary to the old one, the new Procedural Law contains a framework provision regulating class actions. Furthermore, Law no. 4077 and the new Law no. 6502 have some specific provisions related to class actions or representative proceedings that can be used in product liability matters. In short, consumer organisations, relevant public authorities and the Ministry of Customs and Trade has the right to file a lawsuit for the suspension of production and sale of the defective product and also for the collection of these products from third parties that possess such products for sale. Furthermore, referring to the framework provision included in the new Procedural Law, we believe that especially consumer organisations should have the right to file a lawsuit for the determination of consumer rights or to eliminate the illegal situation or prevention of the breach of consumers' future rights. It should be noted that under the current legal system it is not possible to claim compensation by way of class actions or representative proceedings. Individuals asking for compensation due to product liability should file separate lawsuits.

5. LITIGATION FUNDING

5.1 Is litigation funding by third parties permissible in your country? If so, is it common?

Litigation funding by third parties is not forbidden in our legal system. However, as far as we are aware of, it is not common at all. On the other hand, there are certain rules determined in the Procedural Law regarding litigation funding by the State for people having financial difficulties.

5.2 Are contingency fee or 'no win no fee' arrangements permissible?

It is possible to determine the amount of the legal fee according to a certain ratio of the compensation amount to be ruled by the court. It should be noted that such ratio cannot exceed 25%. On the other hand, 'no win no fee' arrangements are not permissible. At least, the lawyer should be entitled to receive the minimum amount determined in the official tariff for each type of legal services. It should be noted that such minimum amounts determined in the official tariff are significantly low, so, in practice, no win no fee arrangements are almost applicable.

6. REMEDIES

6.1 What remedies are available to a party which successfully pursues a product liability claim?

Various types of claims may arise due to a defective product. If we limit the scope of the claims to damages incurred due to a defective product, the plaintiff can ask compensation both for his/her material and immaterial damages. Within the scope of the material damages; funeral costs,

treatment costs, damages incurred and to be incurred as a result of the loss or impairment of the injured party's ability to work and loss of earnings can be claimed. Within the scope of immaterial damages, an appropriate compensation should be ruled by the court considering the circumstances of the matter for the plaintiff's psychological/mental damages. It should be noted that if the injured party dies, certain relatives (such as mother, father, children) can also ask for compensation for their material and immaterial damages.

A consumer also has the right to apply to the court for the determination of the defect in a serial product, suspension of such product's production and sale, elimination of the defect and collection of the product from the market.

6.2 How are damages calculated/are there limitations on available damages?

Damages are calculated by the expert(s) appointed by the court based on the available evidence in the file. There is no mathematical limitation on damages but the compensation amount cannot exceed the plaintiff's actual damage.

6.3 Are punitive or exemplary damages available and in what circumstances?

No, punitive or exemplary damages are not available for product liability cases under Turkish law.

6.4 Is liability joint and several/how does apportionment of liability work, including where a partially responsible entity is not a party to the proceeding?

In general, within the scope of the consumer legislation, producer, importer and seller of the defective product are jointly liable against the consumer for his/her certain claims. However, if we limit the scope of claims to damages incurred due to a defective product, there is no joint liability regulated by the law. The injured party may apply to the seller based on contractual obligations or to the producer based on tortious act principles.

7. ROLE OF REGULATORS

7.1 Please explain the role, responsibilities and powers of the regulators in your country which have jurisdiction over product liability issues.

In general, regulators prepare technical regulations for products and perform market surveillances. Depending on the product type, there are different regulators that are in charge of preparing the technical regulation for each specific product and conducting market surveillances related to those products.

Products supplied to market should meet the necessary criteria determined in the technical regulations. Regulators perform market surveillances in order to ensure that products on the market meet the

necessary criteria determined in the technical regulations and that they are safe. It should be noted that although the legislation accepts in principle that a product is deemed safe if it is manufactured according to the applicable technical regulation, it is still possible for a product that is manufactured according to the applicable technical regulation to be unsafe.

During market surveillances, regulators make tests on the products in order to ensure that such products have been produced in line with the applicable technical regulation and that they are safe. Even if the test results are not received and thus, it is not officially determined yet that the product is unsafe, regulators have the right to suspend the supply of the product to the market temporarily if there are concrete indications showing that the product is unsafe. According to the Market Surveillance Regulation, such temporary suspension cannot exceed three days provided that to perform the necessary technical tests does not require more time.

If as a result of the tests performed on the product it is understood that the product is not safe, regulators have the power;

- to ban the supply of the product to the market;
- to provide the collection of all products from the market;
- (if it is possible to fix the product) to notify the producer to fix the product and make it safe within a specific period of time;
- (if it is not possible to fix the product or if the producer fails to fix it) to destroy the products completely or partially;
- to make necessary announcements in two newspapers and two TV channels both of which are distributed and broadcasted countrywide;
- to rule the producer to pay the costs that arise as a result of technical tests and measures described above; and
- to impose administrative monetary fines on the producer.

7.2 Are there any mandatory reporting requirements related to product safety issues?

First of all, producers are obliged to investigate product-related complaints and perform tests on the products that are currently on the market. As a result of such investigations, if the producer determines safety risks on the products on its own, it is obliged to notify the distributors of the products and take necessary precautions such as performing product recalls and destroying the affected products if they cannot be fixed.

The relevant law, Law no: 4703, stays silent about reporting requirements for voluntary product recalls. However, our experience has shown us that the relevant Ministry wants to be informed about the details of the voluntary product recalls. Although the relevant law, Law no: 4703, does not contain specific provisions about voluntary product recalls, an amendment has been made in the Market Surveillance Regulation for Industry Products (this is a sub regulation under the general Market Surveillance Regulation issued by the Ministry of Science, Industry and Technology for only the products that fall in the scope of such Ministry's duty area) recently on 25 February 2014 and certain provisions regarding voluntary product recalls have been incorporated into such regulation.

Accordingly: Article 27/A of the Market Surveillance Regulation for Industry Products regulates voluntary product recalls. It is stated in this article that in the event a producer wishes to conduct a voluntary product recall, such producer is obliged to apply to the Ministry together with all the information and documents with regard to any correction and recall activities before conducting such voluntary recall. It should be noted that there is no specific provision regarding whether the voluntary recall of the same product in another jurisdiction would trigger a reporting obligation in Turkey or not. However, in practice, the Ministry expects the producer to make an application to Turkish authorities for a voluntary product recall if a recall is made outside Turkey for the same product.

7.3 Do the regulators have the power to:

(i) ban certain goods or services?

Yes, as explained under question 7.1 above, they have such power.

(ii) require a supplier to recall a product?

As explained under question 7.1 above, they have the power to require the producer to recall a product. The definition of the producer is broad. Law No. 4703 defines the producer as the producer of the product or any other person presenting himself as the manufacturer by affixing to the product his name, trade mark or other distinctive mark, or the person who reconditions the product, or in the event the producer is outside Turkey, the representative of the producer or the importer of the product, or the real or legal persons in the supply chain whose activities may affect the safety properties of the product.

(iii) prescribe standards in respect of certain goods or services and require that the goods or services meet those standards?

Yes, as explained under question 7.1 above, they have such power.

(iv) require production of information without court process?

Yes, as per the relevant provisions of the Market Surveillance Regulation, regulators have the power to require production of information without court process. This information may include all detailed information related to design and production of the product and also the addresses of the production places and warehouses.

If so, broadly explain the circumstances in which the regulator can exercise the power and any penalties that apply if a supplier fails to comply.

If it is determined that the producer has supplied the market with unsafe products or that the producer has failed to investigate the complaints related to its products and take necessary precautions, regulators have the right to impose administrative monetary fines on the producers.

8. VOLUNTARY CONDUCT

8.1 Are there regulations pertaining to the voluntary conduct of a product repair or recall by a supplier?

As explained under question 7.2 above, the relevant law, Law no: 4703, stays silent about voluntary product recalls. Although the relevant law does not contain specific provisions about voluntary product recalls, an amendment has been made in the Market Surveillance Regulation for Industry Products (this is a sub regulation under the general Market Surveillance Regulation issued by the Ministry of Science, Industry and Technology for only the products that fall in the scope of such Ministry's duty area) recently on 25 February 2014 and certain provisions regarding voluntary product recalls have been incorporated into such regulation.

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Upon the application to the Ministry, the Ministry shall give time to the producer to fulfil its recall activities by taking into consideration the request of the producer, specifications of the product and its market extension. This term cannot be more than one year. In the event voluntary recall activities cannot be fulfilled within one year without the negligence of the producer, the Ministry may give additional time to the producer to complete voluntary recall activities.

The Ministry, if it deems necessary, may request the product to be tested and inspected by a neutral test or inspection institution.

The products which are corrected cannot be put into circulation before being submitted to the review of the Ministry. Therefore, after a voluntary recall, if the producer is willing to put the same product into circulation, the information and documentation with regard to corrective actions must be submitted to the Ministry.

9. EMERGING ISSUES AND LAW REFORM

9.1 Are there important developing and emerging issues or trends in product liability law in your country?

As can be seen in the very recent change in the Market Surveillance Regulation for Industry Products, the State is becoming more interested in product liability matters and especially in voluntary product recalls. Therefore, we believe that compared with the past, producers should be more serious and dedicated in their voluntary product recalls to be performed in Turkey.

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As can be seen in the very recent change in the Market Surveillance Regulation for Industry Products, the State is becoming more interested in product liability matters and especially in voluntary product recalls. Therefore, we believe that compared with the past, producers should be more serious and dedicated in their voluntary product recalls to be performed in Turkey.

9.2 Please describe any proposed important law reform in the area of product liability in your country.

Law No. 4703 was adopted with the purpose of implementing Council Directive 92/59/EC of European Union Legislation into Turkish law and it will be amended in the near future. The draft law, entitled Law on Product Safety and Technical Regulations (Draft Law) that will abrogate Law No. 4703 is published on the website of the Ministry of Economy. The Draft Law is prepared in accordance with the changes in the European Union product safety legislation, particularly: (1) EU Regulation numbered 765/2008/EC; (2) EU Decision numbered 768/2008/EC; (3) EU Directive numbered 2001/95/EC; (4) EU Regulation numbered 764/2008/EC; (5) EU Directive numbered 85/374/EEC; (6) Draft EU Regulation numbered 2013/0048; (7) Draft EU Regulation numbered 2013/0049; (8) Turkey-EU Partnership Council Resolution 1/95, 2/97 and 1/2006; and (9) WTO's Agreement on Technical Obstacles in Trade.

10. REGULATORY WEBSITES/INFORMATION

10.1 Please identify any useful regulatory references relating to product liability law in your country, for example, a product safety/consumer law website maintained by the main regulator.

Although the English version of it is not as satisfactory as the Turkish version, <http://urunguvenligi.ekonomi.gov.tr/ug/> which is a website under the responsibility of the Ministry of Economy, can be a useful reference on the matter.