

Recent Trends in the Development of Consumer Legislation in Turkey

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Acts Protecting Insurance Consumers

- Consumer Protection Act & Code of Obligations
- E-commerce Act
- Insurance Supervision Act
- Code of Commerce Book Sixth (insurance contract)
- Data Protection Act

Consumer Protection Act

- Applicable also to insurance (provision of service)
- Refusal to provide service: Prohibited except in case of reasonable grounds
- Sale of service by instalment (in my view applicable to insurance)
- Off premises contracts (should be applicable to insurances)
- Distant contracts (applicable to insurances)
- Consumer credits
- Consumer courts and ADR (applicable to insurances?)

Consumer Protection Act (Consumer Credits)

- Article 29: Insurances taken out in respect of consumer credits
- *“No insurance contract related to the consumer credit shall be concluded without the express request of the consumer made in writing or by means of a durable medium.*
- *The credit institution shall accept the insurance taken out from the insurer that the consumer has chosen.*
- *The insurance taken out in respect of the consumer credit must be appropriate to the subject matter of the loan and in case of fixed sum insurances, to the maturity date of the credit and the remaining amount of debt”.*

Consumer Protection Act (Consumer Credits)

- Article 29 is a reactionary rule.
- It is the result of a reaction to the banks acting at the same time as insurance intermediaries (Banks imposing insurances to be taken out from the insurers they work with = commission)
- Article 29 is partly non-sense (what means “no contract without the express request of the consumer”?)
- In my opinion we should make insurance “compulsory” (as guarantee of the credit) by imposing on the bank the economic burden of the premium (entirely or an important portion thereof).

Consumer Protection Act (Consumer Credits)

- Banks are free to require a guarantee for the credits they grant.
- Banks require mortgage or pledge or bailment as guarantee.
- All are much more harmful than insurance.
- Therefore insurance should be encouraged and facilitated at least not rendered more difficult.

Unfair Contract Terms

- Protection re unfair contract terms granted to “all”
- Not only consumers but also traders and professionals
- Problem: General Conditions of Insurance prepared by the Regulator (contract terms not prepared by the insurers and imposed on the policyholders)

E-commerce Act

- Electronic messages sent for marketing purposes : Prior consent of the addressee (prospective policyholder) required (but only for consumers)
- Duties imposed to the e-commerce trader (insurer):
 - Information duty
 - Acknowledgement of the receipt of the command (purchase order)
 - Provision of a system appropriate for the detection and correction of input errors
 - Right to refusal to receive commercial e-messages

Insurance Supervision Act

- Aim of the “supervision activities”: Protection of the policyholders/insured (but insurance undertakings despite regulations went bankrupt)
- General Conditions of Insurance determined by the Regulator.
- Insurers are required to enter into insurance contracts with “main content conform to those General Conditions”.
- Quid if they don’t?
 - Freedom to contract unduly restricted
 - Is the contract invalid?
 - Unfair contract terms

Code of Commerce (Book Sixth: Insurance Contract)

- Mandatory provisions
 - Three provisions out of third have mandatory character
- Large risks/mass risks
 - No distinction between large risks and mass risks
 - (= Same protection for any policyholder/insured including medium and big size enterprises)
- Information duty imposed on both the insurer and the intermediary (insurance agent)
- However, no duty to warn about the inconsistencies of the cover and no duty to advise)

Data Protection Act

- Information duties
- Consent
- Right to control the data (erasing, transfer)
- Insurance: Problems re “sensitive data”.
 - Collecting, processing and sharing are necessary for risk assessment (underwriting) and claims handling.
 - Life, accident, health expenses, critical disease, liability (MTPL, Employer etc.)