ASPECT AND SCOPE OF TURKISH CONSUMER LAW

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Legal Sources

From the Classic age of Roman Law to the great civil codes and codes of obligation of last centuries, autonomy of willpower principle and assumption of equality have prevailed over Law of Obligation. Either general principles or specific provisions of obligation law suppose that parties to contract are in equal conditions as an assumption. This structure does not meet the needs of protection of consumers against the actors and conditions of advanced free market economy. This requirement created the consumer Law. In this Way, substantial character of consumer law is the existence of the terms determined in an unequal (lopsided) fashion which protect the consumer and grant him some special rights and privileges.

Legal regulation of provisions which aimed to bring special protection for consumer in Turkish Law is relatively late. As a matter of method, Turkish legislator preferred to enact separate and special Acts in order to regulate this area rather than to incorporate them into basic codes like code of obligation. Main regulation of consumer law in Turkish law is Consumer Protection Act (CPA) dated 1995 nr. 4077 . This code has been amended substantially by Act 4822 dated 3.6.2003 With this amendment

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Turkish Consumer Law became more consistent with the provisions and principles of EU Directives. Another important regulation is Act for Bank Cards and Credit Cards Nr. 5464 dated 2.23.2006. which was brought into force very recently.

Scope of Consumer Protection Act.

Consumers are customers who purchase goods or services for personal purposes but not for commercial or professional aims However CPA does not covers every contract to which consumer is a party. In addition, supplier party must transact this contract for commercial or professional purpose. Differing from most of EU member states law, CPA arranged that an artificial person (a corporation) may be supplier party to a consumer contract. This regulation has being criticized in Turkish Doctrine . Particularly supplier status of the trade companies is a very controversial point in Turkish Jurisprudence. According to one point of view, transactions of trade companies can never be held as consumer contract. As a result of this view, only associations and foundations can be a party to consumer contract. But some others are in opinion of that trade companies can be considered as consumer for their transactions which are not relating to their professional activity directly (for example purchase of food for staff of an industrial plant).

CPA excludes some types of contracts even they have conditions we mentioned above. Sale of real estates except those aiming at housing or holyday accommodation; License and permission contracts of industrial and intellectual property except sale of computer programs (soft wares) are not subject to CPA. Beside these contracts, although it is not indicated explicitly, employer of a Labor contract is not accepted consumer in term of CPA, because of the principle of the protection of employee in Labor Law. CPA can not apply to these contracts.

Contents of Consumer Protection Act.

CPA brought same certain form requirement for consumer contracts. Some kind of contracts prescribed by CPA are subject to written form as a condition of validity. Further more, concerning contracts with general transaction clauses (standard type contracts), beyond a simple written form, Law requires that text of contract must be typed in bold letters and at least at 12 font size. (16 font size in doorstep contracts). CPA also states that a number of certain clauses must be taken part in the written text of agreement by the parties for some certain types of contract. For example, number, amount and due time of installments; rate of contractual or default interest; consequences of consumers default must be written clearly in contract.

As an exception to contract freedom, CPA arranged an obligation of suppliers to make contract with consumers under definite conditions. If supplier displayed (exhibited) his good for sale, he can not refrain from selling it upon a consumers offer. Supplier is also obligated to conclude contract on size, number or weigh to the extend of consumers demand unless this demand is considered against the fair dealing principle.

CPA Also controls the contents of consumer contracts. Art. 6 laid dawn that, unfair terms in standard contracts concluded between supplier and consumer, can not be raised by supplier towards consumer. That kinds of term are not binding on consumer. Consumer is allowed to presume that contract is valid without these kinds of terms. İf a term which has not been individually negotiated by consumer and supplier before conclusion of contract causes a significant imbalance in the parties rights and obligations arising from contract to the detriment of the consumer shall be defined as unfair term. Contract terms in a draft prepared by supplier shall be regarded as not negotiated individually by parties. CPA has not enumerated specific unfair terms, even has not given samples, differing from relating EU Directive and some European Cods. However, A decree for unfair terms in consumer contracts regulates 17 kinds of unfair terms for example.

An other characteristic of CPA is to have provisions those Provisions which enable the consumer to terminate the contract provide for termination rights of consumer which release him from the contract to which he is a party. Provisions which enable the consumer to terminate the contract constitutes usually an easier way of termination in comparison with relating provisions of Code of Obligation. contrary to Code of Obligation, some provisions of CPA allow the consumer to revoke his contract without need to assert any reason. This is an exception to the binding of contracts. Consumer has the right to terminate contract freely in 1- "doorstep contracts" which includes contracts negotiated away from business premises and has surprise factor; 2- "distance contracts" which contains all contracts concluded by using any written, telephone, visual and electronic means without interview of parties face to face; 3- "sale by campaign" is a contract entered by consumer as a result of a campaign announced by newspaper, radio, TV , internet or another public communication way; 4- "subscription contracts" are the contracts that consumer subscribes to a periodic publication. Termination right of consumer must be performed within 7 days in case of doorstep contracts and distance contracts. But in case of sale by campaign and subscription contracts consumer can perform the same right throughout contract period.

Another original regulation of CPA is the extension of contractual liability to the third persons. According to the warranty regulation of CPA, in the event of fulfillment with defective goods, consumer can raise his rights arisen from defective fulfillment against not only supplier but besides him some other persons who are not party to contract. According to this provision, if there was any, producer, dealer, agent, importer and credit institution which has given credit to consumer for sold good shall be jointly responsible against consumer even they had no fault in defective fulfillment (this is a severe liability). Provisions pertaining to the breach of contract are applied to this responsibility rather than provisions about torts.

On the other hand, warranty system of CPA provides rights more than warranty provisions in Code of Obligation. For example, in Code of Obligation optional rights of buyer are "reduction of price", "replacement of sold good", "revocation of contract". In

CPA buyer as a fourth option besides these has the “right to have repaired sold good”. Furthermore, since the choice of optional rights are restricted from some point of view in Code of Obligation, choice of consumer are not limited in CPA.

CPA has set forth some additional duties for suppliers besides fulfillment of obligation agreed upon. Obligation of providing guaranty certificate at sales of industrial goods and obligation to deliver an operation and instruction manual if sold item requires can be cited.

CPA does not consist of those provisions which are only related to obligations and liability of consumer contracts but also has established some institutions in order to protect consumers against some deceiving conditions of market. “Advertisement Committee” which has a certain authority to control advertisements and “Consumer Council” which aims at every possible precaution for protection of consumers interest and application of CPA are such associations.

Litigation and remedies.

Finally, settlement of disputes those are arisen from conflicts related to CPA is subject to a special and exceptional procedure. Competent judicial organs for consumer trials are “Arbitration Councils for Consumer Questions” and “Consumer Courts”. Both are established on regional base. İf value of consumers claim is less than 724Tl 99Krş. (approximately 450 €) for this year he must bring his suit before the Arbitration Council for Consumer Question. Verdict of this Council can be appealed by each party to the Consumer Court and judgment of Consumer Court is final. Claims higher than aforesaid amount are conducted directly by Consumer Court. However Consumer may apply to Arbitration Council for having a verdict on determining evidences prior to open his law suit before Consumer Court. The amount of claim which defines the authorized organ is declared at the and of the October of each year by Ministry of Industry in Official Gazetee.

Ministry of Industry can request from Consumer Court for preventing of selling of some goods and collecting of them if consumers interest requires. Ministry also is authorized to give some penalties to the every actor of market for their certain harmful behaviors which violate their duties prescribed by CPA. Some of these penalties exceed ten thousands YTL.

Act for Bank Cards and Credit Cards

Although some principles about bank credit carts have been designated in CPA, Very recently a separate and detailed legislation has occurred. This is the "Act for Bank Cards and Credit Cards Nr. 5464 dated 2.23.2006." By this regulation, Authorization of banks to issue and distribute credit cards is limited by certain restrictions.