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Defective Products and Consumer Rights

Under the Consumer Protection Law, a 'defective product' is defined as a product which has physical, legal or economic deficiencies that reduce its quality, quantity or standard. Responsibility for a defective product lies with the product's producer, seller, distributor, agency and exporter. Article 4 of the Consumer Protection Law provides that in case of a defective product, the consumer has the right to:

- withdraw from the contract and receive a payment refund;
- exchange the product for an identical product that is free from defects;
- reduce the price of the product in proportion to the defect; or
- receive free repair of the defect.

The law determines that the consumer is free to exercise any one of these four rights. In other words, the producer or seller cannot pressurize the consumer into exercising one particular right. However, despite many established precedents from the Turkish Court of Appeal, the application of this provision remains a problematic area of Turkish consumer protection practice. This is because in cases of defective products, the average Turkish consumer generally prefers to withdraw from the contract and receive a refund.

However, Turkish producers prefer to insist on exchanging the product for another that is free from defects. Producers prefer this option as it helps them to clear their excess stocks. In addition, by selling another product to the consumer, contact with the consumer is not lost and the seller can make more money by providing after-sale services or spare parts. Of course, when parties appear before the courts, sellers often deny the consumer's claim that he or she wished to withdraw from the contract, and may even deny receiving the consumer's application to withdraw.

Another problematic issue for consumers is hidden defects. While under the Consumer Protection Law a consumer must inform the seller of a defect within 30 days of discovering it, this rule does not apply to hidden defects. However, since the Consumer Protection Law provides no clear rule on hidden defects, the general provisions must be applied, which state that in case of a hidden defect, the buyer may apply to the seller immediately after learning of the hidden defect. Such application must be made within a period of two years, according to the statute of limitations.

In cases of hidden defects, many producers and sellers object to the fact that consumers often delay informing the seller of the defect once it has been discovered. Since it can often be difficult to prove the exact timing of when the defect was discovered, consumers may face difficulties in exercising this right.

In light of these problems, the regulators have launched a campaign about consumer rights and the conditions that must be met in order to benefit from such rights. However, consumers must also be aware that in order to exercise one of these rights, written proof is required.