

## CHAPTER XXII

### CONSUMER PROTECTION

#### A- COMMUNITY ACTION PROGRAMME

Consumer protection is to be achieved in the context of the common market rules by means of legislation putting into effect a continuing action programme. The programme commenced in 1975 summarized the consumer interests in terms of five basic rights to be implemented by Community legislation, i.e. the right to protection of health and safety; protection of legal and economic interests; the right of redress; the right of information and representation.

Consumer health and safety legislation covers a great variety and a wide range of products mainly in the context of the CAP (i.e. foodstuffs, fruit and vegetables and animal health) and in the context of the free movement of goods (i.e. in order to remove barriers to trade) affecting in particular motor vehicles, chemical substances, household goods, cosmetics and childrens' toys.

Correct labelling, particularly of foodstuffs, and a curb on misleading and unfair advertising and information procedure for technical standards are among other achievements in this field as is a product liability directive which, though vague and riddled with derogations, advances the process of consumer protection.

A very important practical solution for the Community standards has been found. In the past, standardization has been carried out by piecemeal legislation according to a "recipe" formula for each product. This proved an impossible task and the method was abandoned in favour of "essential" standardization. This means that the Community will standardize only what is considered essential (at present attention is directed towards the telecommunications, pharmaceutical, civil engineering and construction sectors as well as the food sector) whilst a Member State will observe mutual recognition of products lawfully produced and marketed in another Member State.

Since the task of laying down standards has been entrusted to independent bodies consisting of industry experts and representatives of consumer organizations the consumers' cause seems to be in safe hands.

To ensure the protection of legal and economic interests of consumers the major Community legislation comprises directives on doorstep selling, consumer credit, correct description of products, unfair terms in contracts and product liability and package holidays.

No measure as yet has been enacted to ensure that consumers receive advice and help in respect of complaints arising from purchase or use of defective goods or unsatisfactory services but they ought to be forthcoming in order to carry out the programme. However the Commission has embarked on a scheme of information and education to foster consumer awareness at an early age, at school<sup>1</sup>.

On representation of consumer interests the Commission itself has taken an initiative in establishing the Consumers' Consultative Committee in 1973 and supporting financially major European consumer organizations. It is not clear whether Community legislation will be enacted in this field.

#### B- IMPLICATIONS FOR TURKEY<sup>1a</sup>

Consumer protection has led to a vast legislative programme affecting directly virtually all sectors of the manufacturing industry and services. The obligations and standards imposed upon the manufacturers and the providers of services impose burdens upon them which they can pass on to the consumers who will eventually pay for the better product and more satisfying service.

The duty placed upon the Member States is not only to implement and enforce the Community measures but also to construct a national legal framework in which not only the legislation but also the educative measures would work.

A wide variety of legislation exists in Turkey which directly or indirectly concerns consumer protection, Especially statutes and administrative regulations in the field of industrial products, standardization and protection of health are numerous<sup>2</sup>. However, these laws are somewhat old and usually enacted irrespective of the corresponding EC legislation.

The new Turkish Constitution (Art.172) states the protection of consumers as one of the economic functions of the State and obligates the government to take the necessary measures. In this context a so called "Preliminary Consumer Protection Bill" (a green paper) has been published by the Ministry of Industry and Trade in February 1992. This document which is intended to be the last among the six previous unsuccessful proposals to the same effect<sup>3</sup> makes special reference to the Community Action Programmes in the "preamble" and makes provision for consumer contracts, consumer organizations and the establishment of a special consumers' court. However the contents of this "Preliminary Consumer Protection Bill" is far from being satisfactory and has been severely criticized by a group of Turkish jurists in a short report transmitted to the Ministry in March 1992.

Essentially what must be done by Turkey at this stage is not to enact a general consumer protection statute per se but to improve the existing legislation to fill its gaps in some areas and to bring it in line with the EC law.

The most important "gaps" in the Turkish legislation in this respect relate to product liability, consumer contracts (especially standard contract terms), consumer credits and misleading advertising. There is virtually no legislation which directly deals with product liability in Turkish law. Consumer credits and advertisements are regulated only by two regulations of the Central Bank and Turkish Radio and Television Corporation, respectively<sup>4</sup>. Necessary legislation must be enacted in these areas considering the related Community directives<sup>5</sup>. Traditional provisions of the Turkish Code of Obligations regarding Contracts are also by no means satisfactory to deal with consumer contracts. Besides the Community directives on doorstep selling and unfair contract terms<sup>6</sup> and some amendments which have been made in this respect to the Swiss Code of Obligations -which is the origin of its Turkish counterpart- also remain to be considered by the Turkish legislator.

On the other hand, to bring the existing legislation in line with the EC law, the above mentioned Community legislation must be digested and continuously followed by a group of experts who can assist the relevant Ministries to enact the necessary administrative regulations or to propose bills to the Parliament. For example, the Ministry of Health and Social Services must review the existing legislation regarding public health with a view to harmonize it with consumer health and safety legislation of the Community. Such a review study should be conducted in respect of the following: Umumi Hifzissihha Kanunu<sup>7</sup>; İspençiyari ve Tibbi Müstahzarlar Kanunu <sup>8</sup>; Hususî Hastahaneler Kanunu<sup>9</sup>; İspirto ve İspirtolu İçkiler İnhisarı Kanunu<sup>10</sup>; Sıtma ve Fren-

gi İlaçları Hakkında Kanun<sup>11</sup>; Seriri ve Gıdai Taharriyat ve Tahlilat Yapılan ve Masli Tamamüller Aranılan Umuma Mahsus Bakterioloji ve Kimya Laboratuvarları Kanunu<sup>12</sup>; Ecza Ticarethaneleriyle Sanat ve Ziraat İşlerinde Kullanılan Zehirli ve Müessir Kimyevi Maddelerin Satıldığı Dükkanlara Mahsus Kanun<sup>13</sup>; Gıda Maddelerinin ve Umumi Sağlığı İlgilendiren Eşya ve Levazımın Hususi Vasıflarını Gösteren Tüzük<sup>14</sup>; Gıda Katkı Maddeleri Yönetmeliği<sup>15</sup>. For corresponding EC legislation see the Directory of Community Legislation in Force and other acts of the Community Institutions<sup>16</sup>.

Standardization and related activities (certification, research and development, consumer education, publications etc.) are being performed in Turkey by a public body, "Turkish Standards Institution" since 1960<sup>17</sup>.

The Turkish Standards Institution (TSI) is a member of International Standardization Organization and follows the activities of CEN and CELENEC with an "observer" status.

TSI has already taken some steps to adapt Turkish standards to the EC level. By September 1991, 73 CEN and 118 CENELEC standards have been directly translated into Turkish and listed as Turkish standards. Besides, 707 existing Turkish standards have been revised in the years 1980-1991 to be harmonized with ISO, CEN and CENELEC standards.

TSI must take place as a full member "national organization" in CEN and CENELEC, of which EFTA countries' national standardization organizations are also members.

Considering this aim, TSI process in laying down standards which involves for the time being the contributions from only the related public private and scientific sectors, must be improved to put into effect the idea of consumer representation. To this end, the relevant EC documents must be considered <sup>18</sup>.

Similarly, participation of Turkey in the Community system for the rapid exchange of information on dangers arising from the use of consumer products<sup>19</sup> must be considered<sup>20</sup>.

NOTES :

1 Adopted by Council Resolution OJ, 1986 L.184/21.

1a Ali Cem Budak

2 For a collection of statutes see Tüketicinin Korunması ile İlgili Mevzuat = Legislation Concerning Protection of Consumers, İstanbul 1987 - A Publication of İstanbul Chamber of Commerce.

3 For a list of these proposals see, Mucuk, İ.AT'de Tüketiciyi Koruma Politikaları ve Türkiye'de Durum = Consumer Protection Policy of the EC and the Situation in Turkey, İstanbul 1990 -A publication of Association of Turkish Industrialists and Businessmen- pp.144-145

4 Central Bank Regulation OG, No. 18997, 23.1.1986; Turkish Radio and Television Corporation Advertisements Regulation, OG, No. 18402, 15.5.1984

5 Council Directive of 25.7.1985, OJ L.210 7.8.1985; Council Directive of 22.12.1986, OJ L 042 12.2.1987; Council Directive of 10.9.1984, OJ L 250 19.9.1984

6 Council Directive of 20.12.1985, OJ L 372 31.12.1985, the Proposal for a Council Directive 24.4.1990, OJ C 243 28.9.1990

7 Public Law 1593 ; regarding public health

8 Public Laws 1262 and 3940 ; regarding medical products

9 Public Law 2219 ; regarding private sector hospitals

10 Public Law 4250 ; regarding alcoholic drinks

11 Public Law 2767 ; regarding some pharmaceuticals

12 Public Law 992 ; regarding sampling and analysis and official inspection of food-stuffs

13 Public Law 984 ; regarding consumer sale of pharmaceuticals and some chemicals used in agriculture

14 Regulation 3/15481 ; regarding quality of foodstuffs and other products and machinery concerning public health

15 RG. 6.3.1988 ; a regulation regarding additives

16 18th edition, Vol.1, pp.795-803; A New Community Standards Policy, Current

Status 31.12.1989

17 Public Law No.132 as amended by Public Laws 2449, 2881 and 3205

18 Commission Recommendation of 10.12.1987, OJ L 023 28.1.1988; Council Resolution of 4.11.1988, OJ C 293 17.11.1988; Commission Decision of 17.12.1988, OJ L 040 21.1.1989

19 Council Decision of 21.12.1988, OJ L 071 21.1.1989

20 In recent years numerous studies published in Turkey, concerning consumer protection. Below is some of those studies which make reference to EC law: M.Oktay, R.Tatlidil and M.Tanyeri, Avrupa Topluluğunda Tüketiciyi Koruma Politikaları ve Türkiye'nin Uyumunu Ankara 1989; E.Özsunay, Türkiye'de Tüketicinin Korunması: Batı Avrupa'daki Yeni Hukuksal Gelişmelerin Işığında Türk Hukukunun Bugünü ve Yarını, Türk-İş Bilimsel Danışma Toplantısı, İstanbul 1982; Y.Kılış, Tüketicinin Korunması - Pazarlama Karşısında Tüketici, İstanbul-undated; A.C.Budak, "Mukayeseli Hukukta Tüketicinin Gayriadil Sözleşme Hükümlerine ve Özellikle Genel İşlem Şartlarına Karşı Korunması", Yasa Hukuk Dergisi 1991/6 p.765.