



# ICLG

The International Comparative Legal Guide to:

## Product Liability 2018

**16th Edition**

A practical cross-border insight into product liability work

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## EDITORIAL

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Welcome to the sixteenth edition of *The International Comparative Legal Guide to: Product Liability*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of product liability.

It is divided into two main sections:

Seven general chapters. These chapters are designed to provide readers with an overview of key issues affecting product liability law, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in product liability laws and regulations in 23 jurisdictions.

All chapters are written by leading product liability lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Adela Williams and Tom Fox of Arnold & Porter for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.com](http://www.iclg.com).

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## PREFACE

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I'm delighted to have been asked to introduce the sixteenth edition of *The International Comparative Legal Guide to: Product Liability*.

The guide continues to be an ideal reference point with seven excellent general chapters covering significant developments in European, Asian and US law. This edition also has a special focus on product recalls, a practical guide around costs issues and considerations in the context of group actions in England & Wales and finally commentary on liability and insurance matters in the context of driverless cars.

As always, the bulk of the edition remains the enormously helpful country question and answer section, covering 23 jurisdictions, new to the guide this year being Albania and Kosovo.

I frequently have cause to make reference to the guide for matters concerning product liability all over the world and will continue to do so as the guide remains a thoroughly informative and comprehensive publication.

Tom Spencer  
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GlaxoSmithKline  
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# Turkey

Noyan Turunç



Esin Çamlıbel



TURUNÇ

## 1 Liability Systems

**1.1 What systems of product liability are available (i.e. liability in respect of damage to persons or property resulting from the supply of products found to be defective or faulty)? Is liability fault based, or strict, or both? Does contractual liability play any role? Can liability be imposed for breach of statutory obligations e.g. consumer fraud statutes?**

The rules regarding product liability are regulated under the Turkish Code of Obligations, Law No. 6098 (the “COO”) and the Law of Consumer Protection, Law No. 6502 (the “LCP”). Furthermore, the Law on the Preparation and Implementation of Technical Legislation Products, Law No. 4703 (the “Technical Legislation Law”) may also be applicable in a product liability case depending on the circumstances of the matter. Furthermore, secondary legislation relating to product liability consists of regulations such as Regulation of Liability for Damages arising from Defective Goods (the “Product Liability Regulation”) and Market Surveillance Regulation.

Under Turkish Law, it is a controversial issue whether there is strict liability for product liability cases, in large part because liability is regulated only by an article of the Product Liability Regulation and not by statute. The referenced article states that in case the defective product causes a person’s death or injury or causes damage to a property, the manufacturer is obliged to indemnify such damage irrespective of the negligence of the manufacturer. While the Supreme Court has held that there is no strict liability for the manufacturer, the manufacturer must take every possible precaution to eliminate the risks.

Because the LCP defines the consumer as a real or legal person who acts for non-professional or non-commercial purposes, a potential dispute that arises between a trader and the seller because of a defective good will be settled as per the provisions of the COO. Claiming compensation for material or moral damage from the manufacturer or seller (or both) will also be a matter of contractual liability under these general provisions.

As for criminal liability, the Turkish Criminal Law foresees the liabilities in cases of selling, supplying or keeping food materials or drugs that endanger human health, as well as producing or selling medical or other substances that endanger human life.

**1.2 Does the state operate any schemes of compensation for particular products?**

The state does not operate any schemes of compensation for

particular products. A direct connection between the damage caused and the specific defect must be firstly proven in order to declare direct responsibility.

**1.3 Who bears responsibility for the fault/defect? The manufacturer, the importer, the distributor, the “retail” supplier or all of these?**

The LCP does not contain a special provision regarding the damages incurred due to the defective products. Rather, it refers to the COO for compensation claims listed in Article 11 related to the defective products.

As per the Product Liability Regulation, where two or more persons are liable for the damage, they will be jointly liable. The LCP foresees joint and several liability for the manufacturer, seller and importer for the optional rights of the consumer, in case a damage has occurred because of a defective product.

**1.4 May a regulatory authority be found liable in respect of a defective/faulty product? If so, in what circumstances?**

Pursuant to the Technical Legislation Law, the regulatory authority authorises Conformity Assessment Offices, which appoint Notified Bodies to supervise the market. The Technical Legislation Law includes administrative fines up to TRY 135,000 in the event these offices fail to comply with their obligations and allow defective products to be released onto the market.

**1.5 In what circumstances is there an obligation to recall products, and in what way may a claim for failure to recall be brought?**

The products should possess the requirements set forth in the technical regulations. Producers, on the other hand, are obliged to investigate if there are any complaints related to their products and perform tests to resolve any problems. As part of their surveillance, regulators conduct tests to ensure that such products have been produced in accordance with applicable regulations. If it is understood that a product is not safe, regulators have the power to require the manufacturer to recall the product. Furthermore, producers must notify the distributors of the products as well, and take every possible precaution, such as applying product recalls and destroying the affected products, if it is not possible to rectify the problem following the complaints. If producers fail to comply with the recall process, an administrative fine of up to TRY 285,000 will

be imposed. If a consumer detects a defective product that shall be subject to recall, he/she may file an individual case within the scope of the LCP.

### 1.6 Do criminal sanctions apply to the supply of defective products?

Criminal liability may arise under certain conditions in the event of injury or death due to the products or services. Article 186 of the Turkish Criminal Code sets forth that “selling, supplying or keeping food materials or drugs that endanger human health are sentenced to imprisonment of one year to five years and a judicial fine corresponding to up to 1,500 days is imposed”. Article 187 establishes that persons producing or selling medical products that endanger human life and health can be sentenced to imprisonment from one to five years and a judicial fine is also imposed. Finally, under Article 194, imprisonment of six months to one year is foreseen for those who provide or present substances for consumption which endanger human health.

## 2 Causation

### 2.1 Who has the burden of proving fault/defect and damage?

In principle, under Turkey’s legal framework, plaintiffs bear the burden of proof unless there is a specific statutory provision.

As such, per Article 6/2 of the Product Liability Regulation, the plaintiff is required to prove the defect in the product, the damage it suffered, and the causal link between the defect and the damage. However, pursuant to Article 10/1 of the LCP, defects detected within six months of the date of delivery are deemed existent at the time of delivery, thus the burden of proof lies on the defendant in such cases.

### 2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongly exposed the claimant to an increased risk of a type of injury known to be associated with the product, even if it cannot be proved by the claimant that the injury would not have arisen without such exposure? Is it necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury, or is it sufficient that all the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction?

A direct connection between the damage caused and the specific defect must be established by the claimant. Expert and documentary evidences are admitted to prove causation. Testimonial evidence is generally not because the dispute is related to a technical issue, and it is normally not legally feasible to prove controversial technical details based on oral testimony.

### 2.3 What is the legal position if it cannot be established which of several possible producers manufactured the defective product? Does any form of market-share liability apply?

In principle, where more than one person is responsible for the same damage, their liability towards the person injured is joint and

several. A party who is exposed to the claims of the consumer shall use its recourse right against the other liable persons as per their internal relationship *pro rata* to their contribution to the defect.

### 2.4 Does a failure to warn give rise to liability and, if so, in what circumstances? What information, advice and warnings are taken into account: only information provided directly to the injured party, or also information supplied to an intermediary in the chain of supply between the manufacturer and consumer? Does it make any difference to the answer if the product can only be obtained through the intermediary who owes a separate obligation to assess the suitability of the product for the particular consumer, e.g. a surgeon using a temporary or permanent medical device, a doctor prescribing a medicine or a pharmacist recommending a medicine? Is there any principle of “learned intermediary” under your law pursuant to which the supply of information to the learned intermediary discharges the duty owed by the manufacturer to the ultimate consumer to make available appropriate product information?

In case the manufacturers fail to provide adequate warnings for open and obvious risks, this can give rise to their liability. If the use of a product is not safe for the consumer, this fact must be made known. Turkish Law does not apply the “learned intermediary” theory. In case of a defect, all producers, importers and dealers/distributors are jointly liable for losses incurred due to the defective product. The Product Liability Regulation provides that in the event that producers, importers and dealers/distributors duly inform the consumers and successfully complete the recall process, all will be released from liability.

## 3 Defences and Estoppel

### 3.1 What defences, if any, are available?

The manufacturer shall not be liable if it proves any of the below:

- that the product was not launched into the market by the manufacturer;
- that the product was not produced for selling, or was not manufactured during commercial or professional activities;
- that, having regard to the circumstances, the defect which caused the damage did not exist at the time when the product was supplied to the market;
- that the defect was caused due to the compliance of the product with applicable technical regulation; or
- that the state of scientific and technical knowledge at the time when the product was put into circulation was not such as to enable the existence of the defect to be known.

### 3.2 Is there a state of the art/development risk defence? Is there a defence if the fault/defect in the product was not discoverable given the state of scientific and technical knowledge at the time of supply? If there is such a defence, is it for the claimant to prove that the fault/defect was discoverable or is it for the manufacturer to prove that it was not?

There is a state of the art defence, as noted above under question 3.1 (point e), and it is for the manufacturer to prove that the fault/defect was not discoverable.

**3.3 Is it a defence for the manufacturer to show that he complied with regulatory and/or statutory requirements relating to the development, manufacture, licensing, marketing and supply of the product?**

Under Article 5/4 of the Technical Legislation Law, the manufacturer can be released from liability if it can prove that it did not supply the unsafe product to the market, or the unsafe product derived from following the relevant technical regulations, as is the case with the Product Liability Regulation Article 7.

**3.4 Can claimants re-litigate issues of fault, defect or the capability of a product to cause a certain type of damage, provided they arise in separate proceedings brought by a different claimant, or does some form of issue estoppel prevent this?**

Every court reviews each specific case within its own conviction. If a separate court has already tried on the same defect, such judgment would be persuasive, provided they share the similar facts. There is no issue of estoppel preventing a different claimant from bringing an action against a defendant in separate proceedings.

**3.5 Can defendants claim that the fault/defect was due to the actions of a third party and seek a contribution or indemnity towards any damages payable to the claimant, either in the same proceedings or in subsequent proceedings? If it is possible to bring subsequent proceedings, is there a time limit on commencing such proceedings?**

Regardless of being a player in the product supply chain, indemnification can be claimed by the defendant in subsequent proceedings through the right of recourse. Consumers may file a case against all involved in the chain of production. Thus, if the responsible third party for the damage has relation to the product supply, indemnification can be required during the same proceedings.

**3.6 Can defendants allege that the claimant's actions caused or contributed towards the damage?**

Per Article 6 of the Product Liability Regulation, the liability of the manufacturer may be reduced or removed, if it is proven that the damage is caused by the consumer or any person for whom the consumer is responsible.

## 4 Procedure

**4.1 In the case of court proceedings, is the trial by a judge or a jury?**

There is no jury system under Turkish Law. Disputes, including product liability claims, are tried by civil courts and all decisions are made by a judge.

**4.2 Does the court have power to appoint technical specialists to sit with the judge and assess the evidence presented by the parties (i.e. expert assessors)?**

Yes, if the court finds that the issues to be proven require special

technical knowledge, technical expert assessors may carry out the work involved for pursuing these purposes. The court may appoint one or more experts.

**4.3 Is there a specific group or class action procedure for multiple claims? If so, please outline this. Is the procedure 'opt-in' or 'opt-out'? Who can bring such claims e.g. individuals and/or groups? Are such claims commonly brought?**

The LCP has some specific provisions related to class actions or representative proceedings. Consumer organisations, relevant public authorities and the Ministry of Customs and Trade have the right to file a lawsuit for the suspension of production and sale of the defective product, and for the collection of these products from third parties which possess such products for sale. However, class actions are rarely used in Turkey.

**4.4 Can claims be brought by a representative body on behalf of a number of claimants e.g. by a consumer association?**

Yes (see above under question 4.3).

**4.5 How long does it normally take to get to trial?**

A complex product litigation takes approximately between 18 and 24 months following its filing, and the justified decision is issued one to three months after the final hearing. The above-mentioned periods generally depend on the courts workload. If the justified decision is appealed to Regional Court of Justice and Supreme Court, respectively, by one of the parties, the period may extend over four years, on average.

**4.6 Can the court try preliminary issues, the result of which determine whether the remainder of the trial should proceed? If it can, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?**

Yes, the court can try preliminary issues that relate to the law at the time of the main trial.

**4.7 What appeal options are available?**

A new appellate process was introduced a short while ago. There are two types of appeals in Turkey: a) examination of the Turkish Regional Court of Appeal; and b) examination of the Supreme Court. Thus, the Regional Court of Appeal will function as a "court of cassation". In principle, final decisions concerning material rights may be appealed; however, actions for amounts under TRY 3,560, for 2018, are final and not appealable.

Decisions which are appealed before the Turkish Supreme Court hereinafter will firstly be subject to the examination of the Turkish Regional Court of Appeal, which will have the jurisdiction to examine the decision on procedural grounds and merits of the case, and will be able to repeat certain procedural steps, as opposed to the Supreme Court, which can only examine the case over the file. Under the current system, if the claim amount is lower than TRY 47,530, the decision of Turkish Regional Courts of Appeal is not appealable before the Supreme Court.

**4.8 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?**

Both parties can rely on expert opinion evidence. The court is also entitled to rule for an expert opinion for technical matters that require specialist knowledge. The court may decide to listen to the expert who prepared the written opinion. However, if the expert does not accept the invitation, the report will not be taken into consideration. The Turkish Code of Civil Procedure, Law No. 6100 (“CCP”), states that the judge cannot decide to have an expert opinion on legal issues and the outcome of the expert report is not binding on the judge. In addition, the parties may submit expert/technical reports supporting their claims to the court.

**4.9 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?**

There is no pre-trial in the Turkish procedural system. Factual and expert witnesses may be required to present themselves at the hearing or trial.

**4.10 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?**

Pursuant to current practice, each party submits two petitions to the court including their claims and arguments before the investigation phase of the case. In the preliminary investigation hearing, the court will order the parties to submit their evidence that they have not yet submitted within two weeks. Any party failing to submit its evidence shall forfeit the right to submit additional evidence and the court shall immediately proceed to the “investigation” phase, whereby it would evaluate the parties’ petitions/evidence collectively and subsequently make its judgment.

**4.11 Are alternative methods of dispute resolution required to be pursued first or available as an alternative to litigation e.g. mediation, arbitration?**

Arbitration, which has long been recognised, has only recently become a more familiar method of alternative dispute resolution in Turkey. Mediation, on the other hand, was not recognised as a method in Turkey until the Law on Mediation for Civil Disputes, Law No. 6325 came into force in 2012. Accordingly, parties can choose mediation or arbitration as the means for resolving their disputes. However, for product liability cases, it is not obligatory for the parties to pursue arbitration or mediation prior to filing a lawsuit.

**4.12 In what factual circumstances can persons that are not domiciled in your jurisdiction be brought within the jurisdiction of your courts either as a defendant or as a claimant?**

Pursuant to the CCP, if a party is not domiciled in Turkey, courts located at the habitual residence of the party have jurisdiction. However, if the party does not have a habitual residence, courts located where the damage is alleged to have occurred have jurisdiction.

## 5 Time Limits

**5.1 Are there any time limits on bringing or issuing proceedings?**

Yes, please see question 5.2.

**5.2 If so, please explain what these are. Do they vary depending on whether the liability is fault based or strict? Does the age or condition of the claimant affect the calculation of any time limits and does the court have a discretion to disapply time limits?**

Unless a longer period is agreed between the parties, the claim should be brought before the courts within two years starting from the time of delivery of the goods to the consumer, and in any case, the claim would be time-barred 10 years after the damage occurs.

**5.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?**

If the defect is hidden from the consumer due to the seller’s fault or negligence, the statute of limitations periods do not apply.

## 6 Remedies

**6.1 What remedies are available e.g. monetary compensation, injunctive/declaratory relief?**

In case of a defect, the consumer is entitled to choose among the rights provided alternatively under the Article 11 of the LCP, which are: (1) the right to ask for free repair; (2) the right to ask for the replacement of the good with a defect-free one; (3) the right to terminate the contract; and (4) the right to demand a discount from the sale price in proportion to the defect. The plaintiff-consumer can also ask to be compensated both for the material and immaterial damages if the required conditions set forth by the COO are met.

**6.2 What types of damage are recoverable e.g. damage to the product itself, bodily injury, mental damage, damage to property?**

Within the scope of material damages, treatment costs, funeral costs, damages incurred, including those 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 moral damages, an appropriate compensation will be ruled by the court considering the circumstances of the matter for the plaintiff’s psychological/mental damages.

**6.3 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where the product has not yet malfunctioned and caused injury, but it may do so in future?**

If a causal link between the defect and the damage exists, the costs may be recovered.

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**6.4 Are punitive damages recoverable? If so, are there any restrictions?**


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No, they are not recoverable.

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**6.5 Is there a maximum limit on the damages recoverable from one manufacturer e.g. for a series of claims arising from one incident or accident?**


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According to Turkish Law, the compensation amount cannot exceed the plaintiff's actual damage since as a general rule, compensation cannot be enriching.

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**6.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required for the settlement of group/class actions, or claims by infants, or otherwise?**


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Parties may partially or entirely settle the dispute before trial or during the litigation, up until the final judgment is rendered. During the preliminary investigation, the court encourages parties to settle or mediate. If the parties choose not to exercise these options, the court will continue to try the case. Settlement is legally binding and equivalent to a final judgment.

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**6.7 Can Government authorities concerned with health and social security matters claim from any damages awarded or settlements paid to the claimant without admission of liability reimbursement of treatment costs, unemployment benefits or other costs paid by the authorities to the claimant in respect of the injury allegedly caused by the product. If so, who has responsibility for the repayment of such sums?**


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No such claim by government authorities is contemplated under Turkish Law.

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## 7 Costs / Funding

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**7.1 Can the successful party recover: (a) court fees or other incidental expenses; (b) their own legal costs of bringing the proceedings, from the losing party?**


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The successful party may recover litigation expenses from the losing party in proportion to the amount awarded. The legal fees to be reimbursed to the successful party shall be determined according to the minimum attorney fee tariff issued by the Turkish Bar Association. With regards to the attorney fees, the litigation expenses do not include attorney fees, so the successful party cannot recover such expenses from the losing party.

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**7.2 Is public funding, e.g. legal aid, available?**


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Yes, articles 334–340 of the CCP set out the provisions regarding public funding by the state for people who experience financial difficulties.

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**7.3 If so, are there any restrictions on the availability of public funding?**


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Legal aid may be granted to low-income citizens who are unable to afford the required legal expenses.

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**7.4 Is funding allowed through conditional or contingency fees and, if so, on what conditions?**


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Pure contingency fees are not acceptable in Turkey. It is possible to determine the amount of the legal fee based on a certain ratio up to 25% of the total amount to be ruled by the court.

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**7.5 Is third party funding of claims permitted and, if so, on what basis may funding be provided?**


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Turkish Law does not provide any specific regulations regarding third-party funding; however, litigation funding by third parties is not forbidden in Turkey. Claimants who have a strong case but limited finance to pursue it, or simply prefer to seek external funding, can apply for litigation funding to finance their case.

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**7.6 In advance of the case proceeding to trial, does the court exercise any control over the costs to be incurred by the parties so that they are proportionate to the value of the claim?**


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No, it does not.

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## 8 Updates

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**8.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Product Liability Law in your jurisdiction.**


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In line with Turkey's efforts to harmonise its laws with EU legislation, the LCP resembles relevant Directives and places significant emphasis on consumer protection. The scope of the LCP covers all consumer transactions and all other consumer-related practices. It aims at specifically regulating certain acts and practices of private/public commercial or professional entities prior to or after their conclusion of any agreement with consumers. Secondary legislation promulgated under the LCP and recent court decisions also indicate an increased level of consumer rights and protection, again, in line with EU practices.



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Noyan Turunç is the Firm's founding partner. Mr. Turunç has decades of experience advising multinational and domestic corporations in a wide variety of industries including automotive, banking, consumer goods, energy, industrial goods, insurance and reinsurance and telecommunications across many jurisdictions including Turkey, the EU, the United States, Asia and Latin America.

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Dr. Çamlıbel is an expert in commercial law, competition law, European Union law, intellectual property law, and international trade and WTO laws. Dr. Çamlıbel has extensive experience in advising domestic and multinational clients in a wide variety of industries on these topics.

Dr. Çamlıbel is also an assistant professor of law at **Dokuz Eylül University**, where she is the head of the Commercial Law Branch of the Business Administration Department in the Faculty of Economics and Administrative Sciences, and the deputy head of the Graduate Department of EU Studies there. She is also the coordinator for the Jean Monnet Module on "Strengthening the Competition Culture During the Accession Process", a teaching program co-funded by the European Commission. Dr. Çamlıbel has also written and lectured extensively on a wide range of topics.

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