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# ALTERNATIVE DISPUTE RESOLUTION ON CONSUMER CONFLICTS IN THE EU AND TURKEY*

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***Abstract***

*Consumer conflicts arise every day, and how to handle this issue is a major part of ensuring consumer redress mechanisms. In the 1970s, alternative dispute resolution (ADR) methods were adopted in response to an increase in consumer conflicts, with the aim of reducing the workload on courts. ADR has been supported by the European Union (EU), which enacted the 2013/11/EU ADR Directive to standardize consumer redress mechanisms between Member States. However, because of the general nature of the provisions, there have been many different approaches and methods in the member states. It has also become imprecise to understand if it is a good role model or effective because of the ambiguous provisions and various approaches.*

*Turkish Law on Consumer Protection entered into force in 2014 to ensure the harmonisation duty of the EU acquis, and it regulated the sui generis procedure of Consumer Arbitration Committees (CAC) and then compulsory mediation on consumer conflicts with an added article in 2020. This article argues that CAC is harmonised with the EU acquis and ADR systems in Turkey, bringing more effective consumer redress mechanisms for now due to cultural and economic reasons, even if it is not perfect and has to be improved.*

***Key Words:*** *Consumer Protection, Alternative Dispute Resolution, Consumer Law, European Union, Turkey.*

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***Avrupa Birliği ve Türkiye'de Tüketici İhtilaflarında Alternatif Uyuşmazlık Çözümü***

***Öz***

*Tüketici uyuşmazlıkları her gün ortaya çıkmaktadır ve bu konunun nasıl ele alınacağı, tüketici tazmin mekanizmalarının sağlanmasının önemli bir parçasıdır. 1970'lerde, tüketici anlaşmazlıklarındaki artışa yanıt olarak, mahkemelerdeki iş yükünü azaltmak amacıyla alternatif uyuşmazlık çözüm yöntemleri benimsenmiştir. Alternatif uyuşmazlık çözüm yöntemleri, Avrupa Birliği tarafından desteklenmekte olup, üye devletler arasında alternatif uyuşmazlık çözüm yollarını standartlaştırmak amacıyla 2013/11/EU sayılı Direktifi yürürlüğe girmiştir. Ancak maddelerin genel doğası gereği birçok farklı yaklaşım ve yöntem uygulanmaya başlamıştır. Belirsiz hükümler ve farklı yaklaşımlar nedeniyle iyi bir rol model veya etkili olup olmadığını anlamak zor bir hale gelmiştir.*

*Türkiye'nin AB müktesebatına uyum yükümlülüğünü yerine getirmek amacıyla, 2014 yılında Tüketicinin Korunması Hakkında Kanun yürürlüğe girmiş ve kendine özgü bir yapıya sahip Tüketici Hakem Heyetlerini düzenlemiştir. Daha sonra da 2020 yılında Kanuna eklenen bir madde ile tüketici uyuşmazlıklarında zorunlu arabuluculuk getirilmiştir. Bu makale, Tüketici Hakem Heyetleri sisteminin AB hukuku ile uyumlu olduğunu, kültürel ve ekonomik nedenlerle Türkiye'de alternatif uyuşmazlık çözüm yollarının mükemmel olmasa ve geliştirilmesi gerekse de daha etkin bir tüketici tazmin mekanizması getirdiğini savunmaktadır.*

***Anahtar Kelimeler:*** *Tüketicinin Korunması, Alternatif Uyuşmazlık Çözümü, Tüketici Hukuku, Avrupa Birliği, Türkiye.*

## Introduction

Alternative Dispute Resolution (ADR) has been crucial for years around the world as a way of accessing justice. Especially consumer conflicts are a specific and special part of ADR systems, considering the huge share of consumer conflicts compared to others and the imbalance of power between parties in the contracts. The European Union (EU) has been one of the supporters of ADR systems for years, which is also a part of its consumer protection policy.[1] EU's consumer protection policy was integrated into the treaties and therefore announced to be a genuine Community policy by the

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[1] Geoffrey Vos and Diana Wallis, "The Relationship between Formal and Informal Justice: the Courts and Alternative Dispute Resolution", *European Law Institute and of the European Network of Councils for the Judiciary* (2018):25.

Maastricht Treaty, which entered into force in 1993.[2] The Treaty of Amsterdam, which established its scope in 1997, stated the goals of promoting consumer interests and ensuring a high level of consumer protection.[3] As a part of consumer protection policy in the EU, the Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 (ADR Directive) adopted a minimum harmonisation approach and came into force to give a direction for member states for ADR procedures on consumer conflicts.[4] Consumers choose to contact an ADR entity to resolve their disputes since it is quicker, less expensive, and involves less bureaucracy than traditional legal processes.[5] This idea is prevalent in the literature and is known as consumer alternative dispute resolution (CADR), also referred to as consumer dispute resolution (CDR).[6]

The EU has been a role model for Turkey due to the accession process. Thus, the Turkish legal provisions and judicial system have tried to be harmonised with the EU acquis, including consumer protection law. Therefore, Consumer Protection Law No.6502 became effective on May 28, 2014, to achieve full compatibility with the EU acquis and offer complementary consumer protection measures.[7] The law regulates consumer arbitration committees (CAC), which are sui generis and have a similar type of ADR structure for consumer conflicts. Also, on 28 July 2020, a provision was added to Law No. 6502, which meant that mediation for consumer conflicts became a mandatory process before going to court.

This article will only focus on CAC and mediation, the main procedures to resolve consumer conflicts in Turkey. It will discuss whether Turkish legislation on ADR for consumer conflicts is harmonised with the EU acquis and whether the EU law that Turkey made commitments to implement is fit for effective consumer redress. Within this context, it will analyse the sui generis feature of CAC, questioning if it is conducting a type of ADR process considering the ADR Directive and its basic principles. Then, the new mandatory mediation process will be examined based on consumer redress

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2 Auswärtiges Amt, 'Consumer Protection in the EU' (*Germany's Presidency of the Council of the EU*), accessed January 12, 2024, "https://www.eu2020.de/eu2020-en/news/article/consumer-protection-in-the-european-union/2419996".

3 Amt, 'Consumer Protection in the EU'.

4 OJ 18.6.2013, L 165/63.

5 Jagna Mucha, "Alternative Dispute Resolution for Consumer Disputes in the EU: Challenges and Opportunities", *Queen Mary Law Journal* (2016): 30.

6 Mucha, 30.

7 OJ 28.11.2013, 28835.

effectiveness, elaborating on its new provisions and features. Lastly, it will try to explore the effectiveness of consumer protection on current ADR procedures, the advantages and disadvantages of the current system, and bring some suggestions. The study is based on a socio-legal approach, which argues that the socioeconomic context and outcomes of law should be taken into consideration during research in addition to legal documents.[8] While the methodology is not comparative, some examples from European countries are used to support the arguments throughout the study.

## I. ADR Mechanisms on Consumer Conflicts in Turkey Compared to the EU

### A. Evolution of ADR Perspective on Consumer Conflicts in the EU

The different methods of resolving a dispute with the help of a neutral conflict settlement agency instead of going to court are referred to as ADR.[9] Formal resolutions are well-known in the media; court proceedings that result in jail sentences or substantial compensation usually draw attention. Informal dispute resolution procedures, however, have several distinct advantages; despite their lower profile and, hence, less familiarity with the public, there is much evidence to suggest that this method of resolving issues is simpler, quicker, and less costly.[10]

Alternative means of dispute resolution have grown in popularity and have been used significantly throughout Europe during the last four decades. The European Commission (EC) believes that boosting consumer confidence in online cross-border purchasing through appropriate regulatory action could significantly boost economic growth in Europe because empowered and self-assured consumers can propel the economy.[11] It is also stated in the Commission's communication of 'A New Deal for Consumers' that the ADR

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[8] David N Schiff, "Socio-Legal Theory: Social Structure and Law" *The Modern Law Review* 39 (1976): 287.

[9] Margaret Doyle, "Why Use ADR? Pros & Cons", accessed January 12, 2024, https://asauk.org.uk/wp-content/uploads/2013/08/Why-use-ADR.pdf.

[10] Antoni Benedikt et al., "Mediation as an alternative method of conflict resolution: A practical approach", *Family Medicine & Primary Care Review* 22, 3 (2020): 235.

[11] Laine Fogh Knudsen and Signe Balina, "Alternative Dispute Resolution Systems Across the EU, Iceland and Norway", *Procedia - Social and Behavioral Sciences*, (2014): 944.

mechanism is one of the main goals to make existing enforcement tools fully effective and ensure that EU consumer law achieves its capacity.[12]

The EU appeared to be primarily interested in consumer issues, particularly where those conflicts were cross-border in nature, that is when they involved citizens from the different Member States. ADR mechanisms were initially introduced in Europe in the late 1960s, and since the 1990s, it has become a more widespread practice in many Member States.[13] In 1998 and 2001, the EC issued two recommendations concerning the quality of ADR mechanisms available for consumer disputes. These recommendations brought fundamental principles such as independence, impartiality, transparency, adversarial principle, effectiveness, representation, legality, liberty, and fairness, just like the current ADR Directive for consumer disputes.[14]

The EU has increasingly focused its attention over the years on facilitative ADR, which involves a third party that doesn't make decisions but helps the parties agree. The "Green Paper on ADR in Civil and Commercial Matters," a document published by EC in 2002, clearly indicates that, in the European context, ADR refers to "out-of-court dispute resolution mechanisms carried by a neutral third party", excluding arbitration.[15]

In 2008, the EU adopted Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.[16] It aims to improve the

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[12] ‘A New Deal for Consumers’, European Commission, accessed January 12, 2024, (https://ec.europa.eu/newsroom/just/items/620435/en).

[13] “Report From The Commission to the European Parliament, the Council and the European Economic and Social Committee on the Application of Directive 2013/11/EU of the European Parliament and of the Council on Alternative Dispute Resolution for Consumer Disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on Online Dispute Resolution for Consumer Disputes”, European Commission, accessed January 12, 2024, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0425.

[14] OJ L115/31, 17.4.1998, Commission Recommendation of 30 March 1998 (98/257/EC). OJ L109, 19/04/2001, Commission Recommendation of 4 April 2001.

[15] “Green Paper on ADR in Civil and Commercial Law”, European Commission, accessed January 13, 2024, https://op.europa.eu/en/publication-detail/-/publication/61c3379d-bc12-431f-a051-d82fefc20a04.

[16] OJ L 136/3, 24.5.2008, EU Directive 2008/52/EC of 21 May 2008.

coordination of judicial and mediation processes, establish uniform guidelines for mediation training that is better and more professional, ensure complete discretion throughout the mediation process, assure the enforceability of any agreements that the parties to the mediation process achieve and approve the suspension of any applicable statutes of limitations throughout the mediation process.[17] Since mediation is by its very nature an informal and flexible practice, there are no regulations governing it under the Directive and imposing a formal or uniform approach may be pointless or even hazardous.[18]

A horizontal regulatory system for CADR was developed with the adoption of the ADR Directive for consumer disputes, and Member States are required to make ADR more accessible to EU consumers and to guarantee that they can turn to quality-certified ADR institutions to resolve disputes with EU traders over the acquisition of a product or service including all retail sector disputes and both online and offline transactions.[19] The Directive does not specify the form of ADR procedure that should be used, nor does it address whether involvement in the system should be voluntary or compulsory or whether the procedure's decision should be binding or not. Therefore, even though the complaints boards, conciliation, mediation, ombudsman, arbitration, or other procedures can be examples of ADR, the meanings of terms differ significantly between member states.[20] Although the European Commission approved a plan to review the ADR framework on October 17, 2023, through the adoption of a legislative proposal to remove the ODR Regulation and revise the current ADR Directive, it did not change the fundamental nature of the ADR Directive.

### B. Is the EU ADR Directive a Good Role Model?

Consumer rights, as granted by the European legislature, are obviously worthless if they cannot be successfully implemented or are challenging for other reasons, such as excessive expenses.[21] It is particularly difficult to establish a structure that allows for efficient consumer redress, particularly in cases involving cross-border transactions. There are a variety of issues making it difficult for them to use the protection that is provided for them by

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[17] Elisabetta Silvestri, "Alternative Dispute Resolution in the European Union", *Russian Law*, 1 (2013).

[18] Silvestri, "Alternative Dispute Resolution in the European Union".

[19] ADR Directive Article 5(1).

[20] EC, 'Alternative Dispute Resolution', fn. 19.

[21] Mucha, 28.

substantive law, such as linguistic hurdles, the potentially high costs of recourse, or differences in the various member nations' legal systems.[22]

The recent legislative proposal on the ADR Directive expanded the directive's scope by encompassing all aspects of EU consumer law, such as unfair practices, including manipulative interfaces, manipulative advertising, and geo-blocking rules.[23] Despite this, the proposal's main aims seem to be designed to protect company profits, such as removing the ODR platform and streamlining company practices, helping them to operate in a single market.[24]

There are differences among the Member States that implemented the Directive, for example, in the kind of training mediators are obliged to have or in the procedures for binding mediation agreements because of the Directive's minimum harmonisation nature.[25] The success rate of the mediation process, or the likelihood that a solution will be reached, is high, for example, 50-75% for countries such as Italy and Belgium, when the disputing parties choose mediation. However, there is the issue that parties and their lawyers hardly ever voluntarily use mediation unless it is required, which brings us to the mediation paradox.[26] The European Parliament called for a more standardised approach in a resolution published in September 2011 that highlighted the various ways that the Member States have applied the Directive.[27]

While it is apparent that disagreements between consumers and organisations typically only involve modest financial quantities, this does not imply that the legal issues these disputes pose are easy. ADR mechanisms have developed differently in each EU member state due to the differences in culture and traditions, politics, economics, and other considerations. In 2011, the EC concluded that there were 750 ADR schemes available throughout the

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22 Mucha, 28.

23 Proposal for a Directive amending Directive 2013/11/EU on Alternative Dispute Resolution For Consumer Disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828.

24 European Commission, Alternative Dispute Resolution for Consumers, accessed 2 December, 2023, https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en.

25 Silvestri, "Alternative Dispute Resolution in the European Union".

26 Giuseppe De Palo, Ashley Feasley and Flavia Orecchini, "Quantifying The Cost Of Not Using Mediation – A Data Analysis", *European Parliament*, (2011):3.

27 OJ C 51 E/17, 22.2.2013, European Parliament resolution of 13 September 2011.

EU to resolve consumer concerns.[28] The high number of ADR systems makes it difficult to assess which countries have produced the most successful schemes.[29] Some Member States, including France, have left consumer arbitration out of their applicable laws, while some, such as Italy, have recognised business conciliators as potential ADR entities.[30]

According to some authors in the literature in this area, judges and legal professionals who have a thorough knowledge of the law and work under the guiding principles of due process should enforce mandatory consumer rights due to the need for rights-based processes in consumer justice.[31] The EU rule, in sharp contrast, stipulates that the natural person in charge of consumer ADR must simply have a general knowledge of the law. It does not bring a qualification, and it is vague to understand what it really covers. It is also difficult for member states to monitor the third party's performance by not properly putting it in place.[32] Because of this, there is a chance that ADR organisations with varying degrees of legal expertise will not be able to consistently apply and implement EU consumer law, which could lead to fragmentation of the law among various member states.[33]

It is debatable whether these services should be supported by funds from the private sector, particularly in the context of assuring the impartiality and independence of ADR entities.[34] There may be a risk that funding ADR organisations through private financing will have an impact on the resolutions

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[28] "Consumers: Cheaper, Faster, Easier Ways to Settle Disputes without Going to Court", European Commission, accessed 12 January, 2024. (https://ec.europa.eu/commission/presscorner/detail/en/ip_11_459.

[29] Knudsen ve Balina, "Alternative Dispute Resolution Systems Across the European Union, Iceland and Norway", 945.

[30] Stefaan Voet, Sofia Caruso, Anna D'Agostino, and Stien Dethier, "Recommendations from academic research regarding future needs of the EU framework of the consumer Alternative Dispute Resolution" *KU Leuven*, (2022):13.

[31] Horst G. M. Eidenmueller and Martin Engel, "Against False Settlement: Designing Efficient Consumer Rights Enforcement Systems in Europe", *SSRN Electronic Journal*, (2013): 29.; Christopher Hodges, "Consumer Alternative Dispute Resolution" in *Implementing EU Consumer Rights By National Procedural Law*, eds. Burkhard Hess and Stephanie Law, (Bloomsbury 2019): 181, Vos and Wallis, 57-58.

[32] Eidenmueller and Engel, 31.

[33] Mucha, 33.

[34] Gerhard Wagner, "Private Law Enforcement through ADR: Wonder Drug or Snake Oil?" *Common Market Law Review* 51, I. 1 (2014): 179.

they issue in consumer conflicts. Although the EU law brings principles of impartiality and independence, there are no precise standards showing what they mean in every situation, so ADR entities may make biased decisions.[35] One cannot assert that the result is reasonable and fair if the impartiality and independence of the body proposing or imposing the dispute's resolution are violated, as well as the equality of the parties to the action.[36]

According to the Directive, one or more "Competent Authorities" serving as the foundation of the new framework must be appointed by the Member States. Currently, Member States have adopted two primary methods. A vertical (or decentralised) one where certification and monitoring are carried out by regulators based on the sector in which strategies operate, as opposed to a horizontal (or centralised) one where a central authority is in control of certifying and controlling all ADR entities throughout all sectors.[37] Some authorities may be tempted to quickly analyse the information supplied by applicants, while others may perform in-depth assessments due to factors such as expense, capacity restrictions, or even just a lack of familiarity with how ADR schemes work.[38] Therefore, different accredited ADR providers with varying levels of quality can coexist throughout the EU due to variations in Competent Authorities' behaviour and levels of inspection. Also, the Directive mandates that Member States conduct ongoing surveillance of licensed ADR providers. Regular follow-up monitoring, on the other hand, seems to be the exception and has only been recorded from Belgium, according to a study.[39]

Setting rigid timeframes for conflict resolution may make it challenging to do the thorough legal research required for the expert settlement of complex situations.[40] However, the deliberate actions of business owners may sometimes hinder the effective enforcement of consumer rights. Thus, it is difficult to assess if the EU has been dealing with consumer conflicts effectively, considering all these explanations and differences among countries.

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[35] Wagner, 179.

[36] Mucha, 35.

[37] Alexandre Biard, “Impact of Directive 2013/11/EU on Consumer ADR Quality: Evidence from France and the UK”, *Journal of Consumer Policy* 42, (2019): 112.

[38] Biard, 112.

[39] DG SANCO, “Study on the use of Alternative Dispute Resolution in the European Union” (2009): 123.

[40] Mucha, 34.

### C. Progress of ADR on Consumer Conflicts in Turkey

There is a growing awareness of the importance of consumer protection, and the issue is increasingly drawing public attention. The first studies were conducted in pre-industrial countries under various labels and legal frameworks accelerated by industrialisation.[41] Although the contemporary developments regarding consumer problems and consumer protection in Turkey started in the 1970s, the most important development in this field was the publication of "Law on Consumer Protection No. 4077", which came into force in 1995.[42]

After the enactment of this Law, many laws and regulations were gathered under one title in this framework; therefore, it was an important milestone for consumers. Also, for the first time, consumers in Turkey had obtained legal, institutional, and organisational rights.[43] Within this context, CAC as a problem-solving mechanism was brought into our legal system in 1995 with Law No.4077.[44] To help courts handle fewer cases more efficiently and cut down on the amount of time consumers spend in court, CAC was established.

The Consumer Protection Law No.6502 was passed in 2013 with the need to harmonise the EU acquis, and the pertinent regulations provide the final form of the rules on consumer protection incorporated into Turkish law by the Constitution of 1982. CAC and their duties are kept in Law No.6502. Similar to Law no.4077, CAC consists of five members, including one member to be appointed by the Mayor, one member to be appointed by the Bar, one member to be appointed by the Chamber of Trade and Industry or by the Chamber of Commerce depending on the conflict subject; or by the union of the chamber of merchants and craftsmen, one member to be appointed from among the consumer organisations.[45]

The decisions of the committees were not binding for parties according to Law No.4077, although they must apply to the committees depending on the amount of the conflict[46], and these decisions could be used for arguments

[41] Süleyman Tunç, "Development of the Consumer Rights in Turkey and the Internet as a Way to Legal Remedies", *University Library of Munich*, V 1 (2015): 70-85.
[42] OJ 22221, 8.3.1995.
[43] Tunç, 74.
[44] Art. 22 of Law No. 4077.
[45] Art. 66 of Law No. 6502, Art. 22 of Law No. 4077.
[46] Art. 22/4 of Law No. 4077; it was 5.000 Turkish Liras in the first and changing every year with wholesale price index rate.

in the courts. It was voluntary for parties to go to CAC if their conflict exceeded the monetary limit. So, CAC was considered an arbitration board that was regulated by the Code of Civil Procedures at that time.[47] After Law No.4822 came into force, the decisions of the committees became binding for the parties before going to the consumer courts.[48] With the current legislation, the binding decision of the committees was kept the same as Law No.4822, and now it is mandatory to apply to the CAC for disputes that are under 104.000 Turkish Liras in 2024.[49] The parties can appeal the committee's decision by taking it to the consumer courts within fifteen days of the notification, and the decision of the consumer court is final. Consequently, although according to the prevailing opinion in the doctrine assumes that CAC is a part of ADR procedures, it is debatable.[50]

There is no general provision in Turkish laws regarding the determination of ADR. However, ADR procedures were mentioned as being necessary to ensure that the constitutional principles work effectively in the decision of the Constitutional Court dated 03.03.2004, numbered 2004/31.[51] In 2023, the number of applications to the CAC was 635.363, which mostly consists of retail, subscription services and the financial sector.[52] As can be seen, committees are dealing with a high volume of cases and committing a duty to decrease that level of cases from courts.

Also, the Law on Mediation in Civil Disputes No.6325 entered into force on 22.6.2012 for the resolution of private law disputes through mediation.[53] This law is based on the voluntary mediation method, and the parties are free to apply to a mediator to continue the process, conclude it or abandon this process. After that, compulsory mediation was adopted for labour disputes, commercial disputes and recently, consumer disputes[54] in Turkey. Although

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[47] Alper Uyumaz, "Tüketici Hukukundan Doğan Uyuşmazlıkların Alternatif Çözüm Yolları". *Selçuk Üniversitesi Hukuk Fakültesi Dergisi* 20, (2012): 122.

[48] OJ 25048, 14.3.2003. Art. 29 of Law. 4822.

[49] The Communique on Increasing the Monetary Limites. OJ 32405 20.12.2023.

[50] İbrahim Ermenek, "Yargı Kararları Işığında Tüketici Sorunları Hakem Heyetleri ve Bu Alanda Ortaya Çıkan Sorunlara İlişkin Çözüm Önerileri". *Gazi Üniversitesi Hukuk Fakültesi Dergisi* 17, 2 (2013): 563-630.

[51] OJ 25518, 10.07.2004.

[52] "2022 Statistics", *Ministry of Trade*, accessed 12.01.2024 https://tuketici.ticaret.gov.tr/yayinlar/istatistikler/istatistikler.

[53] OJ 28331, 22.6.2012.

[54] Art. 73/A of Law No.6502, this article added on 22/7/2020.

applying to a mediator has been made compulsory, continuing and finalising the process is subject to the free will of the parties. For ADR on consumer conflicts, mediation and CAC are the most common methods in Turkey. Although it is controversial whether arbitration can be another type of ADR in consumer conflicts in the literature, it is mostly accepted that it is.[55]

**1. Is the CAC in Turkey A Part of ADR According to Principles in the ADR Directive?**

Whether the CAC is a part of ADR and their legal character, have been debatable questions has been for years. In the literature, while the dominant idea is that the dispute resolution method of CAC is compulsory arbitration[56], there are many other perspectives such as conciliation[57], mediation or peace-promoting boards,[58] quasi-judicial activity[59], or a sui generis non-judicial dispute resolution method.[60]

The compulsory arbitration perspective underscores that it is compulsory to apply to CAC in disputes below a certain monetary limit; the arbitration committees decide on which party is right, their decisions are binding, and the decisions are subject to disciplinary enforcement.[61] Also, according to this perspective, although arbitration is a voluntary procedure in general, the resolution of some disputes through arbitration may be deemed obligatory by special regulations, and in such cases, state courts cannot be applied to resolve these disputes.[62] In different cities in Portugal, there are arbitration centres for

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[55] Uyumaz, 107.

[56] Ramazan Arslan, Ejder Yılmaz and Sema Ayvaz Taşpınar, *Medeni Usul Hukuku* (Yetkin, 2016):763; Baki Kuru, *İstinaf Sistemine Göre Yazılmış Medeni Usul Hukuku*, (Yetkin, 2016): 930; Gökçen Topuz, Tüketici Mahkemeleri, (Yetkin, 2018): 26; Nagihan Tandoğan Özbaykal, "Tüketici Hakem Heyetlerinde İtirazın İptali Davası Sorunu ve 7063 Sayılı Kanun Sonrasında Verilen Yargı Kararlarının Değerlendirilmesi" 26(1) *MÜHFAD*, (2020): 476; Mehmet Akif Tutumlu, *Norm, Kuram ve İçtihat Işığında Tüketici Hakem Heyetleri*, (Seçkin, 2015): 32.

[57] Seda Özmumcu, *Uzak Doğu'da Arabuluculuk Anlayışı ile Türk Hukuk Sisteminde Arabuluculuk Kanununa Genel Bir Bakış*, (On İki Levha, 2013): 273.

[58] Uyumaz, 123- 129.

[59] Kemal Başlar, "Anayasa Yargısında Davaya Bakmakta Olan Mahkeme Kavramı" in *Anayasa Yargısı İncelemeleri,* eds. Mehmet Turhan and Hikmet Tülen (Anayasa Mahkemesi Yayınları, 2006): 220.

[60] Budak, 10.

[61] Tandoğan Özbaykal, 476.

[62] Tandoğan Özbaykal, 475.

consumer conflicts meant to solve disputes regarding consumer rights. [63] Within this context, CAC is similar to the consumer arbitration structure in Lisbon.

On the other hand, some authors believe that even if the legal character of CAC is compulsory arbitration, due to its characteristics, such as binding decisions and not being voluntary, it cannot be seen as ADR.[64] The Supreme Court decided that Consumer Protection Law No.4077, which is the previous law, is related to public order, so it is not possible to decide on the arbitration clause between the parties, and the conflict cannot be resolved by arbitration.[65] This perception seems to have changed with the current Law No.6502, stating that the regulations related to CAC do not prevent consumers from applying to ADR authorities by the relevant legislation.[66]

However, another view says that CAC is conducting a sui generis procedure for consumer conflicts. According to this view, considering that the application to CAC is obligatory and the parties cannot select the arbitrators, these committees cannot be accepted as arbitration.[67] This view also states that ADR procedures have some features, such as the dispute must not be related to public order, the application is completely voluntary, binding decisions cannot be made, and it does not abolish the authority to apply to the court, so CAC is not also a part ADR as well.[68]

While trying to understand the context of the ADR process and whether CAC conducts an ADR policy, the Turkish Constitutional Court mentioned in the decision dated 20.03.2008 that the arbitration committees for consumer

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[63] Jorge Morais Carvalho, “Consumer ADR in the European Union and in Portugal as a Means of Ensuring Consumer Protection”, in *Vulnerable Consumers and the Law: Consumer Protection and Access to Justice*, eds. Christine Riefa and Séverine Saintier (Routledge, 2020): 193.

[64] Murat Atalı, “6502 sayılı Kanun’un Tüketici Sorunları Hakem Heyetlerine İlişkin Hükümlerinin Değerlendirilmesi” in *Prof. Dr. Ejder YILMAZ’a Armağan* eds. Emel Hanağası, Mustafa Göksu (Yetkin, 2014): 411-12.

[65] Supreme Court 13th Civil Department 25.09.2008.

[66] Art. 68/5 of Law No. 6502.

[67] Ali Cem Budak, “6502 Sayılı Tüketicinin Korunması Hakkında Kanun’a Göre Tüketici Hakem Heyetleri”, *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi* (2014): 79.; Altay İltan Aktürk and Ayşe Acar Umut, “Tüketici Hakem Heyetleri ve İşleyişine Genel Bir Bakış”, *İstanbul Aydın Üniversitesi Hukuk Fakültesi Dergisi* (2019): 29.

[68] Ermenek, 579.

problems are not organised as a committee that performs a judicial function.[69] Although it is mandatory to apply to CAC, it is possible to appeal to consumer courts within fifteen days against these decisions. CAC does not have jurisdiction, but the legislator has accepted that the decisions of these committees are enforceable by the parties.

It also states in the decision that according to Article 141 of the Constitution, it is the duty of the judiciary to resolve conflicts, but it may be necessary to implement alternative methods for the resolution of disputes to ensure the effectiveness of the constitutional rules regarding the judiciary. Therefore, the parties were obliged to apply to CAC to resolve the dispute below a certain value in a short time, but the party who did not adopt the decision was left open to a judicial remedy. Another decision of the Turkish Constitutional Court dated 31.05.2007 also says that CAC does not have the qualifications of judicial organs and members specified in the Constitution.[70] According to Law No.6502, CAC does not prevent consumers from applying to other ADR authorities by the relevant legislation.[71]

CAC do not have court status, they do not have judicial activities, their members do not have the security of judgeship, and their decisions can be brought to the state judiciary by Turkish jurisprudence. Considering these aspects of CAC, they can be seen as compulsory arbitration because the parties are also obliged to apply them in the first instance. Compulsory arbitration is considered a part of ADR by some authors in the literature, as they define any dispute resolution method other than litigation as ADR.[72] Furthermore, the Turkish Constitutional Court mentioned in the decision dated 20.03.2008 that ADR systems should be encouraged while referring to CAC procedures, thus confirming their ADR status in an indirect manner.[73]

The EU ADR Directive mandates that ADR entities must possess independence, impartiality, and relevant expertise. While CAC members serve three-year terms, concerns exist regarding whether expertise criteria are met in practice. The Directive requires transparency, including information provision on websites. CAC websites vary in the extent of information

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[69] OJ 26923, 01.07.2008.

[70] OJ 26739, 27.12.2007.

[71] Art. 68/5 of Law No. 6502.

[72] Mustafa Serdar Özbek, *Alternatif Uyuşmazlık Çözümü*, (Yetkin Yayınları, 2013):168. ; Gülgün Ildır, *Alternatif Uyuşmazlık Çözümü (Medeni Yargıya Alternatif Yöntemler)*, (Seçkin Yayıncılık, 2003): 30.

[73] OJ 26923, 01.07.2008.

available, and data collection by the Ministry of Trade is feasible. ADR entities should provide accessible, timely, and reasonably priced procedures. Researchers suggest shorter timeframes for greater effectiveness, while CAC processes, although free, can take up to six months. Fairness in ADR involves parties sharing viewpoints, evidence, and the right to seek legal remedies. Justification for decisions is vital, and Turkish law supports the right to be heard and fair procedures. Agreements for ADR procedures should not bind consumers if made before disputes arise, and consumers must be informed of their rights. Such contract clauses may be considered unfair and void in accordance with EU and Turkish laws upholding the freedom to access the courts.

### 2. Evaluation of the New Mediation Processes on Consumer Conflicts in Turkey

Mediation Law No.6325 on consumer conflicts entered into force in 2012, and mediation has started to be implemented in Turkey.[74] Voluntary mediation has been implemented since 2018 and continued as voluntary and compulsory mediation after that. First, the compulsory mediation was accepted by Labour Courts Law[75], and then Mediation Law Regulation on Civil Disputes entered into force to bring a broad legal basis.[76] For commercial conflicts, an article was regulated in 2018 and entered into force in 2019 to assure compulsory mediation in the Turkish Commercial Code No.6102.[77]

Since compulsory mediation came to commercial conflicts, it was debatable whether consumer conflicts would be a part of compulsory mediation within the Turkish Commercial Code.[78] Commercial affair means by Code No.6102 that the affair in question must either be regulated in the Code or be a transaction or an act involving a commercial enterprise.[79] Furthermore, the debts of a trader are deemed commercial based on the

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[74] OJ 28331, 22.6.2012.

[75] OJ 30221, 25.10.2017.

[76] OJ 30439, 2.6.2018.

[77] Art. 5/A of Turkish Commercial Law, the article brought by Law No. 7155 OJ 6.12.2018, 30630.

[78] Şafak Narbay and Muhammed Akkuş, “Ticari İş ve Tüketici İşlemi Kavramları Ekseninde Görevli Mahkeme ve Dava Şartı Arabuluculuk Üzerine Düşünceler”, *TAAD*, 44 (2020): 301.

[79] Art. 3 of the Code No.6102.

assumption that the debts are related to its commercial enterprise.[80] Thus, the traits of a commercial affair and a consumer transaction may overlap.[81]

Within this context, the High Court and Regional Courts started to rule that if the cases are absolute commercial cases, the cases specifically mentioned in article 4 of No.6102, such as lend upon pawn, intellectual property, company mergers, compulsory mediation, must be applied before going to the court even if the conflicts can be consumer conflicts because of one party of the contract is a consumer according to the definition in Law No.6502 on consumer transaction.[82] During this period, the parties were a part of commercial mediation, although their conflict was being seen in consumer courts because of the nature of the consumer transaction conflict.[83]

Finally, the dilemma ended with the new regulation regarding compulsory mediation of consumer conflicts. Article 73/A was added to Law No.6502 on consumer protection in 2020.[84] According to the article, only the conflicts to be settled by Consumer Courts as a First Instance Court will be subject to compulsory mediation; the conflicts which are first settled by CAC are not a part of it.[85] This procedure is totally free only for consumers, and in any case, their part will be paid by the Ministry of Justice's budget.[86] Consequently, a new era started for consumers and consumer protection.

Compulsory mediation in consumer disputes, however, is criticised by some authors for the difficulties in determining the jurisdiction of the consumer courts in terms of other courts, the difficulty in determining the legal nature of the consumer arbitration committees, and the difficulty in determining whether the consumer courts fall within the jurisdiction of the consumer courts in terms of monetary limit.[87]

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[80] Art. 19 of the Code No.6102.

[81] Narbay and Akkuş, 301.

[82] No. 2019/856; 2019/834 (Ankara Regional Court, 3rd Civil Chamber 03.5.2019).

[83] Evrim Erişir, "Tüketici Uyuşmazlıklarında Zorunlu Arabuluculuğun Kapsamının Belirlenmesindeki Güçlüklerin Ortaya Çıkardığı Bazı Meseleler", *Arabulucuğun Geleceği Sempozyumu*, (2020): 312.

[84] Art. 73/A of Law No. 6502. OJ 31199, 28/7/2020.

[85] Hicabi Yağbasan, "Medeni Usul Hukuku Kuralları Çerçevesinde Tüketici Hakem Heyetlerinde Ortaya Çıkan Bazı Usuli Sorunlar", *SÜAMYOD* (2019): 118.

[86] Art. 73/A/3 of Law No. 6502.

[87] Erişir, 351.; İbrahim Özbay, "Tüketici Uyuşmazlıklarında Arabuluculuğa Elverişlilik", *TOGÜHFD* (2023): 8-18.

### 3. Did the EU Acquis Affect Mediation on Consumer Conflicts in Turkey?

While Law No.6502's Article 73/A does not specifically reference the harmonisation process to EU acquis in its preamble, the Law itself is primarily managed and was put into effect to fulfil this task.[88] Turkish system of mediation on consumer conflicts now gives parties both chances to apply voluntary mediation and compulsory mediation if the case is related to Law No.6502. While there is freedom of application in the voluntary mediation method completely depending on the will of the parties, there is a legal regulation that obliges the application to the mediator in the compulsory mediation method.

Although the compulsory character of ADR has always been debatable, the Turkish Constitution Court made a statement on this issue. The fact that the application to mediation is required by law does not constitute an obstacle to the principle of voluntariness because the continuation of the process and reaching an agreement is voluntary, and the parties can file a lawsuit in court by ending the process. The term “alternative” in the concept of ADR cannot be used as an alternative to the courts. Mediation is an amicable solution based on voluntariness, aiming at solving the problems of the parties themselves and not a judicial activity.[89]

The CJEU also played a significant role, concluding that the Italian scheme of mandatory mediation was compliant with European law or, provided certain circumstances are met, that the requirement to use ADR does not contradict the concept of effective judicial protection.[90] So, member states can bring mandatory or voluntary ADR procedures for consumer conflicts if they meet the minimum harmonisation criteria, and the Turkish mediation system is also compatible with the principles of the ADR Directive. So, it can be argued that the new system in Turkey brings more than a minimum harmonisation process but also ensures the principles in the ADR Directive may be more effective.

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[88] The Preamble of the Law, Turkish Grand National Assembly.

[89] No. 2012/94; 2013/89 (Turkish Constitutional Court 10.07.2013).

[90] Livio Menini, Maria Antonia Rampanelli v. Banco Popolare Società Cooperativa, No. C-75/16 (CJEU 2017).

## II. The Assessment of the Methods Accomplishing Consumer Protection in the EU and Turkey

### A. Assessment of Different Approaches

Achieving effective consumer redress mechanisms has always been a search for states. It is vital to consider traders' and customers' perceptions of ADR quality. The information that matters most to customers and businesspeople should be given special consideration, as well as how this information should be communicated.[91] In England and Wales, consumer law matters were no longer eligible for legal aid by 2012, which resulted in a 100% decrease in legal aid payments on consumer matters from 2012 to 2018.[92] People making such claims were thought to be less likely to be particularly vulnerable; however, the notion was wrong. According to estimates, there were 8 million individuals who were overindebted in 2017 and 13 million people who were suffering from poverty, and everyone can be vulnerable at a certain time.[93] The general consumer vulnerability serves as justification for consumer law's autonomy as a separate matter under private law. From that perception, all consumers are vulnerable, especially due to asymmetric information, lack of negotiating power, misunderstanding of rights or procedures for seeking remedy, and ignorance of rights themselves.[94]

The primary complaints, according to the Green Paper from 2018, involved automobile services, building or home modifications, and air travel—all industries with little to no access to ADR. In both the judicial system and ADR, most consumers seeking redress were male (69%), older (69% were over 50), and wealthier (39% had family incomes of above £40,000); self-reported health or disability issues were recorded by 13% of claimants and 17% of defendants, which underrepresents the number of disabled people at the time.[95] The most vulnerable people frequently end up

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[91] Biard, 137.

[92] Cosmo Graham, "Improving courts and ADR to help vulnerable consumers access justice" in *Vulnerable Consumers and the Law: Consumer Protection and Access to Justice*, eds. Christine Riefa and Séverine Saintier (Routledge, 2020), 155-56.

[93] Comptroller and Auditor General, "Vulnerable consumers in regulated industries", *National Audit Office* (2017): 12.

[94] Carvalho, 193-94.

[95] Department for Business, Energy & Industrial Strategy, "Modernising consumer markets: Consumer Green Paper" accessed January 13, 2024 https://assets.publishing.service.gov.uk/media/5ad0d1cb40f0b617df3359b7/modernising-consumer-markets-green-paper.pdf.

paying the most since they are less likely to be on favourable deals.[96] Therefore, consumers are vulnerable most of the time because of the circumstances, and while considering the most effective redress mechanism, it should be mainly considered.

Mediation is the most popular and well-known ADR mechanism. Mediation is a low-cost, informal approach to resolving a disagreement whereby independent expert information can be used. However, due to the private nature of the mediation process, there is little potential to create the notoriety that surrounds a court case or to create public norms that could serve as a catalyst for changes in other aspects of the system.[97] According to a survey, 71% of consumers believed that using ADR may help them avoid going to court, 55% of them believed that ADR served as a mediator, and 51% of them thought ADR was impartial.[98] The creation of a state-funded mediation agency that focuses on specific consumer issues might reduce the prevalence of forceful execution because both parties frequently have inaccurate perceptions of what will happen if coercive execution is used.[99] In most cases, a neutral mediator would be better able to convince parties. A mediator would also typically be better equipped to persuade a claimed defence would not hold up in court than a consumer.[100]

The confidentiality of ADR procedures is a benefit. [101] And it enables parties to control their behaviour more effectively. However, due to their limited access to pertinent information and potential limitations in their ability to bargain with traders, the most vulnerable consumers may be at a disadvantage in this situation.[102] research shows that those who participate in mediation often settle for less than what they had originally demanded.[103] So,

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[96] Competition and Markets Authority, "Consumer vulnerability: challenges and potential solutions" accessed January 13, 2024 https://assets.publishing.service.gov.uk/media/5c77f164ed915d29eb6a0045/CMA-Vulnerable_People.

[97] Iain D. C. Ramsay, "Consumer Redress Mechanisms for Poor-Quality and Defective Products", *The University of Toronto Law Journal* 31, 2 (1981): 142.

[98] Chris Gill, Naomi Creutzfeldt, Jane Williams, Sarah O'Neill, and Nial Vivian "Confusion, gaps, and overlaps: A consumer perspective on alternative dispute resolution between consumers and businesses", *Citizens Advice* (2017): 12.

[99] Arthur Allen Leff, "Injury, Ignorance and Spite. The Dynamics of Coercive Collection", *The Yale Law Journal* 80, (1970): 45.

[100] Leff, 45.

[101] Carvalho, 206.

[102] Carvalho, 206.

[103] Graham, 173.

do these differences reflect an injustice or a trade between the compromise of a settlement and the time, expense, and tension of court proceedings? [104] It is a question that is impossible to answer. Therefore, some may argue that a consumer's negotiating position with a merchant may be strengthened through increased access to better small claims courts and creative remedies such blacklisting retailers that failed to respond to consumer concerns.[105]

For a better system, the decision should be enforceable by consumers, even if it is a small amount of money, and the result should be published by a third party to be an example for future disputes to bring consistency.[106] According to Eidenmüller and Engel, instead of choosing ADR procedures as an alternative to the small claims court system, small claims court systems can be improved by bringing innovative technology, consumer advocates, and collective redress.[107] The EU itself introduced a European Directive for the payment process and a small claims mechanism for disputes up to €2,000 in 2006 and 2007, which apply to all Member States except Denmark.[108] The objective is to ensure that access to justice is a reality, even for minor claims.

Some may consider that using efficiency criteria solely to evaluate the worth of ADR programmes endangers the courts' most valuable and essential resources: the public faith in the honesty of the procedures, the courts' support, and the public's belief in the motivations that guide the courts' decisions.[109] Before fully supporting CADR processes, policymakers should tread cautiously. There is an uneasy relationship between accuracy, which is considered to refer to the proper application of substantive law, and the total costs of litigation or other conflict resolution procedures to the parties.[110] Economically speaking, the goal must be to maximise the benefits of correct conflict resolution in the form of better incentives for good behaviour and lessen administrative expenditures.[111]

Progressive outcomes necessitate consumer involvement in the complaint process as well as liberal replies from businesses, and this

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[104] Graham, 173.
[105] Ramsay, 144.
[106] Eidenmueller and Engel, 28.
[107] Eidenmueller and Engel, 28.
[108] OJ L 399/1, 30.12.2006; OJ L 199/1, 31.7.2007.
[109] Nancy Welsh, "The Place of Court-Connected Mediation in a Democratic Justice System", *SSRN Electronic Journal* (2004): 141.
[110] Wagner, 182.
[111] Wagner, 182.

involvement may be inversely related to the type of response. [112] A study showed that only 6% of consumers brought their matter to an ADR body, while 81% of consumers complained about the issue to the retailer or provider, and 8% took no action after experiencing a problem.[113] It can be argued that it gives sellers a huge monopoly on their dispute resolution. Therefore, it can be argued that the most crucial institution for resolving a customer's issues was two-party negotiations.

Mass market appliance buyers are more likely to be "repeat players," especially if the retailer is a widely diverse department store chain, so consumer dissatisfaction with a single purchase could lead to negative feelings about the entire business. Furthermore, management may want to prevent the spread of customer unhappiness if it believes that customers are part of the enduring family, neighbourhood, and other networks.[114] Two-party bargaining is typically easier, faster, and less expensive than any third-party institutions and formal legal institutions.[115] In a similar vein, the legal rules do not seem to play an important role in the seller's decisions regarding the conflict and altering the substantive law of sales is unlikely to be as effective compared to a successful complaint system.[116] Instead, the repeat player idea and the benefits from customers telling new customers about their satisfaction, in the long run, seems more encouraging given the fact that the refund policy does not become costly, which is almost 1% of the gross sales.[117]

A relatively recent approach is industry-based CADR, which uses non-judgmental methods such as mediation and conciliation to settle issues; however, it does not include a third party like the other ADR schemes.[118] They were developed by various actors, including government, business, and the consumer movement, and they do not precisely fit any of the pre-existing dispute settlement models.[119] This program can successfully settle disputes

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[112] Ross and Littlefield, 213.

[113] Ipsos European Public Affairs, "Survey of Consumers' Attitudes Towards Cross-border Trade and Consumer-related Issues 2023", *European Commission* (2023): 14.

[114] Ross and Littlefield, 213.

[115] Ross and Littlefield, 214-15.

[116] Ramsay, 128.

[117] Ramsay, 128.

[118] Paul M. O'Shea, "The Lion's Question Applied to Industry-Based Consumer Dispute Resolution Schemes", *University of Queensland TC Beirne School of Law Research Paper* 25, 1 (2008): 63.

[119] O'Shea, 80.

because they can understand the industry better and investigate more easily. They are generally less expensive to operate for business, consumers can access them for free, and they deliver decisions much more rapidly, flexibly, and generally equitably than the courts.[120] This is a practical application of the consumer law "inside-out" theory.[121] However, the issue is how to optimise the advantages of the schemes' autonomy while protecting the members' rights to procedural justice and achieving accountable autonomy.[122] Failure to abide by a scheme decision may result in sanctions based on the industry, such as expulsion from the relevant industry association, and ultimately, after being reported to the appropriate regulator, the licence to engage in the relevant industrial activity would be withdrawn.[123]

Instead of operating on the grounds of the implementation of rigid standards and principles, which is the main characteristic of trial courts, industry-based dispute resolution schemes are established on the basis of flexible standards and principles.[124] The Quantum Contract Theory outlines how they do not go against the broad body of law but instead attempt to achieve results by using open-textured principles that allow for a great deal of latitude in the resolution of every specific consumer dispute.[125]

### B. Evaluation of the Most Effective System for Turkey

In general, the two-party ADR procedure can be more effective considering the circumstances of companies relying on consumer perception because they are repeat players. It will be easier because the parties already know the whole situation, and third parties may not be as effective as parties in solving the issue. However, an ADR provider that is selected and financed by a business cannot be independent.[126] Similarly, although industry-based ADR systems seem logical with their own general principles and rules brought by the sector, it is also difficult to say they will be independent and impartial.

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[120] O'Shea, 80.
[121] O'Shea, 73.
[122] O'Shea, 80.
[123] O'Shea, 71.
[124] Paul O'Shea and Charles Rickett, "In Defence of Consumer Law: The Resolution of Consumer Disputes", *Sydney Law Review* 28 (2006): 169.
[125] O'Shea, 169.
[126] UK Gambling Commission, "Complaints processes in the gambling industry: A review one year after the introduction of the alternative dispute resolution (ADR) scheme" (2017): 14.

Also, the rules and principles may be too vague to bring consistency or fairness among cases.

Turkey's social capital structure is weak; that is, it has been revealed many times by many public opinion polls that it is a society where people do not know and do not trust people other than themselves.[127] Consumers most likely do not bring a dispute against a provider they do not trust.[128] In addition, the options can be limited by cultural and economic norms.[129] Therefore, it can be argued that due to the financial instability in Turkey, people may not feel comfortable trusting companies or industries to handle their complaints. Therefore, rights-based procedures and independent systems may be more suitable for consumer redress. Despite their ability to deliver justice, small claims courts will not be sufficient because they will be expensive and time-consuming for consumers, who may also be vulnerable given Turkey's present economic crisis.

CAC in Turkey, which provides a rights-based and free service, including an online and offline application process, can be seen as the most appropriate system for consumers. However, due to the high level of applications and the lack of adequate expertise, they either must be improved by changing the committees' structure, such as hiring legal professionals or should be supported by other ADR systems. However, hiring legal professionals does not seem possible due to the scarcity of resources. CACs cannot hire law graduates as rapporteurs because of limited salaries. Their costs are provided by the government, which places a high burden on public resources. The issue of ADR scheme finance is intimately related to ADR quality. Schemes will not perform as expected and will not be able to offer high-quality services if they lack sufficient funding.[130]

In 2022, 286.129 out of 635.363 cases were not in favour of consumers[131]; however, only 18.515 cases were taken to the courts by consumers.[132] This gives us the same logic of consumers in the EU that they do not prefer going

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[127] Arif Özsağır, "Ekonomide Güven Faktörü", *Elektronik Sosyal Bilimler Dergisi* 6, (2007): 49.
[128] Vos and Wallis, 14.
[129] Vos and Wallis, 14.
[130] Biard, 135.
[131] Ministry of Trade, Statistics 2022.
[132] "Forensic Statistics 2022", Ministry of Justice, accessed January 12, 2024, https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/29032023141410adalet_ist-2022cal%C4%B1sma100kapakl%C4%B1.pdf, 101.

to the courts. Also, consumers may choose mediation as a free and impartial alternative to other dispute resolution methods. Compulsory mediation may help raise awareness, even though it does not seem like it will happen anytime soon. Facilitative mediation may not be efficient enough for parties to handle the conflict and use the expertise of mediators. The system can be improved by bringing evaluative mediation and more consumer participation in the procedure. After compulsory mediation was introduced, in 52% of the total number (150.297) of cases, parties resolved their issues. Although it does not seem high, it is a good starting point.[133] Consequently, the current ADR systems on consumer conflicts in Turkey seem the best option for now; however, improvements must be made to ensure an effective consumer redress mechanism.

## Conclusion

Consumer conflicts are an important part of our daily lives because, in the end, we are all consumers. Therefore, consumer protection and dispute-resolution techniques are becoming more and more crucial. As a part of consumer protection policy, many countries are adopting ADR procedures to ensure effective consumer redress mechanisms because they are easier, quicker, and less costly. Therefore, ADR policy has been encouraged by the EU, especially since the Maastricht Treaty and the ADR Directive on Consumer Conflicts. However, the Directive only brings general provisions through the principles of expertise, independence, impartiality, transparency, effectiveness, fairness and liberty and minimum harmonisation approach for member states.

Consequently, hundreds of different ADR systems are being implemented by member states, which is vague for consumers to understand in cross-border purchases, and it is difficult to measure which one is better to ensure an effective redress mechanism. Some articles in the Directive have also been debatable for scholars. The criteria of “the person in charge of ADR to have a general understanding of the law” is seen as inadequate, and the meaning may seem ambiguous. “The certifying and controlling duty of competent authorities” differs among member states due to the extremely general nature of the provision, which is unable to ensure a minimum level of

[133] “Mediation Statistics”, Ministry of Justice, accessed January 12, 2024. https://adb.adalet.gov.tr/Resimler/SayfaDokuman/9052022162408t%C3%BCketici%20%2004.05.2022.pdf.

quality. Also, "giving the freedom to fund the ADR procedure by companies" can contravene the principle of independence.

The EU is a role model for Turkey as a part of the accession process and negotiation chapters. So, it is Turkey's duty to harmonise the EU acquis, which is also a major reason for the introduction of Turkish Consumer Protection Law No. 6502. With this law, the system of CAC has changed, and recently, compulsory mediation has been introduced with a new article. In addition, even though mediation is a very well-known and popular ADR procedure in the world, it has become important for Turkey only in the last decades, especially with compulsory mediation, which was recently introduced in 2020 to encourage mediation and to improve effective consumer redress.

To achieve an effective consumer redress mechanism and consumer protection as an aim, two-party negotiations may be a good system for the EU because the willingness or unwillingness of parties to resolve the issue will not change by a third party, and the parties know the situation better. However, although the EU ADR Directive is the role model, the consumer and policy needs in the EU and Turkey differ depending on the current cultural and economic circumstances. Therefore, the ADR system of CAC and compulsory mediation on consumer conflicts in Turkey are better at achieving effectiveness even though lots of improvements must be made, such as ensuring expertise, increasing the budget of CAC, and increasing consumers' awareness of mediation.

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