

The Relationship Between Defective Goods and Homogeneity Assumption in the Context of Consumer Law: The Right to Request a Price Reduction in Proportion to the Defect

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Abstract: It is well-known that perfectly competitive market, as theoretically modeled in economics, has a fictional nature due to its reliance on certain assumptions. Moreover, it is observed that these assumptions do not align with the realities of life, and as a result, an imperfect market exists in real life. In this context, it can be argued that the institution of consumer rights has been established to support the homogeneity assumption, which does not correspond to real-life circumstances. In this study, the notion that the institution of consumer rights was established to support the homogeneity assumption, which does not align with real-life circumstances, has been examined within the context of the Republic of Türkiye and the framework of the Law on the Protection of Consumers No. 6502. However, the scope of this study is limited to the right to request a price reduction in proportion to the defect, as one of the rights enumerated under the law. In this study, a method involving the examination of relevant legislation, judicial decisions, and literature, followed by certain theoretical inferences based on the findings obtained from these sources, has been employed. The homogeneity assumption appears in the concept of defective goods in Law No. 6502. Goods that are contrary to the homogeneity assumption are considered defective, and consumers are granted various optional rights. Consequently, it has been concluded that the regulations concerning consumer protection within the scope of Law No. 6502 support the homogeneity assumption.

Keywords: Economics, Market, Law, Homogeneity, Consumer

Jel Codes: P10, D41, D63, K20, K42

Tüketici Hukuku Bağlamında Ayıplı Mal ve Homojenlik Varsayımı İlişkisi: Ayıp Oranında Satış Bedelinden İndirim İsteme Hakkı

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Öz: İktisat biliminde teorik olarak modellenen tam rekabet piyasasının, bazı varsayımlara dayanması yönüyle kurgusal bir niteliğinin haiz olduğu bilinmektedir. Dahası, söz konusu varsayımların hayatın gerçekleriyle uyum sağlamadığı ve dolayısıyla gerçek hayatta aksak nitelikte bir piyasanın mevcut olduğu görülmektedir. Bu bağlamda gerçek hayatın gerçekleriyle örtüşmeyen homojenlik varsayımını desteklemek üzere tüketici hakları kurumunun tesis edildiği söylenebilir. Bu çalışmada, gerçek hayatla örtüşmeyen homojenlik varsayımını desteklemek üzere tüketici hakları kurumunun tesis edildiği kabulü, Türkiye Cumhuriyeti özelinde ve 6502 sayılı Tüketicinin Korunması Hakkında Kanun çerçevesinde incelenmiştir. Bununla birlikte çalışma, anılan kanunda sayılan haklardan yalnızca ayıp oranında satış bedelinden indirim isteme hakkı ile sınırlandırılmıştır. Bu çalışmada, konuya ilişkin mevzuat ile yargı kararlarının ve literatürün incelenip bunlardan elde edilen bulgulara dayanarak bazı teorik çıkarımlarda bulunulması şeklinde bir yöntem izlenmiştir. Homojenlik varsayımı, 6502 sayılı Kanun'da ayıplı mal kavramında karşımıza çıkmaktadır. Homojenlik varsayımına aykırı olan mallar ayıplı mal kabul edilerek tüketiciye çeşitli seçimlik haklar verilmiştir. Böylece, 6502 sayılı Kanun kapsamında tüketicinin korunmasına ilişkin düzenlemelerin homojenlik varsayımını desteklediği sonucuna ulaşılmıştır.

Anahtar Kelimeler: İktisat, Piyasa, Hukuk, Homojenlik, Tüketici

Jel Kodları: P10, D41, D63, K20, K42

1. Introduction

Perfect competition is an economic model based on certain assumptions. It is evident that the assumptions of this model do not align with real-world markets, resulting in the presence of an imperfect market in practice. At this point, it can be argued that the regulations concerning defective goods, one of the defects in consumer transactions, as specified in Law No. 6502 on the Protection of Consumers, were implemented to fulfill the homogeneity assumption of perfect competition by establishing consumer protection institutions (Law on the Protection of Consumers [Law No. 6502], *Resmî Gazete*, 28.11.2013, 28835).

It is important to note that the milestone for legal regulations aimed at protecting consumer rights in Turkey is not Law No. 6502. In this context, it is evident that the first regulation specifically focused on consumers in Turkey was Law No. 4077 on the Protection of Consumers (Repealed Law on the Protection of Consumers [Law No. 4077], *Resmî Gazete*, 8.3.1995, 22221). Prior to this law, the provisions of Law No. 818, the Code of Obligations, were applicable to consumer-related matters (Repealed Code of Obligations [Law No. 818], *Resmî Gazete*, 8.5.1926, 359). At present, it is observed that Law No. 6502, which replaced Law No. 4077, is considered a special regulation concerning sales contracts compared to the provisions of Law No. 6098, the Turkish Code of Obligations, which replaced Law No. 818 (Erdogan, 1997; Turkish Code of Obligations [Law No. 6098], *Resmî Gazete*, 4.2.2011, 27836; Bozpınar & Kadioglu, 2023, pp. 80-81). However, it cannot be said that all matters related to consumers are covered in Law No. 6502. Indeed, within the scope of the consumer's right to compensation, Law No. 6502 stipulates that compensation may also be claimed under the provisions of Law No. 6098.

In this study, the assumption that consumer protection institutions were established to fulfill the homogeneity assumption is examined within the context of Law No. 6502.

In the study, a methodology was employed that involved reviewing relevant sources and discussing the obtained information from a comparative perspective to arrive at certain theoretical conclusions.

This study has required an extensive and rigorous research process due to the breadth of its scope, primarily encompassing the disciplines of law and economics. Additionally, since the topic has not yet been significantly addressed in legal doctrine, we consider this work to be an introductory exploration of the topic. Nevertheless, considering the deficiencies in both the current legislation and the perspectives noted in the relevant doctrine, we can conclude that the homogeneity assumption has not been effectively fulfilled. Furthermore, it can be stated that the topic represents a vast area that awaits further research.

2. Conceptual Framework: Perfectly Competitive Market and the Homogeneity Assumption

The market is defined as the place or any organization where buyers and sellers meet with the purpose of exchange and where the rate of exchange is determined (*Türk Dil Kurumu Güncel Türkçe Sözlük*, "piyasa"). In other words, a market refers to the place or any organization where supply and demand come together. In a 'pure' market known as perfectly competitive market, there are numerous buyers and sellers, none of whom have the power to influence prices (Altınok et al., 2016, p. 171). Essentially, this outcome arises from the theoretical nature of the perfectly competitive market, which relies on several assumptions. These assumptions include: a large number of buyers and sellers such that no single participant can influence the market price (atomistic structure), the free entry and exit of goods and services from one market to another (mobility), the availability of information about the market and the market participants to everyone (transparency), the ability of buyers and sellers to buy and sell desired goods and services in any quantity (divisibility), and the homogeneity of all goods and services involved in transactions (homogeneity) (Altınok et al., 2016, p. 171). According to the homogeneity assumption, it

is assumed that any good supplied in the market is identical in characteristics to others, regardless of who the seller is, meaning the goods are homogeneous. In other words, the homogeneity assumption posits that the goods supplied for sale in the market are identical in every respect, and therefore, there is no difference between them from the consumer's perspective. The reason a consumer prefers one good over another is due to differences in their prices (Yilmaz, 2019, p. 3).

The first view that the assumptions of the perfectly competitive market do not reflect reality, and that in real life, the conditions of imperfect competition market prevail, was put forward by P. Sraffa (1898-1983) in 1926 and quickly gained widespread support. In his article titled *The Laws of Returns under Competitive Conditions*, Sraffa fundamentally demonstrated the invalidity of A. Marshall's (1842-1924) assumption that under competitive conditions, a large number of firms produce homogeneous goods (Sraffa, 1926). Sraffa argued, among other things, that consumers are not indifferent to whom they purchase a particular good from, meaning that the homogeneity assumption does not hold in real life, as consumers choose between sellers for various reasons. Among these reasons, Sraffa included tradition, personal acquaintance, trust in the quality of the goods, geographic proximity, ease of credit, and the commercial brand's reputation, model, and design that distinguish it from other firms' goods. Following the path paved by Sraffa, J. Robinson (1903-1983) examined these preferences as reasons for imperfect competition, while E. H. Chamberlin (1899-1967) studied them as causes of monopolistic competition through product differentiation (Kazgan, 2000, p. 203).

It is evident that the development of consumer rights in subsequent periods is related to the homogeneity assumption, which Sraffa theoretically demonstrated to be invalid. Specifically, the evolution of consumer rights in later periods has been aimed at addressing the homogeneity assumption, which does not hold in real life. A brief summary of these developments would be appropriate.

Since the 1960s, significant legislation aimed at protecting consumers has been enacted, particularly in European countries. It can be argued that this development was driven by the need to safeguard consumers against general laws and market forces, leading to the enactment of favorable legislation. In this context, consumer protection laws have focused either on the terms and conditions of sales contracts or on behaviors that promote the formation of these contracts, such as marketing, packaging, advertising, and information provision. Before the enactment of consumer legislation, laws relating to contracts assumed that the parties were legally equal in terms of power and information. However, in reality, it became apparent that consumers almost always had significantly less power and knowledge than suppliers or producers. Consequently, as contract laws did not provide a fair legal framework for consumers or the protection they needed, legislative changes were introduced to offer consumers more protection than they could individually negotiate for themselves. It is also appropriate to acknowledge that these developments have contributed to reducing uncertainty in markets for consumers and thus stabilizing demand (Bozpınar & Kadioglu, 2023, p. 77). Furthermore, it should not be overlooked that 'reducing uncertainty' has also served to uphold the homogeneity assumption (Bozpınar, 2021).

3. Consumer Rights under Law No. 6502

Defective Goods

Defective goods is the primary concept encountered in contracts that form the basis of Consumer Law. Although Law No. 6502 distinguishes between defective goods and defective services, this study focuses on the examination of defective goods and the consumer's optional rights. Article 8, Paragraph 1 of Law No. 6520 defines defective goods as "a product that is contrary to the contract due to not being in conformity with the sample or model agreed upon by the parties at the time of delivery to the consumer, or lacking the objective characteristics it should possess." Paragraph 2 of the same article further states that "products that do not possess one or more of the features stated in their

packaging, label, promotional and user manuals, online portals, or advertisements; are contrary to the qualities reported by the seller or identified in technical regulations; or contain material, legal, or economic deficiencies that hinder the intended use of similar products, or reduce or eliminate the benefits reasonably expected by the consumer, are also considered defective.”

When examining the spirit of Law No. 6502, it can be observed that the legislator has made certain provisions in favor of the consumer to protect them, who is in a weaker position compared to the seller. Indeed, this inference can be directly seen in Article 1 of the Law, which is titled Purpose. Article 1 of Law No. 6502 states:

“The purpose of this Law is to regulate matters related to taking measures that protect the health and safety of consumers and their economic interests in accordance with the public interest, compensate for their damages, protect them from environmental hazards, provide information and raise awareness, encourage consumer self-protection initiatives, and promote voluntary organizations in the formation of policies on these issues.”

It is possible to say that, in making these provisions, the legislator fundamentally took into account the assumption of homogeneity in economic theory.

Law No. 6502 and the Homogeneity Assumption

As will be outlined in the following explanations, it is understood that the legislator who drafted Law No. 6502 assumed that the goods subject to consumer transactions were homogeneous, meaning they possessed the same characteristics. However, in the market conditions of our world, this assumption does not hold true, meaning that goods are not homogeneous. In other words, the condition of homogeneity, which implies that the buyer, seller, and the goods being traded are similar, is the condition that deviates the most from real economic life (Curga, 2002, p. 11). The institution of consumer rights protection emerges as a solution to eliminate this deviation. The reflections of the theoretical homogeneity assumption of perfectly competitive markets on Consumer Law can be seen in the provisions of Articles 8, Paragraphs 1 and 2 of Law No. 6502. Accordingly, Article 8, Paragraph 1 of Law No. 6502 stipulates that the absence of objective characteristics that should be present in a goods—i.e., the absence of features that other goods in the market are supposed to have—renders it defective goods. Article 8, Paragraph 1 of Law No. 6502 states:

“Defective goods is one that is contrary to the contract due to not conforming to the sample or model agreed upon by the parties at the time of delivery to the consumer, or lacking the objective characteristics it should possess.”

Another reflection of the homogeneity assumption in Law No. 6502 is seen in Article 8, Paragraph 2. According to this provision, products that do not fulfill the intended use of similar products, or that contain material, legal, or economic deficiencies that reduce or eliminate the benefits reasonably expected by the consumer, are also considered defective. Article 8, Paragraph 2 of Law No. 6502 states:

“Goods that do not possess one or more of the features stated in their packaging, label, promotional and user manuals, online portals, or advertisements; are contrary to the qualities reported by the seller or identified in technical regulations; or contain material, legal, or economic deficiencies that do not fulfill the intended use of similar goods, or reduce or eliminate the benefits reasonably expected by the consumer, are also considered defective.”

This provision implies that, in terms of intended use and expected reasonable benefit, products are assumed to be homogeneous, and those that do not possess these qualities, i.e., those contrary to the homogeneity assumption, are also considered defective.

Consumer's Optional Rights under Law No. 6502

The assumption of homogeneity in perfectly competitive markets is also reflected in the concept of defective goods under Law No. 6502 within the context of Consumer Law. Specifically, goods that deviate from the assumption of homogeneity are considered defective, and as a result, various optional rights are granted to the consumer to ensure homogeneity. Article 11 of Law No. 6502 provides the consumer with four optional rights in the case where a product lacks the objective characteristics it should possess according

to the homogeneity assumption of goods in the market, or contains material, legal, or economic deficiencies that do not fulfill the intended use of similar products or reduce or eliminate the benefits reasonably expected by the consumer. These optional rights are listed in Article 11, Paragraph 1 of Law No. 6502:

“In the event that the product is found to be defective, the consumer may use one of the following optional rights: a) Withdraw from the contract by notifying their readiness to return the product, b) Retain the product and request a discount from the sale price in proportion to the defect, c) Request free repair of the product, provided that it does not require excessive cost, with all expenses borne by the seller, d) Request replacement of the product with a defect-free equivalent if possible. The seller is obligated to fulfill the consumer’s preferred request.”

The rights include: notifying the seller of the intention to withdraw from the contract by returning the purchased item, requesting a discount from the sale price in proportion to the defect while retaining the item, requesting free repair of the item at the seller’s expense provided that it does not require excessive cost, and requesting replacement of the item with a defect-free equivalent if possible. The primary responsibility for these rights lies with the seller. However, the consumer can also direct requests for “free repair” and “replacement with a defect-free equivalent” to the manufacturer or importer. In other words, the seller, manufacturer, and importer are jointly liable for fulfilling requests for “free repair” or “replacement with a defect-free equivalent” (Usta, 2019, pp. 48-49). Within the scope of this study, only the right to request a discount from the sale price in proportion to the defect has been examined.

On the other hand, the subsequent paragraphs of the relevant article contain provisions regarding the use and limitations of these rights. Similarly, Paragraph 5 of the relevant article stipulates that if the consumer chooses to request a discount from the sale price in proportion to the defect, the amount of the discount shall be promptly refunded to the consumer. Article 11, Paragraph 5 of Law No. 6502 states: “In cases where the consumer chooses to withdraw from the contract or request a discount from the sale price in proportion to the defect, the full amount paid or the discount amount shall be promptly refunded to the consumer.”

Determining the Amount to be Discounted in Cases of Defective Goods According to Law No. 6502

Article 11, Paragraph 1 of Law No. 6502 stipulates that when a consumer discovers that the purchased product is defective, they have the option to retain the product and request a discount from the sale price in proportion to the defect. The amount to be deducted can be determined by mutual agreement between the parties. If the parties cannot agree on the amount to be deducted, its determination falls to the judge (Satan, 1997, p. 62).

Considering the conditions in Turkey, it is evident that exercising this right is beneficial to the consumer in an environment with high inflation rates (Altug & Dumanoglu, 1996, p. 227). If the consumer chooses to exercise one of the other three optional rights, they may face negative consequences such as purchasing the same product from another seller at a higher price or experiencing delays in the utility of the purchased product.

The right to request a discount from the sale price in proportion to the defect is granted to the consumer with the aim of ensuring the equivalence between performances and fairness in the contract. Although this optional right does not constitute compensation, the consumer also has the right to seek additional compensation for damages incurred along with the price reduction (Yavuz, 2012, pp. 56-57). This situation is also stipulated in Law No. 6502. The consumer’s right to compensation due to defective goods is regulated in Article 11, Paragraph 6 of Law No. 6502 as follows: *“The consumer may also request compensation in accordance with the provisions of the Turkish Code of Obligations No. 6098 dated 11/1/2011, along with one of these optional rights.”*

There is no prescribed method for determining the discount amount in Law No. 6502 for defective goods, and this matter is left to the judge’s discretion. In doctrine and court

precedents, however, three accepted methods for calculating the discount amount are recognized (Satan, 1997, p. 63). Although there are three calculation methods—relative method, absolute method, and compensation method—accepted in doctrine and practice, the relative calculation method is the one most widely accepted in Turkish courts and academic circles (Altug & Dumanoglu, 1996, p. 228). However, as will be explained below, the method that protects the consumer and aligns with the homogeneity assumption in a perfectly competitive market, according to the spirit of Law No. 6502, is the compensation method.

The Relative Method and the Homogeneity Assumption in Determining the Discount Amount

In the matter of reducing the price due to the defectiveness of the sold item, the generally accepted method in doctrine and practice is the relative method. According to this method, the ratio between the defective and defect-free value of the item at the time of sale is applied to the agreed sale price to determine the amount to be paid (Aslan, 2010, p. 113). In determining the amount of the discount due to a defect, the proportional method, which is accepted in doctrine and Court of Cassation (Yargıtay) rulings, should be used. According to this method, the ratio between the defect-free and defective value of the vehicle as of the sale date is applied to the agreed price (The 13th Civil Chamber of the Court of Cassation [Yargıtay 13. Hukuk Dairesi], E.7580. K.10870, 26.12.1997). Accordingly, the calculation of the discount amount to be paid is done using the following formula:

Discount amount to be paid = (Agreed sale price) × (Defective value / Defect-free value)

Article 1 of Law No. 6502, titled Purpose, states that the aim is to take measures to protect the safety and economic interests of the consumer, compensate for damages, and safeguard against environmental hazards. However, in the relative calculation method, as will be seen below, since the ratio is based on the defect-free value of the item, the resulting discount amount to be paid differs from the sale price agreed upon by the consumer and the seller. Consequently, the consumer is left in a position where they must effectively negotiate the price.

On the other hand, when this calculation method is evaluated according to the assumption of homogeneity, it contradicts the assumption that the agreed price of the presumed item is not different from its defect-free value. The acceptance that the price of the item at the time of sale may differ from its defect-free value implies the acceptance of a different pricing. To better understand this issue, some examples are provided below.

Example 1: The situation where the sale price of the goods is less than its defect-free value

- Sale price of the goods: 80₺
- Defect-free value of the goods: 100₺
- Defective value of the goods: 20₺

Discount amount to be paid = (Agreed sale price) × (Defective value / Defect-free value)

Discount amount to be paid = (80₺) × (20₺ / 100₺) = 16₺

Example 2: The situation where the sale price of the goods is equal to its defect-free value

- Sale price of the goods: 100₺
- Defect-free value of the goods: 100₺
- Defective value of the goods: 20₺

Discount amount to be paid = (Agreed sale price) × (Defective value / Defect-free value)

Discount amount to be paid = (100₺) × (20₺ / 100₺) = 20₺

Example 3: The situation where the sale price of the goods is more than its defect-free value

- Sale price of the goods: 120₺
- Defect-free value of the goods: 100₺
- Defective value of the goods: 20₺

Discount amount to be paid=(Agreed sale price)x(Defective value/Defect-free value)

Discount amount to be paid=(120£)x(20£/100£)=26£

Absolute Method and Homogeneity Assumption in Determining the Discount Amount

Another calculation method in doctrine is the absolute method. According to this method, the defective and defect-free values of the goods are assessed separately; the difference between these determined values is then deducted from the agreed sale price in the contract, thereby determining the reduced sale price that the buyer is required to pay (Satan, 1997, p. 63).

In this calculation method, as the value of the goods deviates from its actual value, it will lead to unjust results either for the seller or the consumer. The more the goods is sold at a lower price, the more burdensome the situation will be for the seller when applying the absolute method. Conversely, the higher the sale price of the goods, the more burdensome the situation will be for the buyer. This situation not only fails to serve the spirit and purpose of Law No. 6502 but also harms the balance of interests between the parties (Satan, 1997, p. 64).

Additionally, similar to the explanation of the proportional method above, this calculation method also contradicts the assumption of homogeneity. The goods subject to the consumer transaction, which is identical to the defect-free goods at the time of sale, seems to transform into a different structure from the goods at the time of sale and other goods in the market, almost as if the defect-free goods takes on a different form after the sale.

Determining the Discount Amount Using the Compensation Method and the Homogeneity Assumption

According to the compensation method, the difference between the agreed sale price in the contract and the defective value of the sold goods is deducted from the agreed sale price, thereby ensuring that the consumer only pays for the defective value of the goods (Satan, 1997, p. 64).

According to this method, regardless of whether the consumer has any subjective influence on price determination, the defective goods will be subject to a fixed pricing within its equivalent classification, eliminating the need for any subjective influence by the consumer. The sale price being either lower or higher than the defect-free price will no longer matter, and the consumer will reach the actual sale price based on the price of the defective goods.

Moreover, according to this method, when a goods is defective, it is differentiated from its defect-free counterparts at the time of sale and is instead priced according to its defective counterparts. In this regard, it is seen to fulfill the homogeneity assumption. Specifically, the defective goods, by differentiating itself from the defect-free counterparts, is classified according to its defective equivalents. Within this classification, it is assumed to have the same homogenous characteristics as other defective equivalent goods.

4. Conclusion

It is observed that the perfectly competitive market model, based on certain assumptions, does not reflect real life. In this context, it can be said that the regulations regarding defective goods within the framework of the Consumer Protection Law No. 6502 aim to achieve the homogeneity assumptions of perfectly competitive markets.

In this study, it is assumed that the consumer rights institution has been established to achieve the homogeneity assumption, and the Consumer Protection Law No. 6502 has been examined based on this assumption.

In the study, a methodology was employed that involved reviewing relevant sources and discussing the obtained information from a comparative perspective to arrive at certain theoretical conclusions. The results obtained are explained below.

In the context of defective goods under the Consumer Protection Law No. 6502, three methods are recognized in the doctrine for determining the amount to be deducted when

applying the consumer's right to seek a reduction in the sales price. These methods are the proportional method, the absolute method, and the compensation method.

The generally accepted proportional method in the doctrine and practice leads to different results based on the subjective characteristics of the consumer, and it is concluded that this is not in line with the spirit and purpose of Law No. 6502. Additionally, another result reached in the assessment of the homogeneity assumption in a perfectly competitive market is that the notion of considering the value of the goods at the time of sale and the defect-free value as different contradicts the homogeneity assumption due to its reliance on a non-homogeneous, different pricing model.

Another method in the doctrine, the compensation method, does not impose any requirement on the consumer to have subjective abilities. It evaluates the defective price of the goods within its own classification of similar items, leading to the conclusion that this is a fixed method more aligned with the spirit and purpose of the law. Additionally, this calculation method is consistent with the homogeneity assumption in a perfectly competitive market, as it evaluates defective goods relative to similar defective items within their classification.

Based on the results obtained, it can be said that the regulations concerning consumer protection under Law No. 6502 serve to support the homogeneity assumption in economic theory.

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