BAY
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MIR

Akat Mahallesi Güldeste Sokak No 1
Beşiktaş / İstanbul / Türkiye
www.baysaldemir.com
info@baysaldemir.com
T: +902128131931
F: +902129510185

# FIRE INSURERS' DUTY TO ASSESS FIRE SAFETY MEASURES: A LEGAL GRAY AREA?

*Pelin Baysal & Ilgaz Önder & Ceyda Parmaksız*

The recent fire at one of Turkey's most prestigious winter resorts, which engulfed hundreds of guests and tragically claimed 78 lives, has reignited critical discussions about the role of insurers in fire-related incidents. Specifically, do insurers have a duty to assess a building's fire safety measures before issuing fire insurance? If so, could this duty render them liable to third parties for fire-related damages?

The legal basis for this debate is Article 6.6 of the Regulation on Fire Protection of Buildings ("**Regulation**"), which requires insurance companies to verify that fire safety measures are in place before providing coverage. However, the controversy arises from the fact that the Regulation does not explicitly list insurers among the entities subject to sanctions for non-compliance.



**A Risk Evaluation Duty or a Public Safety Obligation?**

One perspective is that Article 6.6 merely echoes Articles 1435 and 1436 of the Turkish Commercial Code ("**TCC**"), which require insurers to assess risks before underwriting policies. This assessment is typically conducted through questionnaires filled out by policyholders. In this context, the insurer's duty is aimed at ensuring fair risk assessment, rather than imposing an independent legal obligation. A failure to fulfill this duty would not necessarily result in contractual or extracontractual liability but could limit the insurer's ability to assert its rights – such as rejecting a claim based on misrepresentation by the insured.

Conversely, opponents argue that the Regulation imposes a distinct duty, or an obligation towards the public, separate from risk evaluation. Its stated purpose is to "minimize the occurrence of fires" and "ensure that any fire is extinguished with minimal loss of life and property." This suggests a broader obligation beyond mere commercial risk assessment.

**Judicial Inconsistencies and Case Law Trends**

Courts have previously made inconsistent rulings on this issue. Most recently, there was a shopping mall fire in 2008, giving rise to a number of claims from third parties and numerous insurers' subrogation claims, each handled by different courts. Since then, all the three tiers, from the first instance courts to the Court of Cassation, have dealt with whether the fire insurers can be held partially liable towards third

parties. In some cases, the Court of Cassation confirmed that the insurer, who failed to conduct its investigation before the policy can be held liable for 10% of damage [**İstanbul Regional Appellate Court 45th Civil Chamber, Case No: 2020/1124, Decision No: 2022/1084, Date: 05.10.2024**]. In some cases, however, the Court of Cassation was equally content with the lower courts who have absolved insurer of any liability [**Court of Cassation, 17th Civil Chamber, Case No: 2019/2562, Decision No: 2020/6101, Date: 22.10.2020**]. The reasoning of this differentiation is not crystal clear, but the key factor in these divergent decisions appears to be the causal nexus. In cases where insurers were not held liable, the courts often attributed greater fault to other parties, such as the insured for misapplying fire suppression systems or the municipality for issuing operating licenses without proper oversight.

**Conclusion**

Court precedents suggest that insurers can potentially be held liable—albeit to a minor extent—for failing to ensure compliance with fire safety regulations. However, liability depends on the specific circumstances of each case, particularly the extent to which other parties contributed to the fire's occurrence and severity

***For further information, please contact:***


**Pelin BAYSAL**
**pelin@baysaldemir.com**

**Ilgaz Önder**
**ilgaz@baysaldemir.com**

**Ceyda Parmaksız**
**ceyda@baysaldemir.com**