

CATASTROPHIC INSURANCES UNDER THE SPOTLIGHT

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On February 6, 2023, two large and sequential earthquakes struck 11 south-eastern cities of Turkey, including Gaziantep, Kahramanmaraş and Hatay, some of the country's largest and most dense cities. The earthquakes have led to an unbearable loss of life and injuries, causing thousands of buildings to be destroyed. While in deep sorrow, condolence and sympathy for the losses, the public looks forward to the higher-ups implementing preventive measures to avoid similar catastrophes as well as repairing the damage as much as possible.

Earthquake insurance stands as one of the tools to support earthquake victims. It became compulsory in 2000 after another devastating earthquake which heavily affected midwestern metropolises including Istanbul. Yet the rate of insured dwellings in the southeast region is at most 50% according to official records, as there is no severe legal repercussion for those not having this insurance. Despite how low the insurance penetration is, Turkish Catastrophe Insurance Pool (TCIP or DASK in Turkish), as the exclusive underwriter of the earthquake insurance, has already paid over TRY 2.0 bn (USD 100 mn) for over 320,000 notified claims in only 30 days, which is more than total compensation paid in the past 23 years. This amount only features the tip of the iceberg, given much more loss notifications and insurance payments are yet to be made (Artemis: "Insured loss from Turkey earthquakes likely to exceed \$5bn: Moody's RMS").

Against all this background, TCIP inevitably came under the spotlight. Because, the lawsuits that had stemmed from previous earthquakes often witnessed debates about the scope and conditions of the coverage.

In exemplary cases not so long ago, TCIP denied coverage mainly because of the dwelling's earlier deficiencies. In these cases, the dwellings were allegedly damaged because of the inherent structural weakness present before the earthquake. And the dwelling's prior weakness is a reason to deny coverage under the general conditions of earthquake insurance approved by the Treasury.

The Court of Cassation, depending on the circumstances surrounding the particular case, either dismissed TCIP's defense reminding TCIP's burden of proof (Court of Cassation, 17th Civil Division, 2016/11927 E., 2018/1311 K. 26.02.2018) or instructed the local court for a retrial by obtaining an expert report to detect the dwelling's

condition before the earthquake (Court of Cassation, 17th Civil Division, 2018/2465 E., 2020/3243 K. 08.06.2020).

This debate continues with an increased significance, given that the considerable portion of the dwellings destroyed in the southeast region is old and not constructed according to the current building construction standards (enhanced after the 1999 earthquakes). What is more, most of the buildings of a young age are understood to be built or have undergone structural alterations not in full compliance with their architectural projects, as the news hurtfully showed after the earthquakes. Hence, the size of the peril that came with the earthquakes can potentially obstruct majority of the insurance payments, and this could have reasonable explanations on legal grounds.

To prevent this outcome, TCIP and other insurers collaborating with TCIP in earthquake insurances seem not persistent on their earlier reservations. Implying this, TCIP, contrary to their earlier practices, launched a payment scheme facilitating advance payments to the victims. This was also why TCIP felt the need to comfort the public by disclosing on February 20, 2023, that it has, together with reinsurance treaties, a fund reserve amounting to TRY 117 bn (USD 6.2 bn) sufficient to cover all the claims.

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