

# **Class Actions in the Age of Technology: Evolution or Extinction?**

## **1. Introduction**

The class action mechanism, the first examples of which emerged in England in the 13<sup>th</sup> century, continues today to expose some of the world's largest companies to litigation arising from misleading consumer practices, personal data breaches, anti-competitive conduct, or commercial activities causing mass harm. For instance, in the *Dieseldgate* class actions brought against one of the world's largest automobile manufacturers over allegations of manipulated emission tests, settlements amounting to billions of dollars were reached and compensation was paid to hundreds of thousands of consumers. From technology companies to pharmaceutical manufacturers, many global actors have become parties to class action proceedings arising from disputes related to data breaches, product safety, or consumer transactions.

The class action mechanism enables similar damages suffered by a large number of individuals to be asserted within a single proceeding. Its modern development accelerated particularly in the United States during the 20<sup>th</sup> century and became increasingly widespread with the rise of disputes arising from consumer markets, capital markets, and the digital economy. The main purpose of this paper is to demonstrate the gap existing in Turkish law in this field when compared with foreign legal systems with a brief glance at possible future developments.

## **2. Class Actions Around the World**

### **2.1. United States**

The most developed example of the class action mechanism can be found in U.S. law, where it is regulated under *Federal Rule 23*. Pursuant to this framework, claims of a similar nature may be asserted through a single lawsuit. This structure allows even relatively low-value damages, which may not be economically meaningful to pursue individually, to be collectively asserted when they affect large groups of people. As a result, individuals' access to justice is strengthened while companies<sup>1</sup> are exposed to significant legal and financial risks.

One of the most notable aspects of the U.S. class action mechanism is the “*opt-out*” model, which is widely applied particularly in consumer disputes. Under this model, individuals falling within the class defined by the court are automatically included within the scope of the lawsuit without being required to make a separate legal application to become a party to the proceedings. For example, consumers who purchased the same product during a specific period may automatically fall within the scope of the lawsuit and may seek compensation simply by submitting a claim under the settlement or compensation plan established at the end of the proceedings.

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<sup>1</sup> Most of these are companies engaged in manufacturing or distribution activities directed toward end users and consumers.

The opt-out model facilitates high-value compensation claims, creates a deterrent effect on companies, and enables small individual damages to be asserted collectively. On the other hand, this structure is also criticized as contributing to an “excessive litigation culture.”

Approximately USD 500 million was paid in settlement of the *Batterygate* class action concerning allegations that a leading American technology company intentionally limited the performance of its older smartphone models. As a more recent example, in a class action concerning allegations that users were being unlawfully monitored through a voice assistant application, a settlement of approximately USD 100 million was reached in 2025 and the compensation process for eligible consumers was initiated.

## 2.2. European Union

Although collective action mechanisms in the European Union had previously been recognized in a limited manner through various sector-specific regulations, the most significant regulation establishing a general and comprehensive framework across the EU is the *Representative Actions Directive* dated 2020. Through this Directive, a more harmonized and functional collective action framework, particularly with respect to consumer disputes, has been established throughout the European Union.

Significant differences emerged among Member States during the process of transposing the Directive into domestic law. Germany, through the *VRUG*<sup>2</sup>, which entered into force in 2023, granted qualified consumer organizations the right to seek collective compensation for damages, while the Netherlands aligned its settlement-based collective compensation model previously developed under the *WCAM* mechanism with the framework of the Directive. France, on the other hand, expanded its *action de groupe* system beyond consumer disputes to also cover environmental and data protection matters.

Within the EU system, collective actions are generally conducted through certain consumer organizations or authorized entities rather than individual claimants. In this respect, the mechanism presents a more limited and controlled structure compared to the broad class action model in the United States. Indeed, unlike the “opt-out” approach commonly applied in the United States, many EU countries prefer the “opt-in” approach, which requires individuals to expressly demonstrate their intention to join the claimant group and request participation in the proceedings. Accordingly, the system observed in the EU produces a much more limited impact compared to the billion-dollar proceedings affecting large groups seen in the United States.

## 2.3. China

Chinese law does not provide for a comprehensive class action mechanism. Although certain mechanisms resembling class actions have been introduced, it is noteworthy that these

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<sup>2</sup> *Verbandsklagenrichtlinienumsetzungsgesetz*

mechanisms remained quite limited in practice for many years and have reflected a more controlled and public authority-oriented structure.

However, in recent years, class action proceedings in China have increased particularly in relation to capital markets disputes. The *Kangmei Pharmaceutical case*, involving more than 50,000 investors, constitutes a turning point in the development of class action practice in China. The fact that compensation amounting to approximately USD 400 million was awarded in this case represented a remarkable development in terms of the collective assertion of mass investor losses on such a scale for the first time in China. This is significant not only because of the substantial amount of compensation awarded, but also because it created a serious deterrent effect for corporate executives and large-scale companies within the Chinese capital markets. Following this case, mechanisms aimed at the collective protection of investors have become more prominent in China, and the concept of class actions has become increasingly visible particularly in the field of capital markets.

### **3. Türkiye**

Turkish law does not provide for a specific class action mechanism capable of representing many individuals within a single proceeding and resulting in collective compensation. Although certain procedural mechanisms, particularly those similar to the mechanisms found in EU law, allow collective action in disputes concerning multiple individuals or the protection of certain group interests, these mechanisms do not share the same structural characteristics as the class action models observed in foreign legal systems.

Joinder of parties regulated under Article 57 of the Code of Civil Procedure (“CCP”) allows multiple persons to file a lawsuit together. Although, for reasons of procedural economy, such claims may be heard within the same case file, each claimant individually asserts their own claim and maintains party status with respect to their own right. Accordingly, unlike the class action mechanism under U.S. law, the proceeding does not establish a unified and representative structure binding the entire group through a single representative claimant.

In addition, under Article 113 of the CCP, associations and other legal entities may bring a lawsuit only where the field of activity of the legal entity overlaps with the interest sought to be protected and where such interest constitutes a group interest rather than an individual one. However, this mechanism is limited to the determination and prevention of unlawful conduct and does not encompass individual compensation claims; therefore, it does not serve the principal function of the class action mechanism, namely collective compensation.

Similarly, although certain lawsuits may be initiated by consumer organizations and relevant institutions under the Consumer Protection Law, the available remedies are limited to measures such as the recall of defective products or the suspension of sales. This structure likewise does not result in collective compensation being paid to consumers.

At this point, it is necessary to underline a conceptual distinction: although the existing mechanisms under Turkish law permit collective litigation under certain conditions, they do not

provide for class certification or a unified judicial decision binding the entire group, which constitute the essence of the class action mechanism under U.S. law. In other words, claimants brought together within the same case file through joinder of parties continue to maintain separate party status with respect to their individual claims; a structure in which a single claimant acts in a representative capacity for the entire group and the court's judgment automatically binds all group members does not exist. Accordingly, the principal deficiency under Turkish law is not merely the absence of collective litigation, but rather the structural absence of a collective compensation mechanism.

#### **4. Why Does Turkish Law Not Have a Class Action Mechanism?**

The absence of a general and comprehensive class action mechanism under Turkish law is closely related not only to economic, social, and cultural dynamics, but also to the approach of our legal system toward dispute resolution. Under Turkish law, dispute resolution has predominantly developed through individual application mechanisms. In contrast, mechanisms capable of bringing together large numbers of individuals within a single proceeding and creating significant collective compensation risks for companies have not found a place within our legal system.

As can be seen, the Turkish legal system has developed an approach based on more controlled and centralized structures rather than mechanisms capable of creating mass private law pressure in dispute resolution. Due to this individual application-based structure, damages affecting large numbers of individuals but remaining individually low in value may often remain outside judicial scrutiny.

Particularly in areas such as digital services, e-commerce, banking transactions, or data breaches, mass harms arising in practice often cannot become the subject of collective litigation. Accordingly, unlike the examples observed in other jurisdictions, the main deficiency under Turkish law is the absence of an effective compensation mechanism enabling damages affecting large numbers of individuals to be asserted collectively.

#### **5. Possible Approaches for Türkiye and Future of Class Action**

Although there is a perception in doctrine and international sectoral analyses that the class action mechanism has lost its global efficacy, particularly due to stricter procedural requirements and the insertion of arbitration clauses into contracts, current data demonstrates the contrary. Indeed, in 2025 alone, more than 13,000 class actions were filed in US courts, which translates to an average of 36 new lawsuits per day and reflects a significant increase compared to previous years. Rather than experiencing a structural decline, the class action mechanism is undergoing a profound transformation by expanding both its scope of application and geographical boundaries. The shift in disputes from traditional consumer claims to next-generation frontiers, such as artificial intelligence intellectual property rights, data privacy, and ESG liabilities, demonstrates that this institution maintains its full dynamism. In short, the class

action mechanism retains its character as a vital legal tool for the judicial review of corporate practices, the generation of public pressure, and the advancement of corporate compliance processes.

This radical transformation taking place on a global scale, combined with the borderless nature of digitalization, necessitates evaluating similar mechanisms within the framework of Turkish law as well. In our opinion, although the establishment of a broad class action mechanism similar to the U.S. model does not appear realistic, the discussion of a more limited and controlled collective compensation mechanism, particularly in the field of consumer transactions, is becoming increasingly important. Especially with the acceleration of digitalization, situations in which thousands of individuals affected by the same practice suffer similar damages are no longer exceptional.

Such a mechanism could allow similar damages to be asserted within a single proceeding and reduce the burden on individuals to initiate separate lawsuits, while at the same time creating a stronger legal deterrent particularly for large-scale companies. Indeed, mass disputes arising from e-commerce, digital platforms, banking services, and personal data processing activities cannot be fully resolved through traditional individual litigation models.

Accordingly, the issue is not merely the creation of a new type of lawsuit, but rather how mass harms emerging in the digital age can be protected within the legal system in a rapid and effective manner. In the coming period, it would not be surprising for discussions regarding class actions in Türkiye to become more visible particularly in the context of consumer law and digital platforms.

Within this framework, the principal approaches that may be considered for Türkiye can be summarized as follows: The first option is the expansion of the existing CCP framework; introducing a representative mechanism capable of producing collective compensation outcomes into the provisions governing joinder of parties and community actions may make it possible to achieve results through a less radical transformation while preserving the existing legislative infrastructure. The second option is the introduction of sector-specific regulations; establishing independent collective compensation procedures in areas such as consumer law, personal data protection, or electronic commerce may create the basis for a systematic reform. The third option is the adaptation of the EU model; a limited and controlled mechanism allowing authorized consumer organizations to bring collective compensation claims on an opt-in basis, taking the fundamental principles of the 2020 Directive as a basis, may be regarded as the most compatible starting point for the Turkish legal system.

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