



## Theft Cases In Stores

Shopping malls have many different stores, restaurants, cafés, cinemas, entertainment centers and markets, with many people from different backgrounds under the same roof. Unfortunately, thefts happen frequently in these places. This gives rise to the

inevitable question: who is liable?

Customers encounter verbal announcements and written signs in almost every store, restaurants and common areas (e.g. car park, food court, etc.), where the management of the shopping mall, store, café or restaurant (independent sections) disclaiming liability for a customer's stolen property. However, in fact, these disclaimers do not prevent victims from raising compensation claims before the consumer courts and/or local consumer protection arbitration boards, which often rule in favor of consumers. In several decisions, the Court of Appeals has ruled that such disclaimers (either in verbal or written form) do not release a shopping mall or store management's liability.

It is inarguable that the criminal liability arising from a theft belongs to the person who committed the crime. Yet, who bears the liability to compensate the victim's losses remains highly controversial. Fortunately, recent decisions of the Court of Appeals shed light on who bears liability, and to what extent, for the victims' damages.

The first question to be answered while examining who will be held liable for the losses incurred due to a theft is: "In which part of the shopping mall did the theft occur?". In 2006, the Court of Appeals<sup>1</sup> ruled that the management of a shopping mall could not be held liable for a victim's losses, unless the crime was committed in a common area. The Court of Appeals based its verdict upon the fact that the shopping mall's management is not entitled to interfere in an independent section's management, as the independent sections are being operated by separate entities or individuals.<sup>2</sup> Accordingly, if the crime of theft is committed in an independent section, the individual or the legal entity that operates the relevant independent section will be held liable.

The Court of Appeals ruled that such liability derives from tort liability. Under the Turkish Code of Obligations, torts consist of four elements, namely: (i) a wrongful act; (ii) loss; (iii) fault; and (iv) a causality link. When the theft is committed, the causal link between the unlawful action (i.e. theft) and the loss (i.e. losses incurred by the victim) finds its grounds on the good faith principle stipulated under Article 2 of the Turkish Civil Code.<sup>3</sup>

<sup>1</sup> Decision of the 13th Civil Chamber of the Court of Appeals dated 31 March 2006 numbered E. 2005/15684 K..

<sup>2</sup> However, it is inarguable that the shopping mall's management may be held liable, if subjective reasons/conditions exist.

<sup>3</sup> Nevertheless, if the legal relationship between a store management and a customer is based on a safekeeping contract, the causal link finds its grounds on the store management's failure to fulfill its "*obligation of safely and carefully keeping the property*".

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In one of its decisions, the Court of Appeals<sup>4</sup> ruled that store managements must:

- behave responsibly in an effort to sustain their customers' confidence in them;
- take all necessary measures to ensure safety of a customer's health and property; and
- protect customers against any possible danger.

Otherwise, the store management will be deemed to have failed to comply with the good faith principle. In this regard, in order to minimize liability, an entity managing a shopping mall/store must prove with sufficient evidence that they could not prevent the loss, although they properly complied with the foregoing obligations and took all the necessary measures. In addition, the Court of Appeals also held in the same decision that one cannot benefit from his own fault. Thus, if both the victim's and the store/shopping mall management's mutual fault (e.g. negligence) caused the losses, the liability must be proportioned between them in accordance with their contribution to the incurrence of losses. In addition, the amount of compensation that the store's/shopping mall's management will be ordered to pay to the victim must be reduced accordingly.

As to liability arising from a theft committed in a shopping mall's common areas (especially in car parks), the Court of Appeals states that such liability must be borne by the shopping mall's management. However, if the shopping mall obtains security services from third parties (e.g. from a security company), the liability will be proportioned between the shopping mall management and the third party.

All in all, in a possible dispute, a shopping mall/store management must prove that, before the crime of theft was committed, they have already:

- taken all safety measures required for preventing such crime;
- devised a proper safety system in the area that the crime occurred;
- installed security cameras (and retained visual records for an extensive period of time); and
- trained their personnel on how to prevent such crimes.

Further, the shopping mall/store management must have provided the maximum support to the victim after the crime was committed, in order to minimize their liability.

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<sup>4</sup> Decision of the 13<sup>th</sup> Civil Chamber of the Court of Appeals dated 17 October 2005 numbered E. 2005/8367 K. 2005/15280.