

‘Deferment of announcement of verdict’ provisions cancelled: how will this affect criminal liability in trademark infringement cases?

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Legal updates: case law analysis and intelligence

- The Constitutional Court has annulled the provisions of the Code of Criminal Procedure regulating the ‘deferment of the announcement of the verdict’ (‘HAGB’)
- The decision highlights key concerns regarding the compatibility of the HAGB institution with constitutional principles
- This development will likely have a significant impact on trademark infringement cases, as the finalisation of decisions will be delayed

On 1 June 2023 the Constitutional Court rendered a significant decision that will have an impact on criminal trademark infringement cases. The decision pertains to the annulment of Paragraphs 5 to 14 of Article 231 of the Code of Criminal Procedure, which regulate the 'deferment of the announcement of the verdict' ('*Hükmün Açıklanmasının Geri Bırakılması*' or 'HAGB') institution. The decision will become effective on 1 June 2024.

Background

The case before the Constitutional Court involved a criminal trial for intentional assault and resistance to lawful arrest. The applicants challenged the constitutionality of Paragraphs 5 to 14 of Article 231 of the Code of Criminal Procedure based on the violation of Article 17 of the Constitution.

Key points

The court's analysis highlighted several key concerns regarding the compatibility of the HAGB institution with constitutional principles.

Procedural fairness and access to appeal

The court pointed out that the HAGB decision could be forced upon the defendant before the trial's conclusion, potentially limiting the defendant's access to the appellate process and impinging on the right to a fair trial.

Uncertainty of confiscation measures

The decision noted that the lack of a specified timeframe for the enforcement of confiscation measures resulting from a HAGB decision could undermine property rights and the principle of proportionality.

Ineffectiveness of deterrence and victim compensation

The court emphasised that the HAGB institution might hinder the proportionality of criminal sanctions and the proper compensation of victims, thereby compromising the efficacy of deterrence and the state's obligations.

Omissions in addressing torture and abuse cases

The decision also highlighted the absence of provisions within the HAGB institution that would address cases involving torture and abuse committed by public officials.

Impact of the decision on criminal trademark infringement cases

This landmark decision has far-reaching consequences for criminal trademark infringement cases. If the parliament does not enact a new law before the effective date (ie, 1 June 2024), the HAGB institution will no longer be applicable, affecting the ability to defer penalties, including prison terms or fines, for trademark infringement under Article 30 of the Industrial Property Law.

Trademark owners and legal practitioners should be aware of this change, which emphasises the importance of bringing timely legal actions and the potential for immediate enforcement of penalties.

This new development will likely have a significant impact on trademark infringement cases, as the finalisation of decisions will be delayed, given that the majority of such cases were resolved through a HAGB decision. Nevertheless, sanctions against counterfeiters will be reinforced. Additionally, if the new enactment mandates the termination of the five-year deferral period for confiscating seized products, the extended destruction procedures will further lengthen this period and lead to storage challenges for seized counterfeit goods.

Conclusion

The Constitutional Court's decision highlights the evolving legal landscape and underscores the need for a balanced approach to criminal justice. Legal professionals, trademark owners and all interested stakeholders should closely follow developments in trademark infringement cases and adapt their strategies to align themselves with the changing legal framework. The annulment of the HAGB institution marks a significant shift in legal dynamics, particularly in the realm of trademark enforcement.

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