

'Deferment of announcement of verdict' institution regulated again: potential impact for rights holders

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Legal updates: case law analysis and intelligence

- Last year the Constitutional Court annulled the provisions of the Code of Criminal Procedure regulating the HAGB institution
- A new regulation concerning this issue has recently been introduced
- As of 1 June 2024, a HAGB decision will be subject to further appeal, which is expected to delay the finalisation of proceedings

On 1 June 2023 the Constitutional Court issued a [significant decision that impacted criminal trademark infringement cases](#). The decision annulled Paragraphs 5 to 14 of Article 231 of the Code of Criminal Procedure, which regulates the 'deferment of the announcement of the verdict' ('*Hükmün Açıklanmasının Geri Bırakılması*' or 'HAGB') institution. This decision was set to come into effect on 1 June 2024.

New development

A new regulation concerning this issue was introduced, due to take effect on 1 June 2024. According to the new regulation, the requirement to obtain the defendant's consent to issue a HAGB decision will no longer apply.

This amendment, which is favourable to defendants, will allow the court to issue a HAGB decision directly, if the defendant:

1. does not have a prior conviction for an intentional crime;
2. demonstrates remorse and a low likelihood of reoffending during the trial; and
3. compensates the damage caused to the victim or the public.

Prior to the new regulation, the defendant's consent was required in addition to the above conditions; however, this requirement will be abolished as of 1 June 2024.

Current status

The new regulation introduced a further appeal review of HAGB decisions by the higher courts. Previously, HAGB decisions were subject only to a procedural review by the criminal high courts to determine whether the HAGB conditions were met, without assessing whether the defendant had actually committed the offence. Such review was intended only to confirm whether the four conditions were met and whether the court had applied HAGB appropriately.

Impact of the new regulation

As of 1 June 2024, a HAGB decision will be subject to further appeal, which is expected to prolong the finalisation of proceedings. Such potential delay may create extra costs for brand owners and the public, due to the postponed destruction of counterfeit products.

The swift finalisation of decisions is crucial to secure the timely and efficient destruction of counterfeit products stored in state and private (legal trustee) warehouses; this usually took approximately one to two-and-a-half years, since most of the cases were finalised with HAGB decisions.

Under the new regulation, lengthy proceedings and the inability to clear warehouses may require additional budget being allocated from public resources, and brand owners may have to assign space for counterfeit products. If a fast destruction process is applied by all the courts consistently, then the new regulation will not have a negative effect on brand protection strategies. Right holders may push for the quick issuance of destruction decisions, since the finalisation of cases will take longer than usual.

It was also indicated in the Constitutional Court's decision 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.

According to the new regulation, the decision to confiscate products will be applicable following the finalisation of a HAGB decision. Some judges were waiting for the end of the five-year deferment period to confiscate the products, while others did not wait for the end of the deferment period. The new regulation has eliminated this confusion.

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