



International report - Constitutional Court: IP rights to be regulated by law

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The director of the Turkish Patent Institute recently gave a speech on the draft Patent Law, which amends certain clauses of the existing Patent Decree-Law. He stated that the aim of the draft patent law is to enable Turkey to develop its own pharmaceutical patents, to reduce dependence on imports and to harmonise national law with international agreements.

While the draft Patent Law is still pending on Parliament's agenda, the Constitutional Court recently handed down a strategic decision which revealed a much more serious issue in relation to the Patent Decree-Law. In its decision the Constitutional Court annulled Article 158/II of the Patent Decree-Law on the grounds that the right of property should not be governed by decree-laws.

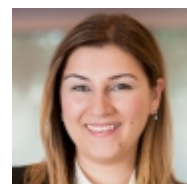
The case arose because the Ankara Fourth IP Court filed a question to the Constitutional Court regarding whether Article 158/II was contrary to the Constitution, and in particular contrary to:

- Article 2 – “Respecting human rights, social state government”;
- Article 10 – “Equality before the law”;
- Article 35 – “Right to property”;
- Article 36 – “Freedom to claim rights”; and
- Article 138 – “Interdependence of the courts”.

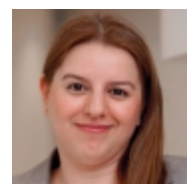
When the Constitutional Court received the application, it decided first to evaluate whether Article 158/II was in line with Article 91 of the Constitution, which states that:

“The Grand National Assembly of Turkey may empower the Council of Ministers to issue decrees having the force of law. However, with the exception of martial law and states of emergency, the fundamental rights, individual rights and duties included in the first and second chapters and the political rights and duties listed in the fourth chapter of the second part of the Constitution shall not be regulated by decrees having the force of law.”

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The Constitutional Court held that Article 158/II of the Patent Decree-Law was subject to the application rules regarding the right of property, which is a right governed under the individual rights and duties of Chapter 2 of the Constitution. The court found that such a right cannot be governed by a decree-law and ordered the cancellation of Article 158/II as per Article 91 of the Constitution.

As the remit of the Constitutional Court is limited to the particular provision cited in the case, its ruling does not automatically extend to all provisions of the Patent Decree-Law. However, the Constitutional Court's reasoning poses a question regarding the legitimacy of all decree-laws pertaining to the protection of IP rights.

The Constitutional Court also issued another decision on a clause of the Trademarks Decree-Law, ordering the cancellation of that clause as well.

Through these remarkable decisions, the Constitutional Court has sent a political message to Parliament, which is considering amendments to the Patent Decree-Law and the Trademark Decree-Law, that its efforts to amend the decree-laws may be useless and that in fact new laws should be enacted instead.

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