



4 Jun  
2021

## Regional Court of Appeal issues controversial reversal decisions

Turkey - [Gün + Partners](#)

- **The Ankara Regional Court of Appeal has reversed several first-instance decisions on procedural grounds**
- **The court does not have the authority to approve first-instance decisions by revising them – as pointed out by the court itself**
- **The necessity of the reversal decision is also questionable**

The Ankara Regional Court of Appeal has recently reversed three first-instance decisions by relying on Article 353/1-a-6 of the Code of Civil Procedure No 6100 (CCP), which reads as follows:

*Following a preliminary examination, the Regional Court of Appeal, without holding a hearing and as a final decision, shall send the file back to the court which rendered the original decision or another court in the same jurisdiction without examining the merits of the dispute in the following circumstances:*

*[...]*

*6. If the court rendered the judgment without collecting or evaluating the evidence submitted by the parties or if the court did not render a judgment on a significant part of the claim.*

Reversal decisions based on Article 353/1-a-6 of the CCP cannot be appealed before the Court of Cassation's General Civil Chamber and are binding on both the first-instance court and the parties. Following such a reversal decision, the case shall be returned to the first-instance court for a re-trial.

As can be understood from its wording, the article concerns a fundamental procedural deficiency in adjudication. As such a reversal decision is unappealable, it allows for a quick re-trial of judgments that were rendered without collecting or evaluating the evidence, or that do not cover a substantial part of the claim.

Notwithstanding this, the Regional Court of Appeal stated in its reversal decisions that the inclusion of the visuals of the trademarks/designs at issue in the reasoned decisions could be misleading as shape, colour or size may vary, and such confusion might lead to further court actions. This was thus against Article 141 of the Constitution (reasons for judgment) and Article 297 of the CCP (scope of the judgment), as also adopted in a decision of the Court of Cassation's General Civil Chamber.

The Regional Court of Appeal further stated that, although it is entitled to re-render a decision by revising it, it could not evaluate the first-instance court's decisions in the present case. Although the authors agree with the Regional Court of Appeal that it lacked authority to approve the first-instance court's decisions by revising them, they also believe that Article 353/1-a-6 of the CCP, which was relied upon to reverse the decisions, was not legally relevant.

Indeed, the inclusion of the visuals of the trademarks/designs at issue and the misleading/confusing nature of such inclusion did not fall within any of the conditions set forth in Article 353/1-a-6. Additionally, the inclusion of the visuals at issue in the reasoned decisions could not be considered as misleading/confusing, since the decisions also included the filing/registration numbers, which was sufficient to differentiate the trademarks/designs at issue from one another and to designate them accurately.

Further, even though the Regional Court of Appeal relied on decisions of the Court of Cassation's General Civil Chamber, it is believed that the Regional Court of Appeal interpreted these decisions broadly. More precisely, the Court of Cassation's General Civil Chamber concluded in these decisions that confusion may occur and there may be hurdles to the execution of the decisions since extrajudicial trademarks/designs/visuals were included. However, in the present case, extrajudicial trademarks/designs were not included, and the registration numbers of the trademarks/designs were provided; therefore, there could be no confusion as to the trademark/designs that were the subject of the action. Moreover, the Court of Cassation's General Civil Chamber stated that, in cases where the composition of the trademarks is of importance, the incomplete inclusion of the marks (eg, lack of details about other characteristics such as colour) into the decision can be deceptive and misleading. In light of this, it should not have been concluded that the inclusion of the trademarks at issue, with their filing/registration numbers, was deceptive.

Overall, the parties were deprived of a trial within a reasonable time period due to the lack of authority of the Regional Court of Appeal and its broad interpretation of the decisions of the Court of Cassation's General Civil Chamber; it relied on an irrelevant article and such reversal cannot be appealed to the Court of Cassation. Arguably, the reversal decisions do not serve any purpose and unnecessarily prolong the proceedings, contrary to the purpose of Article 353 of the CCP.

## Güldeniz Doğan Alkan

Gün + Partners

## Cansu Evren

Gün + Partners

## TAGS

[Enforcement and Litigation](#), [Portfolio Management](#), [Europe](#), [Turkey](#).