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Court of Cassation issues long-awaited decision on non-use revocation actions

Turkey - [Gün + Partners](#)

- **A four-day legal gap was created following the annulment of Article 14 of Decree-Law No 556, which regulated the use requirement**
- **The Court of Cassation has recently considered this legal gap for the first time**
- **It is now clear that one may file a non-use revocation action without having to wait for the expiry of the five-year period following the publication of the IP Code**

Background

In 2016 the [Turkish Constitutional Court annulled Article 14 of Decree-Law No 556](#), which regulated the use requirement for trademarks. Four days after the publication of the decision, on 10 January 2017, the Industrial Property Code No 6769 (the IP Code) entered into force. Although Article 9 of the IP Code governed the use requirement for trademarks, a four-day legal gap was created regarding non-use revocation actions because the legislator did not stipulate a retrospective effective date for the IP Code or, specifically, for Article 9.

When the legal gap occurred, two questions arose:

- whether pending revocation actions filed under Article 14 should be dismissed due to a lack of legal basis; and
- whether this four-day legal gap should be interpreted as meaning that the use requirement did not exist before 10 January 2017 and, therefore, non-use revocation actions can be filed only after five years from the publication date of the IP Code (ie, 10 January 2022).

With regard to the first question, the doctrine mainly argued that the courts should resolve the legal gap caused by the annulment of Article 14 of Decree-Law No 556 by implementing the relevant provisions of the IP Code or international conventions, in particular the Agreement on Trade-Related Aspects of Intellectual Property Rights. However, contrary to the prevailing opinion, the courts did not resolve the

legal gap and rejected pending non-use revocation actions on the ground that they lacked a legal basis. To the best of the authors' knowledge, the Court of Cassation has not yet rendered a decision on any of these first-instance judgments.

Court of Cassation decision

However, the Court of Cassation has recently rendered its first decision on the second question (the four-day legal gap). In this decision, the 11th Chamber of the Court of Cassation stated that, although laws do not apply retroactively, nothing stops the Turkish Grand National Assembly from applying a law retroactively. Further, although the IP Code was published on 10 January 2017, and therefore entered into force as of this date, the IP Code was approved on 22 December 2016. Therefore, the will of the legislator arose in 2016, before the annulment of Article 14 of Decree-Law No 556. Accordingly, the Court of Cassation ruled that the unforeseen legal gap should be resolved by applying such interpretation.

Comment

In light of this decision, it is now clear that non-use actions can be filed at any time, without having to wait for the end of the five-year period following the publication of the IP Code (ie, 10 January 2022).

However, the situation is still unclear with regard to revocation actions filed under Article 14 of the now-repealed Decree-Law No 556. Arguably, the Court of Cassation should follow the same approach and conclude that the courts should resolve the legal gap according to the reasoning provided in the above decision, as the facts are the same in both scenarios. Brand owners and practitioners are thus eagerly awaiting a decision of the Court of Cassation concerning revocation actions based on Decree-Law No 556 in order to adopt the best possible strategy in pending conflicts.

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