

# COVID-19's Impacts on Criminal Raids and Customs Suspensions Based on Trademark Infringement

## 1. Are there specific measures taken at the courthouses due to COVID-19?

**YES.** The courthouses across the country are open and active – yet;

- As per the decisions of the Directorate of Administrative Affairs of the Presidency, the public employees – which covers judges, prosecutors and further courthouse personnel - who are pregnant, taking breastfeeding leave, disabled, over 60 years old (except managers), or those having a chronic disease, will be deemed on administrative leave until further decision.
- According to the Presidential Circular numbered 2020/4, published in the Repeated Official Gazette dated 22 March 2020 and numbered 31076, it has been decided that the number of personnel serving in public bodies will be kept in minimum and flexible working methods such as remote or shift working will be implemented for public employees.

As a result, the courthouses are operating with minimum number of judges, prosecutors and personels who are “on duty” as if we are on a judicial break and the proiorty is given to urgent matters.

Also, the Law on Amendment of Certain Laws No. 7226 (“Law”), which entered into force upon publication in the Official Gazette on 26 March, has a specific provision on Covid-19 and therewith, the procedural terms will be suspended until 30 April 2020 in order to prevent any loss of rights in regard to trials, due to the measures taken for the pandemic. Accordingly, the Council of Judges and Prosecutors (“Council”) issued a communiqué on March 30, 2020; and advised the adjournment of all legal proceeding, unless the matter at hand is urgent, until the given date.

All IP courts, District Courts and the Court of Appeals are postponing the hearings due to Covid-19, and this practice is expected to continue until mid-June as well, since the President announced on April 27<sup>th</sup> that the suspension decision on the legal terms - and most probably the “flexible working arrangement” of the courthouse peronnel - will be extended to June 15.

**2. Is it possible to file criminal complaints based on trademark infringement offense and conduct raids during this term?**

**YES.** The response to the above question does not mean that the judicial services has been completely ceased. It is possible to file criminal complaints based on trademark infringement and obtained seizure orders, as those are considered as urgent matters.

However, it should be said that the flexible working arrangement at the courthouses mean that the specialized IP judges and prosecutors are not available most of the time and in fact, the priority of the police – even the specialized IP police in the big cities – has shifted. While anti-counterfeiting actions are considered urgent, they are not the priority during these challenging times – unless the matter at hand also poses risk against public health, such as counterfeit pharmaceutical products, masks, disinfectants and cleaning products.

A decision of the Ministry of Justice is also worth noting here. As legal counsels, we have access to our files on the online judicial system called “national judiciary informatics system” – NJIS in short – and the Ministry of Justice gave the lawyers a broader access to NJIS on April 05<sup>th</sup>. The files of the prosecutor’s offices were not available to us lawyers, even where we are the accused’s or complainant’s appointed lawyers, as the criminal prosecution is confidential but now we have access to our files during criminal prosecution phase as well.

**3. Do the customs operate as usual? Can we expect suspension decisions?**

**YES.** The customs are indeed operative. The customs IPR recordals can be filed and approved as those are online, and the customs continue to issue suspension decisions based on the trademark infringement once they come across suspected products. We can in fact say that it is indeed to take action against the goods at the customs nowadays. The criminal judges are more inclined to issue seizure decisions against these goods at the customs, as the action does not involve an actual raid action at a workplace.

The importation and exportation are affected by the pandemic as well, but the customs examine the products more strictly during these time as their anti counterfeiting and smuggling efforts are also very important during the pandemic.

The majority of the Turkish customs also started sending detailed photos of the products to us upon our request, as a measure against Covid-19 - therefore the visits to the customs' warehouses for examination is rarely necessary.

The customs also continue extending the deadlines. The majority of the directorates were in favor of extensions but some customs which have nevert granted extension decisions before also started issuing decisions, due to the pandemic.