

Constitutional Court Decision

Does claiming the infringing party's net revenues as compensation cause unjust enrichment?



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Client Alert

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Article 151 of the Industrial Property Code No. 6769 (“**IPC**”) provides that rights holders whose industrial property rights have been infringed are entitled to claim “**actual loss and lost revenue**” as compensation. According to Article 151/2(b) of the IPC, “the net revenues obtained by a person infringing industrial property rights” may be claimed as “**lost revenue**”.

The Ankara 1st Civil Court of Intellectual and Industrial Property Rights (“**IP Court**”) submitted an application to the Constitutional Court seeking the annulment of Article 151/2(b) of the IPC on the grounds that the provision is contrary to Article 35 (*the right to property*) and Article 36 (*the right to legal remedy*) of the Constitution. The IP Court argued that (i) claiming the infringing party's net revenues as compensation results in receiving income generated through good faith, which (ii) may lead to the unjust enrichment of the right owner who has suffered damages.

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According to the Constitutional Court's¹ decision reviewing the objection, industrial property falls within the scope of the right to property as protected under Article 35 of the Constitution. Accordingly, taking effective measures to protect industrial property rights is a constitutional obligation for the State to prevent third-party interference with individuals' property rights. The Court emphasized that the State is obliged to adopt deterrent measures to prevent the infringement of industrial property rights, and that the legislature holds discretionary power with respect to the measures to be taken. The Constitutional Court stated that, in addition to compensating actual damages, the legislator may enact regulations requiring the infringer to bear certain financial burdens in order to ensure deterrence.

According to the Constitutional Court decision, when calculating compensation, the courts *take into account the economic importance of the industrial property right, the quantity, duration and type of licenses related to the industrial property right at the time of infringement, the nature and extent of the infringement, the well-known status of the trademark, and the similarity between the trademarks*. As a result, the article providing for the calculation of compensation based on net revenues (i) recognizes a balance between the interests of both parties and (ii) does not excessively burden the infringer, given the gravity of the act.

Consequently, the Constitutional Court dismissed the objection of the IP Court on the ground that the calculation method under Article 151/2(b) of the IPL does not deteriorate the balance of interests between the parties.

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