

The Constitutional Court Rejected the Annulment of the Article of the Industrial Property Law

5 Jul 2024

Constitutional Court Decision ("**Decision**") was published in the Official Gazette dated May 20, 2024 and numbered 32551.

The decision involves the evaluation of the sentence "... cannot assert the industrial property right as a ground of defense in the infringement case." in Article 155 of the Industrial Property Law ("**The Law**") in terms of Articles 2, 10, 11, 35 and 36 of the Constitution.

The relevant article regulates that the owner of a trademark, patent or design right registered at a later date may not assert his/her industrial property right as a ground of lawfulness and defense in infringement actions filed by right holders with a priority or application date before them.

An infringement action is a type of lawsuit filed in cases where industrial property rights (trademark, patent, design rights) are infringed. The acts considered as infringement of these rights are set out in Articles 29, 81 and 141 of the Law.

The justification of the application for the annulment of the relevant regulation is based on the fact that the inability to assert the industrial property right arising from the registration as a defense ground is contrary to the right to property and the freedom to seek rights, and that the rule is incompatible with the principle of equality and the rule of law.

In summary, the court ruled that the article is in conformity with the Constitution on the grounds that, in addition to the rule that the limitation of fundamental rights must be imposed by law, these rules must be specific, accessible and foreseeable regulations that do not allow arbitrariness.

In the decision, the court concluded that the relevant regulation complies with these qualifications.

The full text of the Decision can be reached through this [link](#). (Only Available in Turkish)

Related Practices

- [IP Litigation](#)

Related Attorneys

- [GÖKÇE ?ZG?, LL.M.](#)
- [MERVE ALTINAY ÖZTEK?N](#)