

***DECREE-LAW NO.555 PERTAINING TO THE
PROTECTION OF GEOGRAPHICAL SIGNS
IN FORCE AS FROM JUNE 27, 1995***

Provisions in ***bold***, in Articles 5, 8, 16 and new Article 24/A have been amended/added by The Law No. 4128 of November 7, 1995.

**PART ONE
General Provisions**

**SECTION ONE
Aim, Scope, Persons Entitled for Protection, Definitions**

Aim and Scope

Article 1 - This Decree Having the Power of Law aims hereby, to protect the natural, agricultural, mining and industrial products and handicrafts under geographical signs when they are in conformity with the provisions of the Decree Having the Power of Law.

Persons Entitled for Protection

Article 2 - The protection conferred by this law is available to natural and legal persons who are domiciled or who have industrial or commercial establishments within the territory of the Turkish Republic, or to the persons who have application rights resulting from the terms of the Paris or Bern Conventions or the Agreement Establishing World Trade Organisation.

Natural or legal persons other than those referred in the first paragraph of this Article, who are nationals of states which accord legal and de facto protection to the nationals of the Turkish Republic shall enjoy according to the reciprocity rules protection in Turkey.

Definitions

Article 3 - For the purposes of this Decree Having the Power of Law, geographical sign shall mean signs indicating the origin of a product which possesses a specific quality, reputation or other characteristics attributable to that place, area, region or country of origin.

For the purposes of this Decree Having the Power of Law, geographical signs are divided into two groups as designation of origin and geographical indication.

The name of a place, an area or a region of a product's origin shall mean "designation of origin" when all of the following conditions are met:

- a) a product originating from a place, an area, a region or, in exceptional cases a country, of which the geographical boundaries have been defined;
- b) a product, the quality or characteristics of which are essentially or exclusively due to the inherent natural and human factors of this place, area or region;
- c) a product, the production, processing and preparation of which take place within the defined boundaries of this place, area or region.

Traditional geographical or non-geographical names which have become customary in the current language designating a product originating in a place, an area or a region which fulfil the conditions referred in paragraph 3 may also be used as designations of origin.

The name of a place, an area or a region of a product's origin shall mean "geographical indication" when the following conditions are met:

- a) a product originating from a place, an area or a region of which the geographical boundaries have been defined;
- b) a product possessing a specific quality, reputation or other characteristics attributable to this place, area or region;
- c) a product, at least one of the activities of production, processing or preparation of which take place within the defined boundaries of this place, area or region.

Furthermore, for the purposes of this Decree Having the Power of Law:

- a) 'Institute' means the Turkish Patent Institute assigned to implement the rules of this law.
- b) 'Paris Agreement', means the Paris Convention for the Protection of Industrial Property of March 20, 1883.
- c) 'Agreement Establishing the World Trade Organisation' means the international agreement of 15 April 1994 establishing the World Trade Organisation.
- d) 'Producer' means producers of agricultural, industrial and hand-crafted products or processors of natural products or traders of these products.

SECTION TWO **General Conditions**

PARAGON

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Registration for Protection

Article 4 - Protection provided by this Decree Having the Power of Law to signs indicating a designation of origin or geographical indication of a product is effected by registration.

General Conditions

Article 5 - Following shall not be registered as a geographic sign:

a) names and signs which do not conform with the definitions specified in Article 3,

b) names that have become generic name of the product, for the purposes of this Decree the name of an area, a region used by the public as the common name of a product originating from the related area or region shall be considered as the generic name of the product. *For the purposes of this Decree Having the Power of Law the generic name of a product is the name which has become the common name for that product even if it relates to a region or an area with respect to its origin of production or of marketing. In determining whether a name is generic or not, the use by the public in the area of its origin and use by the consumers at large shall be taken into consideration*

c) names of plant varieties, animal breeds or similar names which are likely to mislead the public as to the true origin of the product.

d) signs contrary to public order and general principles of morality.

e) names which are not protected or their period of protection have expired or names and signs not allowed for use by the countries referred in Article 2.

The Registration Authority

Article 6 - The body authorises for the registration of geographical signs is the Turkish Patent Institute. All applications are to be filed at the Turkish Patent Institute or at the body it may authorise as such.

SECTION THREE

Application Condition

Right of Application

Article 7 - Following natural and legal persons are entitled to apply for application:

a) natural or legal persons who are producers of the product,

b) consumers associations,

c) public institutions related with the product or the geographical region.

Application Procedures

Article 8 - An application for the registration of a geographical sign must be filed with the following:

- a) a petition for registration including information identifying the applicant, and information concerning the applicant's group as specified in Article 7,
- b) the name of the product and the designation of origin or the geographical indication to be registered,
- c) the description of the product; technical information and documents explaining the physical, chemical, micro biological and similar characteristics of the product and if necessary of the raw material,
- d) the definition of the geographical area, information and the documents clearly indicating the geographical boundaries,
- e) production techniques of the product and if relevant the authentic and specific local techniques and conditions,
- f) evidence that the product is in compliance with the provisions of Article 3 in respect of the sign requested for registration,
- g) information detailing the inspection structure provided for in Article 20,
- h) information detailing the labelling, marking and means of using the registered designation of origin or geographical indication,
- i) evidence that the application fee has been paid,
- j) other particulars as specified in the Implementing Regulation.

The International Agreements being reserved, with respect to the geographical sign applications for products originating in other countries, the Institute shall apply the provisions of Articles 9, 10, 11, 12 & 13 in its examination if and where the registration requirements in the country of origin conform to the provisions of this article, where inspection is available as provisioned in Article 20, where the country of origin is affording reciprocal protection to the geographical sign registration applications from Turkey. Where a geographical sign registered in another country is same with a protected geographical sign in Turkey, the registration shall be made after evaluating the regional and traditional use of the name and the possibility of confusion. The use of such sign shall be allowed only under the condition that the name of the country of origin is to be indicated clearly and visibly on the label.

SECTION FOUR

Examination, Registration, Publication and Fees

Examination

Article 9 - The application shall be examined by the Institute as to compliance with Article 3, 5, 7 and 8. The Institute if deems necessary, may request additional information and documents and ask that the deficiencies be remedied within the period prescribed in the Implementing Regulation.

Institute may require the examination of the application by one or more public institutions or universities, or independent private institutions to verify the technical information. The examination fees to be paid to these institutions and the fees for the services of the Institute shall be borne by the applicant and be payable to the Institute.

The applications which comply with the provisions of Article 3, 5, 7 and 8 are published in the Official Gazette and in two of the highest circulating national newspapers and in one local newspaper.

Publication shall include the identify of the applicant, name of the product, information on the designation of origin or geographical indication, conditions relating to the use of the registered name and other particulars laid down in the Implementing Regulation.

An application upon being published shall be entered in the geographical signs register. This entry is provisional and shall become final upon the realisation of the provisions of Article 12.

Deficiencies

Article 10 - Where the Institute finds deficiencies with respect to Article 3, 5, 7 and 8, the applicant shall be requested to remedy those deficiencies within the period specified in the Implementing Regulation.

If the deficiencies specified in the first paragraph of this Article are not remedied as specified by the provisions of this Decree and within the period specified in the Implementing Regulation the application shall be refused.

Objections and Examination

Article 11 - Within six months of the publication of the application, anybody legitimately concerned may object to the registration by filing an objection at the Institute with respect to conformity with Article 3, 5, 7 and 8.

Institute receiving the application shall have the objection examined by one or more of the public institutions or universities or independent private institutions which have expertise in the subject matter. The examination fees to be paid to these institutions and the fees for the services of the Institute shall be borne by the applicant and be payable to the Institute. Objections by public institutions are not subject to fees.

Registration and Publication

Article 12 - If no objection is filed within six months of the publication at the Official Gazette, the geographical sign or name shall become effective as of the publication date and entered in the geographical sign register.

Applications which have undergone changes with respect to form and content during the examination process shall be re-published within the

framework of the provisions of Article 9. The publication shall explain clearly the changes and the application in its revised form and content shall become effective as of the new publication date and entered in the geographical sign register.

Where an objection is found to be valid, the application shall be refused and the decision published in the Official Gazette and entered in the geographical signs register.

Fees, Payment Periods and Effects

Article 13 - Filing, registration, publication and other fees as specified in the Implementing Regulation shall be payable by the applicant or his agent.

The payment dates of the fees specified in the Implementing Regulation shall be notified by the Institute to the applicant or his agent.

An application shall be considered withdrawn when any of the fees have not been paid within the prescribed period.

SECTION FIVE

Persons Having Rights to Practise, Agents

Persons Having Rights to Practise before the Institute

Article 14 - Following persons have the right to practise before the Institute in relation to the geographical signs:

- a) natural or legal persons who are the applicants,
- b) authorised trademark agents who are registered in the Trademark Agents Registry in accordance with the Decree Having the Power of Law No: 544.

Legal persons shall be represented by persons duly powered by their respective authorised bodies.

Those who are domiciled outside the country can only be represented by trademark agents.

Where an agent has been appointed, all procedures are executed through the agent. All notices made to the agent shall be considered to have been made to the assignee.

PART TWO
Scope of Protection and Usage

SECTION ONE
Scope of Protection

Scope of Protection

Article 15 - Persons entitled to file an application for a geographical sign and those entitled to use a protected geographical sign have the right to prevent third parties for the following:

a) any direct and indirect commercial use of a registered name in respect of products which are similar or comparable to the products registered or any use of the name which would exploit the reputation of the registered name,

b) any usage of the name through indicating a real geographical place as a word but which conveys a false impression as to its origin; or of the translated name; or usage of the name accompanied by expressions such as 'style', 'type', 'method', 'as produced in' or other similar descriptions,

c) any use of false or misleading indication as to the origin, nature or essential qualities of the product on the packaging, on advertising material or on documents relating to the product,

d) any packaging of the product in a container liable to convey false impression as to its origin or any other practice liable to mislead the public.

Use Beyond the Scope of Protection

Article 16 - Where a registered name contains the generic name of the product, the usage of that generic name shall not fall within the scope of Article 15. *Registered geographical signs cannot be the generic name of the product*

SECTION TWO
Use of Geographical Names and Inspection

Use of the Registered Name

Article 17 - Registered geographical name shall be used only on products which comply with the condition specified in this Decree Having the Power of Law.

Registered designation of origin shall be used commercially by the producers active in the registered geographical area on products specified in the register subject to conforming to the quality and other specifications provided in the register. Use of registered geographical indication is subject to having at least one of the activities of production, processing or preparation of the product is performed within the boundaries of the place, area or region defined in the

register and that the product should conform to the quality and other specifications provided in the register.

Relation with Trademarks

Article 18 - Where a geographical sign has been applied for registration in accordance with this Decree Having the Power of Law, the application for registration a trademark corresponding to the provisions of Article 15 or to be used in relation to the same product shall be refused.

The claim specified in Article 15 of this Decree Having the Power of Law can be asserted against an application for the registry of a trademark within five years of the general recognition in Turkey of the violation of the registered geographical sign. Same claims can be asserted against a registered trademark within five years of the date of registry provided that the date of general recognition of the violation of the geographical sign is earlier than the publication date of the trademark.

Claims under the second paragraph of this Article can be asserted only for a valid geographical sign registered in good faith.

Trademarks registered in breach of the first paragraph shall be declared invalid.

Validity of a registered trademark shall uphold and its use in good faith shall continue, provided that the application for the registration of the trademark was filed in good faith and registered or that the right of use was acquired before the registered geographical sign has acquired protection in its country of origin or before coming into effect of this Decree Having the Power of Law.

A previously registered trademark with features that are liable to mislead the public as to actual characteristics of the product shall not be registered as a designation of origin or as a geographical indication.

Use in Good Faith

Article 19 - The provisions of Article 15 shall not extend to geographical signs which have been continuously used in good faith for minimum period of ten years prior to 15 April 1994 date of signing of the World Trade Organisation Agreement.

Inspection

Article 20 - Any association, irrespective of its legal form, of the producers or the processors of the product which has registered the related geographical sign within the provisions of this Decree Having the Power of Law, shall possess sufficient qualified staff, equipment and resources to inspect the production, marketing, medium of use of registered designation of origin or geographical indication, labelling details of the product bearing the protected geographical sign. Co-operation of the related experts and independent bodies may be enlisted.

The scope and the form of inspection procedures shall be ruled by the Implementing Regulation.

PART THREE

Invalidity of Geographical Signs and Termination of the Protection Period

SECTION ONE

Invalidity of the Geographical Sign

Invalidity

Article 21 - A registered design shall be declared invalid by the Court in following cases:

- a) where proved that the conditions for protection specified in Article 3, 5 and 8 of this Decree Having the Power of Law are not fulfilled;
- b) where proved that the entitlement to the right provisioned in Article 7 of this Decree Having the Power of Law actually belongs to another person or persons;
- c) where proved that the inspection provisioned in Article 20 of this Decree Having the Power of Law is not properly provided;

Claims relating to the entitlement under Article 7, can only be asserted by those who have rights under Article 7.

Appeal for Invalidity

Article 22 - Any body can appeal for invalidity of a geographical sign.

Effects of Invalidity

Article 23 - Where a geographical sign has been declared invalid, the decision of invalidity shall have retroactive effect. Therefore, the legal protection provided by this Decree in the Power of Law for a registered geographical sign shall be deemed not to have arisen from the outset when declared invalid.

The retroactive effects of invalidity shall not extend to the following:

- a) any final judgement, for infringement of rights of a geographical sign, reached and enforced prior to the decision of invalidity;
- b) contracts concluded and executed prior to the decision of invalidity. However, partial or total reimbursement of sums paid under the contract may be claimed on grounds of equity to an extent, justifiable by circumstances;

A final decision of invalidity shall produce effect against all. The court decision received by the Institute shall be entered in the Registry and published within the period prescribed by the Implementing Regulation.

PART FOUR
Infringement of Geographical Sign and Procedures for Infringement

SECTION ONE
Infringement of a Right Arising from Registered Geographical Sign

Acts of Infringement

Article 24 - The following uses of a geographical sign by third parties who are not entitled to do so shall be considered as infringement:

a) any use of the name which would exploit the reputation of the registered name or any direct and indirect commercial use of a registered name in respect of products which are similar or comparable to the products registered,

b) any use of the name in a form that through indicating a real geographical place as a word however which conveys a false impression as to the origin of the product; or use of the translation of the name; or any usage of the name accompanied by expressions such as, 'style', 'type', 'method', 'as produced in' or other similar descriptions.

c) any use of false or misleading indication as to the origin, nature or essential qualities of the product, on the packaging, on advertising material or on documents relating to the product,

d) any form of packaging or representation of the product which is liable to convey false impression as to its origin or any other practice liable to mislead the public.

e) to participate or to assist or to encourage or to facilitate in whatever form the acts referred in subparagraphs (a), (b), (c) and (d);

f) to abstain from explaining where and how an illegally produced and marketed product has been obtained when found in possession.

Where the application for a geographical sign has been published in accordance with Article 9 of this Decree Having the Power of Law, the holder of the application right has the right to institute civil and criminal proceedings against the infringing party.

Article 24/A

(a) Those making false declaration with respect to true identity of the geographical sign right holder, or those removing without authority the sign indicating a geographical sign right rightfully placed on a product or on its packaging, or those falsely presenting themselves as the proprietor of a geographical sign application right or a geographical sign right shall be sentenced to an imprisonment term of between one and two years and to pay a fine of between three hundred million liras and six hundred million liras,

(b) Those affixing signs on a product produced or put to sale by own self or by others, or on its packaging thereof or on commercial documents or on advertising material in such a way that would convey the impression as if a relationship exists with a legally protected geographical sign right, or of using to the same effect writings, signs or expressions in the advertisements and commercials at the published and visual media without being the rightful proprietor of the geographical sign right or after the expiry of the protection term or after the invalidation of the geographical sign right or after the termination of the geographical sign right shall be sentenced to an imprisonment term of between two and three years and to pay a fine of between six hundred million and one billion liras,

(c) Those who have committed any one of the felonies specified in Article 24 shall be sentenced to an imprisonment term of between two and four years and to pay a fine of between six hundred million and one billion liras, furthermore judgement shall be ruled to close down the premises of their undertaking for a period not to be less than one year and they shall be prevented from practising any commercial activity during the same period.

Where the felonies stated above are committed by those working in the undertaking whether on their own or under instructions while carrying out their duties, the employees and the owner or the manager or their representative and the person holding whatever title whatsoever who is de facto managing the undertaking who have not prevented the misdemeanour shall be punished in the same manner. Where the felonies stated in Article 24 have been committed during the execution of tasks related with a legal entity, the legal entity shall also be liable for the fines, expenses and damages in succession of the real persons who have committed the misdemeanour. For those assisting the acts, depending on the nature of the action the provisions of the Articles 64, 65, 66 and 67 of the Turkish Penal Code shall apply.

Prosecution with respect to the felonies stated above shall be subject to complaint. Subparagraph 8 of paragraph 1 of article 344 of the Criminal Procedures Code No 1412 shall not apply for the implementation of the provisions of this article. The right of complaint belongs to the person whose geographical sign rights have been infringed, and additionally belongs also to the Institute for all felonies except those provisioned in article 24, and to the Consumer Associations and to the establishments under the jurisdiction of laws no 5590 or no 507 for acts of false declaration with respect to true identity of the geographical sign rights holder, and for acts of affixing signs on

a product produced and put to sale by own self or by others, or on its packaging or on commercial documents or on advertising material in such a way that would give the impression as if a relationship exists with a legally protected geographical sign right, or of using to the same effect writings, signs or expressions in the advertisements and commercials at the published and visual media without being the rightful proprietor of the geographical sign right or after the expiry of the protection term or after the invalidation of the geographical sign right or after the termination of the geographical sign right. The proceedings with respect to the felonious acts should be initiated within two years of the date of being informed of the act and the actor. The complaints with respect to acts falling within this scope shall be treated as of urgent matters. The provisions of Article 36 of the Turkish Penal Code and the related articles of the Criminal Procedures Code shall apply for the seizure, the confiscation or the destruction of the goods and the equipment and machinery used to produce these goods which are subjects of acts of felony having infringed the rights arising from a geographical sign application right or a protected geographical sign within the provisions of this Decree Having the Power of Law."

SECTION TWO

Civil Proceedings

Appeals of the Right Holder and the Competent Court

Article 25 - Holder of the right of a geographical sign whose rights have been infringed may in particular appeal for the following at the Court:

- a) request for the establishment of the existence of an infringement,
- b) appeal for the prohibition and prevention of the acts of infringement on the rights of a geographical sign,
- c) appeal for remedies of infringement and request compensation for damages incurred,
- d) request the confiscation of products produced or marketed and of the equipment used directly produce such goods,
- e) appeal for enforcement measures for the prevention of continued infringement of geographical sign rights, in particular request the destruction of the products and equipment if it is essential for the preclusion of acts of infringement or the prevention of alterations on the products and equipment confiscated according to subparagraph (c),

f) request the disclosure to the public and to those related, of the courts decision by means of publication, costs of which to be met by the infringing party.

As regards the measures, the court shall rule in accordance with the related provisions of Civil Procedures Code on precautionary measures.

The competent court, for the institution of civil proceedings by the holder of the right of a geographical sign against the third parties, is the court of the domicile of the plaintiff or of the place where the acts were committed or of the place where the act had effect.

Where the plaintiff is not a citizen of the Republic of Turkey, the competent court is the court of the domicile of the authorised agent registered in the registry and if the agent's registry has been cancelled the court of the domicile of the Institute.

The Competent Court, for the institution of proceedings by the third parties against the holder of the right of a geographical sign, is the court of domicile of the defendant. If the applicant or the holder of the right of a geographical sign is not domiciled in Turkey, the provisions of the third paragraph shall prevail.

Where there several competent courts, the court at which the proceedings are instituted first shall be the competent court.

Compensation

Article 26 - Infringing parties who have committed the acts under Article 25 are liable for compensating the damages incurred by the holder of the right of a geographical sign.

Documents Evidencing Infringement

Article 27 - The holder of the right of a geographical sign can request from the infringing party the documents related with the use of the geographical sign for valuation of the injury suffered because of an infringement of the design without his consent.

Compensation not to be Requested

Article 28 - The holder of the right of a geographical sign can not institute proceedings, under the provisions of this section of this Decree Having the Power of Law, against those who have used the products put on the market by the person who has paid compensation to the holder of the right of a geographical sign. This provision shall not effect if there is bad faith.

Time Limit

Article 29 - Time limit provisions of the Code of Obligations shall have effect concerning the time limits for appeals relating to infringements on the right of geographical signs.

SECTION THREE

Special Courts

Competent Courts

Article 30 - Special courts to be established by the Ministry of Justice shall have jurisdiction for all of the actions and claims provisioned by this Decree Having the Power of Law.

High Council of Judges and Prosecutors shall determine which of the Commercial Courts of the First Instance and the Criminal Courts of the First Instance shall be appointed as special courts and their respective jurisdictions based on the request of the Ministry of Justice.

For actions brought in respect of the Institute's decisions within this Decree Having the Power of Law and for actions brought against the Institute by third parties who have suffered from the decision of the Institute, the special court referred in the first paragraph shall have jurisdiction.

Publication of the Court's Decision

Article 31 - Where a court judgement has become final, the successful party may request the publication in full or in summary of the final judgement in a daily paper, local paper or by other means of the media, the costs of which to be met by the other party.

The nature and extent of the publication shall be determined in the judgement. Right of publication shall be void if not exercised within three months of the judgement becoming final.

SECTION FOUR

Special Provisions

Claims of Non-Infringement

Article 32 - Any related person may institute proceedings against the holder of the right of a geographical sign to obtain a judgement of non-infringement.

Action for Securing of Evidences

Article 33 - Any person, entitled legally to declare rights arising from a geographical sign, may appeal the court to determine and secure the acts of infringement.

Requesting for Precautionary Measures

Article 34 - Any person entitled legally to bring action as prescribed by this Decree Having the Power of Law, may appeal the court to order precautionary measures.

The request for precautionary measures may be filed before or with the institution of proceedings or filed later. The request for precautionary measures shall be examined separately.

Nature of the Precautionary Measures

Article 35 - Precautionary measures shall be in nature to enable securing of the judgement and particularly provide the following:

- a) cessation of the acts of infringement of the rights of the plaintiff arising from a geographical sign,
- b) injunction to arrest within the borders of Turkey, including the customs, free ports or free trade areas and keep in custody the produced or imported goods which have infringed the rights of a geographical sign,
- c) ordering the placement of security for damages to be compensated.

Civil Procedures Code

Article 36 - Provisions of the Civil Procedures Code shall have effect with respect to other actions for securing and precautionary measures.

Seizure at Customs

Article 37 - Customs authorities while being exported or imported shall withhold as a precautionary measure the products which have infringed as fraudulent copies.

Withholding procedures shall be determined by statute to be enacted for this purpose.

The withholding measure employed by the customs authorities shall cease to have effect if proceedings are not instituted at the special court or preventive injunction is not obtained from the court within ten days of the withholding.

Transitional Provisions

Jurisdiction until the Special Courts are Appointed

Transitional Article 1 - For the purposes of this Decree Having the Power of Law, until the Special Courts are established, based on the request of the Ministry of Justice, High Council of Judges and Prosecutors shall select from the Commercial Courts of the First Instance and the Criminal Courts of the First Instance those to be appointed as special courts and indicate their respective jurisdictions.

Entry into Force

Article 38 - This Decree Having the Power of Law shall enter into force on the day of publication.

Execution

Article 39 - This Decree Having the Power of Law shall be executed by the Council of Ministers.