

Confiscation of manufacturing equipment: a major deterrent for counterfeiters

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Legal updates: case law analysis and intelligence

- In practice, Article 54/3 of the Criminal Code constitutes a significant barrier to the confiscation of machines used in the production of counterfeit goods
- The courts often limit confiscation orders to the counterfeit products
- In a significant decision, the İzmir First IP Criminal Court ordered the confiscation of the production equipment

In the fight against counterfeiting, the focus is often limited to the counterfeit goods themselves. However, the production equipment – in particular, the machines used for counterfeiting – are also among the primary instruments of the crime. Therefore, the

question of whether these machines can be confiscated is of critical importance, both from a legal and a practical perspective.

What is confiscation and under what conditions is it applied?

Article 54 of the Turkish Criminal Code introduces an important provision regarding items used in the commission of a crime:

“ Seizure of Property

Article 54/1: The court may adjudicate the seizure of the property/tools used in or reserved for the commission of a felonious offence, provided that such property does not belong to third parties. The property/tools prepared for the purpose of committing the offence shall be seized if they are determined to be dangerous for public safety, public health or moral principles. ”

According to this provision, machines used in the production of counterfeit goods may be subject to confiscation, provided that they were directly used in the commission of the crime or allocated for this specific purpose. However, Paragraph 3 of the same article introduces a limitation:

“ *Article 54/3: If the property belongs to third parties, confiscation may be ordered only if it is proven that these persons provided the property knowing that it would be used in the commission of the offence.* ”

This provision constitutes a significant barrier in practice, particularly in cases involving leased machinery, subcontracting systems or shared production facilities. At this point, it becomes crucial to prove that the production equipment was used exclusively for the manufacture of counterfeit goods.

Challenges in practice

Despite the legal framework, courts often limit confiscation orders to the counterfeit products themselves. Judges may hesitate to confiscate machines due to:

- their high economic value;
- the possibility that they are used for legitimate business; or
- claims of third-party ownership.

It is common for counterfeiters to argue that the production equipment is also used to manufacture legitimate goods. This raises a legal discussion as to whether confiscation is appropriate when the machinery is not exclusively dedicated to the commission of a criminal offence.

As a result, manufacturers are sometimes able to resume operations using the very same equipment – simply in a different location or under a different brand name. This severely undermines the deterrent effect of enforcement.

Latest developments

Recently, the İzmir First IP Criminal Court rendered a significant decision regarding this very debate. During a search, it was determined that the production equipment was being used exclusively to manufacture products bearing the counterfeit trademarks in question. Based on this finding, law enforcement authorities sealed the relevant machinery.

Following an investigation, the public prosecutor concluded that the production machines had contributed to the commission of the crime and requested their confiscation. Despite the defendants' claims that the production machines were not used exclusively for the manufacture of counterfeit goods – and that they owned their own trademarks, and used or could use the same machines to produce goods under those marks – the court accepted the prosecutor's request as set forth in the indictment and ordered the confiscation of the production equipment.

The file is currently under review by the Regional Court of Appeal.

Why confiscating machines matters

Seizing production machinery serves a dual purpose: it punishes existing violations, while also preventing recurrence. For counterfeiters, the potential loss of high-value equipment represents a far more tangible and immediate threat than imprisonment and a monetary fine. Moreover, dismantling the infrastructure of production disrupts the counterfeit supply chain at its roots. Confiscating the machines used in counterfeit production is key to stopping repeat offences. It strengthens enforcement by targeting not just the fake goods, but also the tools that make large-scale violations possible.



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