

## Constitutional Court upholds net profit compensation in IP infringement cases

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### TURKEY

Legal updates: case law analysis and intelligence

- The Ankara First Civil IP Court sought the annulment of Article 152(1)(b), claiming that it placed a disproportionate burden on infringers' property rights
- The Constitutional Court rejected the request for annulment, holding that imposing a reasonable additional financial burden on infringers was justified
- The decision reaffirms the state's duty to protect IP rights without disproportionately interfering with infringers' property rights

The Turkish Constitutional Court has dismissed an application seeking the annulment of the provision that permits the award of compensation based on the infringer's net profit in IP disputes (Decision No 2025/42, 11 February 2025). The decision was published on 6 May 2025.

### Background

Under the Turkish Industrial Property Code (No 6769), those who infringe third-party IP rights must compensate the rights holder for damages. Article 151(1) explicitly states that such damages include both the actual loss and the loss of profit.

Article 151(2) gives rights holder the option to choose how the loss of profit is calculated. The law provides three methods:

1. Estimated lost income – the income that the rights holder would likely have earned if the infringement had not occurred.
2. Infringer's net profit – the actual profit gained by the infringer from the unauthorised use.
3. Hypothetical license fee – the amount the infringer would have paid under a proper licensing agreement.

Article 151(3) also requires courts to consider key factors such as:

- the economic value of the IP right;

- the number, duration and type of licences granted; and
- the nature and extent of the infringing activities.

The Ankara First Civil IP Court applied to the Constitutional Court, seeking the annulment of Article 152(1)(b).

The IP Court argued that such provision might result in compensation that includes profits from the infringer's lawful business activities, potentially exceeding the actual damage suffered by the rights holder. It also raised concerns about how profits would be fairly distributed in cases involving multiple infringers. Emphasising that compensation should not result in unjust enrichment, the IP Court claimed that the provision placed a disproportionate burden on infringers' property rights and was challenged as unconstitutional.

### Constitutional Court's decision

The Constitutional Court ultimately rejected the request for annulment. It emphasised the state's positive obligation to protect IP rights, which includes the authority to adopt measures aimed at infringement. These measures may go beyond compensating the actual losses. The court stated that limiting compensation strictly to proven damages could undermine the deterrent effect of IP enforcement. Therefore, court found that imposing a reasonable additional financial burden on infringers was justified.

The court further highlighted that Article 152(3) already requires courts to consider various factors, such as the nature and extent of the infringement, the value of the IP right and the licensing conditions, when determining compensation under Paragraph (b). Given this framework, it concluded that the provision does not place an unfair burden on infringers or disturb the balance of interests between the parties.

### Key takeaways and comment

A key takeaway from the Constitutional Court's decision is its reaffirmation of the state's duty to protect IP rights without disproportionately interfering with infringers' property rights. The courts are thus expected to conduct careful, case-specific assessments when awarding damages, weighing the various elements outlined above, such as the nature of the infringement, the economic value of the right and the similarity between the marks.

This process typically involves reports from court-appointed experts, but the final decision lies with the court. The Constitutional Court's decision serves as a reminder that both the court appointed-experts and the courts must conduct a balanced and detailed analysis to ensure that the interests of both parties are fairly weighed.

Under Turkish constitutional procedure, a rejected annulment request prevents any further applications concerning the same provision for a period of 10 years. Accordingly, the provision is now shielded from further constitutional review until 6 May 2035, unless the legislature decides to amend it.

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