

Decree-Law No. 555 on the Protection of Geographical Signs*
(of June 27, 1995)

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PART I GENERAL PROVISIONS

Section I Aim, Scope, Persons Entitled to Protection, Definitions

Aim and Scope

1. The aim of this Decree-Law is to protect natural, agricultural, mining and industrial products and handicrafts under geographical signs when they conform to the provisions thereof.

Persons Entitled to Protection

2. The protection conferred by this Decree-Law shall be available to natural and legal persons domiciled or having industrial or commercial establishments within the territory of the Turkish Republic, or to persons having application rights deriving from the terms of the Paris or Berne Conventions or the Agreement Establishing the World Trade Organization. Natural or legal persons other than those referred to in the first paragraph of this Article who are nationals of States that accord legal and *de facto* protection to nationals of the Turkish Republic shall enjoy protection in Turkey according to the principle of reciprocity.

Definitions

3. For the purposes of this Decree-Law, “geographical sign” means a sign indicating the origin of a product that possesses a specific quality, reputation or other characteristics attributable to that place, area, region or country of origin. For the purposes of this Decree-Law, geographical signs shall be divided into two groups as appellations of origin and geographical indications. The name of the place, area or region of origin of a product shall be its appellation of origin when all of the following conditions are met:

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

Traditional geographical or non-geographical names that have become customary in the current language to designate a product originating in a place, area or region which fulfill the conditions referred to in the third paragraph above may also be used as appellations of origin.

The name of the place, area or region of a product’s origin shall be its geographical indication when the following conditions are met:

(a) the product originates in a place, area or region the geographical boundaries of which have been defined;

(b) the product possesses a specific quality, reputation or other characteristics attributable to the place, area or region;

(c) at least one of the activities of production, processing or preparation of the product takes place within the defined boundaries of the place, area or region.

Also, for the purposes of this Decree-Law:

(a) “Institute” means the Turkish Patent Institute assigned to implement the provisions of this Law;

(b) “Paris Convention” means the Paris Convention for the Protection of Industrial Property of March 20, 1883;

(c) “Agreement Establishing the World Trade Organization” means the international agreement of April 15, 1994, establishing the World Trade Organization;

(d) “producer” means a producer of agricultural, industrial or handcrafted products, a processor of natural products or a trader of such products.

Section II General Conditions

Protection by Registration

4. The protection afforded by this Decree-Law to signs constituting appellations of origin or geographical indications in relation to products shall be obtained by registration.

General Conditions

5. The following may not be registered as geographical signs:

(a) names and signs that do not conform to the definitions given in Article 3;

(b) names that have become the generic designation of the product; for the purposes of this Decree-Law, the generic name of a product is the name that has become the common name for that product even where it relates to a region or an area associated with the production or marketing origin thereof; use by the public in the area of origin and use by consumers in general shall be taken into consideration in order to determine whether or not a name is generic;

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

(d) signs contrary to public policy or general principles of morality;

(e) names that are not protected or the period of protection of which has expired or names and signs the use of which is not allowed by the countries referred to in Article 2.

Registration Authority

6. The authorized body for the registration of geographical signs is the Institute. All applications shall be filed with the Institute or with any body that it may authorize for the purpose.

Section III **Application Conditions**

Right to Apply

7. The following natural and legal persons shall be entitled to file applications:

- (a) natural or legal persons who are producers of the product;
- (b) consumer associations;
- (c) public institutions concerned with the product or the geographical region.

Application Procedure

8. An application for the registration of a geographical sign shall be filed together with the following:

(a) a request for registration including information identifying the applicant and information concerning the applicant association or institution within the meaning of Article 7;

(b) the name of the product and the appellation of origin or geographical indication to be registered;

(c) a description of the product, namely technical information and documents explaining the physical, chemical, microbiological and similar characteristics of the product and if necessary of the raw material;

(d) a definition of the geographical area, with information and documents that clearly identify the geographical boundaries;

(e) product manufacturing techniques including, if relevant, authentic and specific local techniques and conditions;

(f) evidence that the product complies with the provisions of Article 3 in relation to the sign filed for registration;

(g) information on the inspection facilities provided for in Article 20;

(h) information on labeling and marking and the means of using the registered appellation of origin or geographical indication;

(i) proof that the application fee has been paid;

(j) other particulars as specified in the Implementing Regulations.

Subject to international agreements, the Institute shall, in relation to applications concerning geographical signs for products originating in other countries, apply the provisions of Articles 9, 10, 11, 12 and 13 to determine whether the registration requirements in the country of origin conform to the provisions of this Article, whether inspection is available as provided in Article 20 and whether the country of origin affords reciprocal protection in response to applications for the registration of geographical signs from Turkey. Where a geographical sign registered in another country is the same as a geographical sign protected in Turkey, registration shall be granted after the regional and traditional use of the name and the possibility of confusion have been evaluated. The use of such a sign shall be allowed only on condition that the name of the country of origin is clearly and visibly stated on the label.

Section IV

Examination, Registration, Publication and Fees

Examination

9. The application shall be examined by the Institute for compliance with Articles 3, 5, 7 and 8. The Institute may, if it sees fit, request additional information and documents and ask for deficiencies to be remedied within the period prescribed in the Implementing Regulations.

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

Applications that comply with the provisions of Articles 3, 5, 7 and 8 shall be published in the Official Gazette, in the two national newspapers with the widest circulation and in one local newspaper.

Publication shall include the identity of the applicant, the name of the product, information on the appellation of origin or geographical indication, conditions governing the use of the registered name and other particulars laid down in the Implementing Regulations.

On being published, an application shall be entered in the register of geographical signs. The entry shall be provisional and shall become final on fulfillment of the provisions of Article 12.

Deficiencies

10. Where the Institute finds deficiencies in relation to Articles 3, 5, 7 and 8, the applicant shall be requested to remedy those deficiencies within the period specified in the Implementing Regulations.

If the deficiencies referred to in the first paragraph of this Article are not remedied as provided in this Decree and within the period specified in the Implementing Regulations, the application shall be refused.

Objections and Examination

11. Within six months of the publication of the application, any person having a legitimate interest may object to the registration by filing an objection with the Institute regarding the application's conformity with Articles 3, 5, 7 or 8.

On receiving the objection, the Institute shall have it examined by one or more of the public institutions or universities or independent private institutions that have expertise in the subject matter concerned. The examination fees charged by those institutions and the fees for the services of the Institute shall be borne by the applicant and be payable to the Institute. Objections filed by public institutions shall not be subject to fees.

Registration and Publication

12. If no objection is filed within six months of its publication in the Official Gazette, the geographical sign or name shall become effective as of the publication date and entered in the Register of Geographical Signs.

Applications that have undergone changes of form and content during the examination process shall be republished according to the procedure laid down in Article 9. The publication shall clearly explain the changes, and the application with its revised form and content shall become effective as of the new publication date and be entered in the Register of Geographical Signs.

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 Register of Geographical Signs.

Fees, Payment Periods and Effects

13. Filing, registration and publication fees and any other fees specified in the Implementing Regulations shall be payable by the applicant or his agent.

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

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

Section V Persons Having the Right to Practice, Agents

Persons Having the Right to Practice Before the Institute

14. The following persons shall have the right to practice before the Institute in relation to geographical signs:

(a) natural or legal persons who are applicants;

(b) authorized trademark agents who are registered in the Trademark Agents Register in accordance with Decree-Law No. 544.

Legal persons shall be represented by natural persons duly empowered by their respective authorized bodies.

Persons domiciled outside the country may only be represented by trademark agents.

Where an agent has been appointed, all procedures shall be conducted through the agent. All notices served on the agent shall be considered served on the principal.

PART II SCOPE OF PROTECTION AND USE

Section I Scope of Protection

Scope of Protection

15. Persons entitled to file an application for a geographical sign and those entitled to use a protected geographical sign shall have the right to prevent third parties from engaging in the following:

(a) direct or indirect commercial use of a registered name in connection with goods that are similar or comparable to the registered goods, or any use of the name that would exploit its reputation;

(b) any use as a word of a name denoting a real geographical place in a manner that conveys a false impression of origin, or use of the name in translation or accompanied by expressions such as “style,” “type,” “method,” “as produced in” or other similar qualifying terms;

(c) any use of false or misleading information as to the origin, nature or essential qualities of the product on its packaging, or in advertising material or documents relating to the product;

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

Use Beyond the Scope of Protection

16. Where a registered name contains the generic name of the product, the use of that generic name shall not fall within the scope of Article 15. A registered geographical sign may not be the generic name of the product.

Section II **Use of Geographical Names and Inspection**

Use of the Registered Name

17. A registered geographical name shall be used only on goods that comply with the conditions laid down in this Decree-Law.

A registered appellation of origin shall be used commercially by the producers active in the registered geographical area in connection with goods specified in the Register, subject to compliance with the quality and other requirements likewise specified in the Register. The use of a registered geographical indication shall be conditional on at least one of the activities of production, processing or preparation of the product being performed within the boundaries of the place, area or region specified in the Register and on the product complying with the quality and other requirements likewise specified in the Register.

Relation to Trademarks

18. Where a geographical sign has been filed for registration in accordance with this Decree-Law, the application for the registration of a trademark that is covered by the provisions of Article 15 or is to be used in connection with the same product shall be refused.

A claim under Article 15 of this Decree-Law may be asserted against an application for the registration of a trademark within five years of the general recognition in Turkey of the violation of the registered geographical sign. A claim may also be asserted against a registered trademark within five years of the date of registration, 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 may be asserted only for a valid geographical sign registered in good faith.

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

The validity of a registered trademark shall be upheld and its use in good faith may continue where the application for registration of the trademark was filed in good faith and

registered, or where the right of use was acquired before the registered geographical sign had been granted protection in its country of origin or before this Decree-Law came into force.

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

Use in Good Faith

19. The provisions of Article 15 shall not extend to geographical signs that have been used in good faith for a continuous period of at least 10 years prior to April 15, 1994, that is, the date of the signature of the Agreement Establishing the World Trade Organization.

Inspection

20. Any association, regardless of its legal form, of producers or processors of a product that has registered the related geographical sign in accordance with this Decree-Law shall possess sufficient qualified staff, equipment and resources with which to inspect the production, marketing and medium of use of registered appellations of origin or geographical indications, and the labeling details of the product bearing the protected geographical sign. The cooperation of competent experts and independent bodies may be sought.

The scope and form of the inspection procedures shall be governed by the Implementing Regulations.

PART III INVALIDITY OF GEOGRAPHICAL SIGNS AND TERMINATION OF THE PROTECTION PERIOD

Section I Invalidity of Geographical Signs

21. A registered sign shall be declared invalid by the court in the following cases:

(a) where it is proved that the conditions for protection specified in Articles 3, 5 and 8 of this Decree-Law have not been fulfilled;

(b) where it is proved that the right provided for in Article 7 of this Decree-Law actually belongs to another person or persons;

(c) where it is proved that the inspection provided for in Article 20 of this Decree-Law has not been properly conducted.

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

Request for Invalidation

22. Any person may request the invalidation of a geographical sign.

Effects of Invalidity

23. Where a geographical sign has been declared invalid, the declaration of invalidity shall have retroactive effect. The legal protection afforded to a registered geographical sign

by this Decree-Law shall therefore be deemed never to have existed from the outset when the sign is declared invalid.

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

(a) any final judgment for infringement of the rights in a geographical sign that has been reached and enforced prior to the declaration of invalidity;

(b) contracts concluded and executed prior to the declaration of invalidity;

(c) however, partial or total repayment of sums paid under the contract may be claimed, on grounds of equity, to an extent justifiable by the circumstances.

A final declaration of invalidity shall be effective against all persons. The court decision received by the Institute shall be entered in the Register and published within the period prescribed by the Implementing Regulations.

PART IV INFRINGEMENT OF GEOGRAPHICAL SIGNS AND PROCEEDINGS FOR INFRINGEMENT

Section I Infringement of Rights Arising from a Registered Geographical Sign

Acts of Infringement

24. The following uses of a geographical sign by third parties not entitled to engage in such uses shall be regarded as infringement:

(a) any use that would exploit the reputation of the registered name or any direct or indirect commercial use of the registered name for products that are similar or comparable to the products registered;

(b) any use of the name in a form which, by indicating a real geographical place as a word, conveys a false impression of the origin of the product, or use of the name either in translation or accompanied by expressions such as “style,” “type,” “method,” “as produced in” or the like;

(c) any use of false or misleading information as to the origin, nature or essential qualities of the product on the packaging thereof or in advertising material or documents relating thereto;

(d) any form of packaging or representation of the product that is liable to convey a false impression as to its origin, or any other practice liable to mislead the public;

(e) participation or assistance in or any form of encouragement or furtherance of the acts referred to in subparagraphs (a), (b), (c) and (d), above;

(f) failure to explain where and how an illegally produced and marketed product has been obtained when found to be in possession thereof.

Where the application for a geographical sign has been published under Article 9 of this Decree-Law, the holder of the application rights may institute civil and criminal proceedings against infringing parties.

24A.—(a) Persons who make false statements as to the true identity of the holder of geographical sign rights, or who remove without authority the notice of geographical sign

rights properly placed on a product or on its packaging, or who falsely present themselves as owners of the rights in a geographical sign application or geographical sign shall be sentenced to imprisonment for a term of between one and two years and to a fine of between 300 million and 600 million liras.

(b) Persons who affix signs on a product produced or placed on sale by themselves or by others, or on the packaging thereof or in commercial documents or advertising material in such a way as to convey the impression that a relationship exists with legally protected geographical sign rights, or who use to the same end written matter, signs or expressions in advertisements and commercials in the published and visual media without being the rightful owner of the geographical sign rights, or for such acts performed after the expiry of the term of protection or after the invalidation or termination of the geographical sign rights shall be sentenced to imprisonment for a term of between two and three years and to a fine of between 600 million and one billion liras.

(c) Persons who have committed any of the offenses specified in Article 24 shall be sentenced to imprisonment for a term of between two and four years and to a fine of between 600 million and one billion liras, in addition to which the judgment shall order the closure of the premises of their undertaking for a period of not less than one year, during which time they shall also be prevented from practicing any commercial activity.

Where the offenses specified above are committed by persons working in the undertaking, either on their own initiative or on instructions given them in the course of their duties, the staff and the owner or manager or their representative or the person holding whatever title who is *de facto* managing the undertaking who have not prevented the offense shall be punished in the same manner. Where the offenses specified in Article 24 have been committed in the performance of tasks on behalf of a legal entity, the legal entity shall also be liable for the fines, expenses and damages in place of the actual persons who have committed the offense. For those assisting in the acts, depending on the nature of the action, the provisions of Articles 64, 65, 66 and 67 of the Turkish Penal Code shall apply. Prosecution for the offenses specified above shall take place on a complaint.

Subparagraph 8 of paragraph 1 of Article 344 of Criminal Procedure Code No. 1412 shall not apply to the implementation of the provisions of this Article. The right of complaint shall belong to the person whose geographical sign rights have been infringed, and also to the Institute for all offenses except those provided for in Article 24; it shall belong to consumer associations and to establishments governed by Law No. 5590 or 507 for false statements as to the true identity of the holder of the geographical sign rights, and for the affixing of signs on a product produced and placed on sale by oneself or by others, or on the packaging thereof or in commercial documents or advertising material in such a way as to convey the impression that a relationship exists with legally protected geographical sign rights, or for the use to the same end of written matter, signs or expressions in advertisements and commercials in the published and visual media without being the rightful owner of the geographical sign rights, or for such acts performed after the expiry of the term of protection or after invalidation or termination of the geographical sign rights.

Proceedings against such offending acts should be initiated within two years of the date on which the offending act and the offender became known. Complaints concerning acts falling within the scope of this provision shall be treated as urgent matters. The provisions of Article 36 of the Turkish Penal Code and the relevant Articles of the Criminal Procedure Code shall apply to the seizure, confiscation or destruction of the goods, and of the equipment and machinery used to produce the goods, in relation to which offenses have been committed through infringement of the rights arising from a geographical sign application or a protected geographical sign in accordance with this Decree-Law.

Section II Civil Proceedings

Action by the Holder of Rights and the Competent Court

25. The holder of the rights in a geographical sign whose rights have been infringed may in particular apply to the court for the following:

- (a) recognition of the existence of an infringement;
- (b) prohibition and prevention of the acts infringing the rights in a geographical sign;
- (c) remedies for infringement and compensation for damages incurred;
- (d) confiscation of the goods produced or marketed and of the equipment used directly to produce such goods;
- (e) enforcement measures to prevent the continued infringement of geographical sign rights, in particular the destruction of the goods and equipment if essential for the prevention of the acts of infringement or the alteration of the goods and equipment confiscated under subparagraph (d), above;
- (f) disclosure of the court judgment to the public and to those concerned, the cost thereof to be met by the offending party.

With regard to the measures, the court shall rule on precautionary measures in accordance with the relevant provisions of the Civil Procedure Code.

The competent court for the institution of civil proceedings against third parties by the holder of the rights in a geographical sign shall be the court of the domicile of the plaintiff, the place in which the act was committed or the place in which the act had effect.

Where the plaintiff is not a citizen of the Republic of Turkey, the competent court shall be that of the domicile of the authorized agent entered in the Register or, if the agent's registration has been cancelled, that of the domicile of the Institute.

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

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

Compensation

26. Infringers who have committed acts provided for in Article 25 shall be liable for the damages incurred by the holder of the rights in a geographical sign.

Documents Evidencing Infringement

27. The holder of the rights in a geographical sign may request from the infringing party the documents relating to the use of the geographical sign for the assessment of the injuries suffered as a result of the exploitation of the sign without his consent.

Compensation Not to Be Requested

28. The holder of the rights in a geographical sign may not institute proceedings under this Section of this Decree-Law against persons who have used goods placed on the market by a person who has paid compensation to the holder of the rights in a geographical sign. This provision shall not apply if there is evidence of bad faith.

Time Limit

29. The provisions of the Code of Contractual Obligations on time limits shall apply to the time limits for action against infringements of the rights in geographical signs.

Section III Special Courts

Competent Courts

30. Special courts to be established by the Ministry of Justice shall have jurisdiction over all actions and claims provided for in this Decree-Law.

The High Council of Judges and Prosecutors shall determine which of the commercial courts of first instance and criminal courts of first instance are to be appointed as special courts, and shall specify the jurisdiction of each one on a request from the Ministry of Justice.

The special courts referred to in the first paragraph above shall have jurisdiction over actions brought against decisions of the Institute under this Decree-Law and over actions brought against the Institute by third parties who have suffered from its decisions.

Publication of the Court's Decision

31. Where a court judgment has become final, the successful party may request the publication in full or in summary form of the final judgment in a daily paper, local paper or other medium, the cost thereof to be met by the other party.

The nature and extent of the publication shall be specified in the judgment. The right of publication shall be void if not exercised within three months of the judgment becoming final.

Section IV Special Provisions

Claims of Non-Infringement

32. Any interested party may institute proceedings against the holder of the rights in a geographical sign to obtain a non-infringement ruling.

Action to Secure Evidence

33. Any person legally entitled to assert rights arising from a geographical sign may request the court to determine and secure evidence of acts of infringement.

Request for Precautionary Measures

34. Any person legally entitled to bring action under this Decree-Law may request the court to order precautionary measures.

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

Nature of the Precautionary Measures

35. The precautionary measures shall be of such a nature as to permit the securing of the judgment and shall in particular provide for the following:

(a) cessation of acts of infringement of the rights of the plaintiff arising from a geographical sign;

(b) seizure within the borders of Turkey, including at the customs or in free ports or free trade areas, and the holding in custody, of produced or imported goods that have infringed the rights in a geographical sign;

(c) provision of security for such damage as may have to be compensated.

Civil Procedure Code

36. The provisions of the Civil Procedure Code shall apply to other securing actions and precautionary measures.

Seizure at Customs

37. The customs authorities shall as a precautionary measure withhold infringing goods as fraudulent copies on either importation or exportation.

Withholding procedures shall be laid down by legislation enacted for the purpose.

The withholding measure applied by the customs authorities shall cease to have effect if proceedings are not instituted before the special court or if a preventive injunction is not obtained from the court within 10 days of the said measure.

TRANSITIONAL PROVISION

Jurisdiction Pending Appointment of the Special Courts

Transitional Provision 1. For the purposes of this Decree-Law, until the special courts are established, at the request of the Ministry of Justice, the High Council of Judges and Prosecutors shall select, from among the commercial courts of first instance and the criminal courts of first instance, those to be appointed as special courts, and shall specify the jurisdiction of each.

Entry Into Force

38. This Decree-Law shall enter into force on the day of its publication.

Execution

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

* *Entry into force:* June 27, 1995.

Source: Translation by the International Bureau of WIPO on the basis of an English translation supplied by the Turkish authorities.

** Added by the International Bureau of WIPO.