



Evaluation of the European Commission's Conclusions in the 2018 Report on Intellectual Property Law in Turkey

Authors: Gönenç Gürkaynak, Esq., İlay Yılmaz, Burak Yeşilaltay of ELIG Gürkaynak Attorneys-at-Law

I. Introduction

The European Commission (“Commission”) has released a report on April 17, 2018, which contained important findings of fact and assessments regarding Turkey’s political situation, economic development, regional issues and international obligations. This document summarizes and evaluates the conclusions put forth by the Commission in its report (“Report”) with respect to intellectual property law in Turkey and its suggestions for the coming years.

II. Current Status of Intellectual Property Law in Turkey

Chapter 7 of the Report examines the state of intellectual property law in Turkey and declares that “*Turkey has a good level of preparation in the area.*”¹ The Commission has chosen to use the word “*good*” in order to emphasize that while the current level of preparation is adequate, there is still room for improvement. The Report also underlines the fact that good progress has been made on legal alignment with the European Union *acquis*.

In order to evaluate the progress that has been made by Turkey in this particular area, it would be useful to compare this Report with the previous report of the Commission. The previous report, which was released in 2016, stated that “there was **some progress** in improving administrative capacity and coordination but enforcement remained problematic.”² The previous report also proposed that Turkey should adopt pending industrial property and copyright legislation in line with the EU *acquis*. On the other hand, the Report of 2018 states that the adoption and entry into force of the new Industrial Property Law is a significant part

¹ <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf>

² https://www.avrupa.info.tr/sites/default/files/2016-12/20161109_report_turkey.pdf



of the “good progress” that the Report has identified. This is one of the most valuable and noteworthy developments regarding intellectual property law in Turkey, as the Commission has also underlined in its Report.

The Report offers further details on this issue and indicates that this new law enables and provides enhanced legal alignment between Turkish IP law and the EU intellectual property rights *acquis* in relation to trademarks and designs. Furthermore, it updates the Turkish intellectual property rights system in line with international agreements and practices. Unlike the previous report, the Report of 2018 also notes that simplified registration procedures have been introduced by the new law. However, the Report also highlights the (disappointing) fact that the new law lacks specific provisions for biotechnological inventions.

The Report also mentions that an Intellectual Property Rights Academy was set up in July 2017, which will be responsible for all intellectual property rights training for civil servants in Turkey. Thus, the Regulation on the Code of Conduct and Disciplinary Measures for Trademark and Patent Agents, which entered into force in May 2017, addresses a legal gap with regard to the liability of trademark and patent agents registered with the Turkish Patent and Trademark Office. Finally, the Report observes that the Turkish Patent and Trademark Office has strengthened its consultation on trademark registration services with owners of intellectual property rights and their representatives.

III. Recommended Steps to Be Taken

The Report suggests that three (3) steps should be taken by Turkish lawmakers and public authorities in the upcoming years with respect to the protection of intellectual property rights. The Commission recommends that Turkey should take the following concrete steps:

*(i) Adopt pending copyright legislation in line with the *acquis*:*

The previous report of 2016 also recommended that Turkey should take three (3) steps in the coming years for the legal protection of intellectual property rights. The first one was the



adoption of the pending industrial property and copyright legislations in line with the European Union *acquis*.

The first half of this step was fulfilled with the passage of the new Industrial Property Law. However, the Report of 2018 now states that Turkey should adopt, in particular, pending copyright legislation in line with the *acquis*, which is the Draft Law Amending the Law No. 5846 on Intellectual and Artistic Works (“Draft Law”).

The Draft Law proposes numerous amendments to the current text of the Law No. 5846 on Intellectual and Artistic Works, which include revisions to the provisions concerning online piracy, collecting societies, databases and exceptional uses, such as temporary reproductions, reproduction through photocopying and other similar means, freedoms for purposes of use by disabled persons, and temporary reproductions by radio or television enterprises.

The Report specifically highlights this issue by stating that, “Collective rights management remains an outstanding issue that the new copyright law should address, particularly in relation to foreign producers, public performance rights and reproduction rights.” The Draft Law actually focuses on the issue of reproduction rights; however, it does not specifically address treatment of foreign producers and public performance rights. For this reason, in order to be brought in line with the recommendations of the Commission, the Draft Law (or other regulations) should include and incorporate these rights as well.

Another recommended step in the previous (2016) report was to improve enforcement measures in fighting against piracy and counterfeiting. When the Draft Law enters into legal force, the Intellectual Property laws in Turkey will finally address the issue of piracy.

(ii) Improve enforcement measures to combat infringements of industrial and intellectual property rights:

While the new Industrial Property Law aims to deliver a higher level of legal alignment with the EU Enforcement Directive, that is still not deemed adequate by the Report. Since the number of intellectual property right infringements and the level of counterfeiting and piracy

activities are still quite high in Turkey, the Report suggests that the implementation of the accelerated destruction procedure and the efficient functioning of the criminal justice system in dealing with intellectual property rights need to be improved.

(iii) Sustain a constructive dialogue with intellectual property right (IPR) owners, increase awareness regarding counterfeiting and piracy and focus on the benefits of a strong IPR protection system for economic growth:

The Report explicitly states that, “Turkey should in particular, sustain a constructive dialogue with intellectual property right (IPR) owners, increase awareness regarding counterfeiting and piracy and focus on the benefits of a strong IPR protection system for economic growth.” This suggestion, once again, highlights the need for specific legal provisions regarding IPR owners, as well as addressing issues of counterfeiting and piracy, and it also raises an important point regarding the application of the laws. In fact, this is the reason why Turkey may not be able to follow and abide by this recommendation in the coming years, since both the application and the enforcement of the relevant laws might take some time and are likely to happen only gradually.

IV. Conclusion

The Report clearly indicates that the state of Intellectual Property Law in Turkey has been improved since the release of the previous report, which was accomplished primarily through the adoption of the new Industrial Property Law. However, there are still a number of issues and challenges that need to be addressed with respect to IP law in Turkey, which are highlighted in the Report, especially in practice. In other words, while significant positive steps have been taken with respect to IP legislation in Turkey, the application and enforcement of the IP rights enshrined in such legislation still leaves much room for improvement.

Article contact: Gönenç Gürkaynak, Esq.

Email: gonenc.gurkaynak@elig.com

(First published by Mondaq on August 8, 2018)