

THE INTERNATIONAL JURISDICTION OF COURTS IN DISPUTES CONCERNING INTELLECTUAL PROPERTY LAW

Fikrî Mülkiyet Hukukuna İlişkin İhtilaflarda Mahkemelerin Milletlerarası Yetkisi

Ebru YILMAZSOY*

L&JR

Year: 12, Issue: 23
January 2022
pp.185-208

Article Information

Submitted :10.11.2021
Revision :06.12.2021
Requested :13.12.2021
Last Version Received :16.12.2021
Accepted :14.12.2021

Article Type

Research Article

Makale Bilgisi

Geliş Tarihi :10.11.2021
Düzeltilme :06.12.2021
İsteme Tarihi :13.12.2021
Son Versiyon Teslim Tarihi :16.12.2021
Kabul Tarihi :14.12.2021

Makale Türü

Araştırma Makalesi

ABSTRACT

In our study, the international jurisdiction of the courts in disputes related to intellectual property law is discussed. In this context, first of all, our work has been evaluated and examined under two main headings for disputes regarding intellectual property law, namely, the international jurisdiction of Turkish courts, and the international jurisdiction of courts within the scope of the European Union. The international jurisdiction of Turkish courts in disputes regarding intellectual property law is determined within the framework of the principles set forth in the International Private and Civil Procedure Law (IPCPL). Article 40 of IPCPL, which regulates international authority, regulates that the international jurisdiction of Turkish courts will be determined by the jurisdictional rules of domestic law. In this sense, the relevant authority is determined according to the type of dispute and whether there is a convention or not. Within the framework of the European Union regulations, the Brussels I Regulation of 2012 has been discussed in our study and the determination of the international jurisdiction of the courts in disputes regarding intellectual property law has been examined.

Key Words: International Jurisdiction, Intellectual Property Law, International Jurisdiction of Turkish Courts, Brussels I Regulation

ÖZET

Çalışmamızda, fikri mülkiyet hukukuna ilişkin ihtilaflarda mahkemelerin milletlerarası yetkisi ele alınmıştır. Bu kapsamda öncelikle çalışmamız, fikri mülkiyet hukukuna ilişkin uyumsuzluklarda Türk mahkemelerinin milletlerarası yetkisi ve Avrupa Birliği kapsamında mahkemelerin milletlerarası yetkisi olmak üzere iki ana başlık altında değerlendirilmiş ve incelenmiştir. Fikri mülkiyet hukukuna ilişkin uyumsuzluklarda Türk mahkemelerinin milletlerarası yetkisi, Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun (MÖHUK) kapsamında belirtilen esaslar çerçevesinde belirlenmektedir. Milletlerarası yetkiyi düzenleyen MÖHUK m. 40 hükmü ise Türk mahkemelerinin milletlerarası yetkisini, iç hukukun yer itibariyle yetki kurallarının tayin edeceğini düzenlemiştir. Bu anlamda, uyumsuzluğun türüne ve arada sözleşme olup olmamasına göre yetkinin belirlenmesi söz konusu olmaktadır. Avrupa Birliği düzenlemeleri çerçevesinde ise 2012 tarihli Brüksel I Tüzüğü, çalışmamızda ele alınmış ve fikri mülkiyet hukukuna ilişkin uyumsuzluklarda ise mahkemelerin milletlerarası yetkisinin tayini incelenmiştir.

Anahtar Sözcükler: Milletlerarası Yetki, Fikri Mülkiyet Hukuku, Türk Mahkemelerinin Milletlerarası Yetkisi, Brüksel I Tüzüğü

There is no requirement of Ethics Committee Approval for this study.

* Judge at Cayıralan (Bogazliyan) Courthouse, Student of PhD in Private Law at Baskent University, e-mail: ebruyilmazsoy@hotmail.com, ORCID ID: 0000-0002-3072-4224



INTRODUCTION

I. INTERNATIONAL JURISDICTION OF TURKISH COURTS IN INTELLECTUAL PROPERTY LAW

Jurisdiction¹ determines the competent judicial (law) court, where it has the right to hear a case. Whether or not a court has jurisdiction in a dispute that has a foreign element is expressed as "international jurisdiction". It may be thought that the concept of "international jurisdiction"² expresses an international order or rules of jurisdiction that is attributable to the laws of the entire state, but this concept actually specifies whether or not a particular country's court has jurisdiction in cases with a foreign aspect³.

The rules of international jurisdiction are determined freely by each country. The international jurisdiction of Turkish Courts has been stipulated in IPCPL⁴ articles 40-49. The international jurisdiction of Turkish Courts in disputes with foreign elements is determined according to the jurisdiction rules in domestic law per IPCPL article 40. This is a general provision. Articles 41-46 of IPCPL stipulate the jurisdictions concerning cases on the personal status of Turkish citizens, as well as some cases on the personal status of foreigners, inheritance cases, employment contracts and employment relation cases, and also cases on consumer and insurance contracts⁵.

¹ Baki Kuru, İstinaf Sistemine Göre Yazılmış Medeni Usul Hukuku, İstanbul 2016, p. 103; Ramazan Arslan, Ejder Yılmaz and Sema Taşpınar Ayvaz, Medeni Usul Hukuku, 2. Edition, Ankara 2016, p. 201 ff.; Ömer Ulukapı, Medeni Usul Hukuku, 3. Edition, Konya 2015, p. 159-160; L. Şanal Görgün, Medeni Usul Hukuku, 5. Edition, Ankara 2016, p. 155; Hakan Pekcantez, Oğuz Atalay and Muhammet Özekes, Medeni Usul Hukuku Ders Kitabı, 4. Edition, Ankara 2016, p. 106 ff.

² "The concept of international authority can be used in two different ways. International jurisdiction, in the first sense, expresses the jurisdiction of the courts of the country in disputes arising from transactions and relations with foreign elements. In the second sense, it refers to the geographical impact of the decisions made by a foreign state court in international disputes. The rules governing both issues are called international jurisdiction rules. However, when 'rules of international jurisdiction' are mentioned, it would not be wrong to say that the rules that determine whether the courts of a particular country are competent in a dispute with a foreign element, usually express the first meaning", Cemal Şanlı, Emre Esen and İnci Figanmeşe-Ataman, Milletlerarası Özel Hukuk, 5. Edition, İstanbul 2016, p. 358; For reference, please see Vahit Doğan, Milletlerarası Özel Hukuk, 4. Edition, Ankara 2016, (Milletlerarası Usul), p. 38.

³ Merve Acun Mekengeç, Aynı Haklardan Doğan Uyuşmazlıklarda Uygulanacak Hukuk ve Yetkili Mahkeme, İstanbul 2016, p. 269; Aysel Çelikel and B. Bahadır Erdem, Milletlerarası Özel Hukuk, 13. Edition, İstanbul 2014, p. 509.

⁴ Official Journal, Date 12.12.2007, Issue 26728; IPCPL art. 1: "The law to be applied in transactions and relations regarding private law with a foreign element, the international jurisdiction of Turkish courts, the recognition, and enforcement of foreign judgments are regulated by this Law".

⁵ Şanlı, Esen and Ataman-Figanmeşe, p. 361-362; Acun Mekengeç, p. 270; İzzet Doğan,

A. The General Jurisdiction Rule

According to IPCPL article 40 “*The international jurisdiction of Turkish courts is determined by the jurisdictional rules of domestic law*”. The general jurisdiction rule for disputes that have a foreign element and which are not covered by the special jurisdiction rules in the International Private and Civil Procedure Law is covered in article 40 of IPCPL. With this article, the international jurisdiction of Turkish Courts in disputes with a foreign element has been tied to the jurisdictional rules of domestic law in terms of location. According to this, if there is a competent court in Turkey in terms of location, for a case with a foreign element, the task is assigned to determine the international jurisdiction of Turkish Courts. The rules of jurisdiction in our domestic law, which have also been given the task of regulating international jurisdiction with the article 40 of the IPCPL, are regulated in various laws, primarily the Code of Civil Procedure and the Civil Code⁶ 7. There are also jurisdictional rules in the international agreements that Turkey is a party to.

The provision of article 40 of the IPCPL has referred to all the rules of jurisdiction in terms of the place of the domestic law in establishing the international jurisdiction of Turkish courts in terms of disputes not included in the scope of special jurisdiction rules in the Law. While the rules of jurisdiction are used in the determination of international authority, the fact that the parties to the lawsuit are Turkish citizens or foreigners does not play a role⁸.

B. The Authority of Turkish Courts in Intellectual Property Law

1. General Explanation of IPR

Intellectual property rights mean the absolute dominance over intangible goods that are the product of the human brain's thought⁹. Intellectual property rights can be established on intangible goods. There is no question of a right

Öğretide ve Uygulamada Milletlerarası Aile Hukuku ve Milletlerarası Usul Hukuku, Ankara 2010, (Milletlerarası Aile) p. 114.

⁶ Official Journal, Date 08.12.2001, Issue 24607.

⁷ Şanlı, Esen and Ataman-Figanmeşe, s. 365-366; Doğan, Milletlerarası Usul, s. 58; Acun Mekengeç, s. 270-271; “*For an example of the main regulations in which the rules regulate the territorial jurisdiction and therefore the international jurisdiction of the Turkish courts, see CPC art. 6-19; Execution and Bankruptcy Law art. 154, Civil Code a. 25, 32, 168, 177, 201, 207, 214, 283, 326, 411, 430, 433, 463, 576; Highway Traffic Law a. 110, Industrial Property Law No. 6769 art. 156; Commercial Enterprise Pledge Law a. 22, Turkish Commercial Code art. 82, 561, 661, 890, 1063, 1087, 1292, 1348, 1354 ff*” see Şanlı, Esen and Ataman-Figanmeşe, p. 366, footnote 90.

⁸ Ergin Nomer, Devletler Hususi Hukuku, 21. Edition, İstanbul 2015, p. 455.

⁹ Bahadır B. Erdem, Fikri Hukukta Türk Mahkemelerinin Milletlerarası Yetkisi, İstanbul 2003, (Fikri Haklar), p. 21

that can be established on a tangible good¹⁰. The concept of intellectual property includes intellectual and artistic works including computer programs and databases, patents, brands, utility models, designs, geographical names and signs, the topography of semiconductors or integrated circuits, chips known as layouts, and digital communications, and it can be used to express all of these¹¹.

Intellectual property legislation is comprised of two main elements which are legislation on intellectual (copyright) rights and industrial property rights. Copyrights include all regulations aiming to protect the rights of the creators of all kinds of intellectual and artistic products such as science, literature, music, fine arts or cinema works; and it also encompasses the regulations that are established for the purpose of protecting neighbouring rights (related rights) that include the rights of performing artists, radio and television companies and film producers that made the initial determination of the film. Industrial property rights cover quite a wide area including trademarks, patents, designs, utility models and integrated circuit topographies¹².

As a result of laws in the field of industrial rights being prepared according to the European Union Harmonization Laws and the laws on the intellectual property being prepared in accordance with Community Directives in our country, the number 551 Statutory Law on the Protection of Patent Rights has been issued for patents, the number 556 Statutory Law on the Protection of Brands been issued for brands, the number 554 Statutory Law on the Protection of Industrial Designs has been issued for industrial designs, the number 555

¹⁰ Ahmet M. Kılıçoğlu, *Sınai Haklarla Karşılaştırmalı Fikri Haklar (Sınai Mülkiyet Kanunu'na Gore)*, 3. Edition, Ankara 2017, p. 1.

¹¹ Orhan Çerçi, *Fikri Mülkiyet Haklarında Hakların Tükenme İlkesi*, Unpublished MA Thesis, Suleyman Demirel University SBE, Isparta 2013, p. 3; Mehmet Yüksel, *Fikri Mülkiyet Haklarının Tarihsel Temelleri*, <<http://www.ankarabaru.org.tr/siteler/ankarabaru.org/firmakale/2001-2/4.pdf>>, p. 89; “*Intellectual property is images, names, symbols, works on literature and fine arts, discoveries used for trading purposes*”, See. <http://www.wipo.int/about-ip/en/>; <<https://www.bl.uk/business-and-ip-centre/articles/what-are-intellectual-property-rights>> Accessed 04 July 2021.

¹² <http://www.ab.gov.tr/72.html> (Access Date: 04.07.2021); “*The most important feature that distinguishes intellectual property rights from industrial property rights is that the right arises from the act of “creation”; In terms of the birth of the right, there is no need for the registration process of the administration. This principle has been expressed in article 5/2 of the 1886 Bern Convention, which is one of the main international documents on this subject and has affected the national legislation. It is possible to examine intellectual property rights in two groups as rights on the work and related rights. These rights, which were expressed as copyright for a long time in our country, started to be expressed more commonly as “rights on the work” after the related rights were included in Law No. 5846 on Intellectual and Artistic Works in 1995*”, See. Ayşe Saadet Arıkan, *Avrupa Topluluğu’nda Fikri-Sınai Mülkiyet Hakları ve Son Gelişmeler*, Ankara Avrupa Çalışmaları Dergisi, Vol. 7, No:1 (Fall: 2007), p.149-173, p. 153, <<http://dergiler.ankara.edu.tr/dergiler/16/1125/13243.pdf>> Accessed 05 July 2021.

Statutory Law on the Protection of Geographical Signs has been issued for geographical signs, and for integrated circuit topographies, the number 5147 Law on the Protection of Integrated Circuit Topographies has been issued. However, the provisions and legal institutions concerning all of these subjects under the Statutory Laws specified above, have been gathered systematically under one umbrella avoiding repetition, and the Industrial Property Law number 6769 has been published in the Official Gazette on ¹³ 10.01.2017 to go into force. Intellectual rights are protected by the Intellectual and Artistic Works Law number 5846¹⁴.

The most common type of dispute in the field of intellectual property law is the disputes arising from the existing contracts between the parties. Because there are many contracts that contain intellectual property rights. License agreements, distribution agreements, franchising, computer agreements, Joint Venture agreements, mergers and acquisitions are the main agreements related to intellectual property rights. In the doctrine, in terms of disputes arising from contracts, contracts regarding intellectual property rights are examined in three categories. These are namely; license agreements on intellectual property rights, agreements on the transfer of intellectual property rights and agreements on the development of intellectual property rights. In case of any dispute arising from the contract, it would be appropriate for the parties to prepare the contracts that they will sign with precision in order to protect their intellectual rights. However, the dispute does not arise only between the contracting parties; as there are also disputes regarding the violation of the intellectual property right or the ownership of the intellectual property right outside the scope of the contract¹⁵.

According to IPCPL article 40, the international jurisdiction of Turkish courts is determined by domestic law rules on jurisdiction in terms of location. When determining the international jurisdiction of Turkish courts with this regulation, IPCPL has referred to the jurisdiction rules of domestic law¹⁶. It appears that special jurisdiction rules have been accepted concerning intellectual property law related cases.

¹³ Official Journal, Date 22.12.2016, Issue. 29944.

¹⁴ Kılıçoğlu, p. 28-78.

¹⁵ Mehmet Sarı, Fikri Mülkiyet Hukukuna İlişkin Davalarda Türk Mahkemelerinin Milletlerarası Yetkisi, <<http://www.ahmetyum.av.tr/fikri-mulkiyet-hukukuna-iliskindavalarda-turk-mahkemelerinin-milletlerarası-yet>> Accessed 05 July 2021; François Dessementet, “Fikri Mülkiyet ve Tahkim”, FMR, Vol. 7, 2007/1, Translator Cem Çağatay Orak, p. 85-98, p. 89 ff.; Yusuf Çalışkan, Uluslararası Fikri Mülkiyet Hukukunda Uyuşmazlık Çözüm Mekanizmaları: WIPO Tahkimi ve Dünya Ticaret Örgütü, İstanbul 2008, p. 17-18.

¹⁶ Ibid.



2. Jurisdiction Provisions in IPR Legislation

a. Industrial Property Law

With the article 156 in the Industrial Property Law, the official and authorized courts for all industrial property rights have been determined, and unity, clarity, and convenience have been ensured in practice. It has been accepted that the solely authorized courts in cases that are filed in the scope of the Law against decisions issued by the Turkish Patent and Trademark Institute¹⁷ are Ankara courts and also special authorities have been adopted for lawsuits that third parties will file amongst themselves. It has been mandated that if the plaintiff does not have a domicile in Turkey, then the court where their attorney resides, and if they do not have an attorney, the court where the Turkish Patent and Trademark Institute headquarters is located shall be the authorized court¹⁸.

The jurisdiction provisions in previous regulations concerning intellectual rights in art. 137 of 551 Statutory Law on the Protection of Patent Rights, art. 63 of number 556 Statutory Law on the Protection of Brands, art. 49 of number 554 Statutory Law on the Protection of Industrial Designs, and art. 25 of number 555 Statutory Law on the Protection of Geographical Signs has been organized with special jurisdiction rules. All of these rules on jurisdiction are governed in the same manner. The only difference in the articles on jurisdiction is that it changes as per the plaintiff's and defendant's intellectual rights topic, the brand owner, the industrial design right's owner, and the geographical sign right's owner. In these jurisdiction provisions, if the rights of an intellectual right owner are violated or infringed on by a third party, the provisions on the jurisdiction in violation lawsuits to be filed against the infringing third parties and in lawsuits filed by third parties against an intellectual right owner regarding the invalidity of the intellectual right were being regulated by the same article¹⁹.

In Statutory Decrees, the authorized court in “lawsuits concerning the violation of intellectual rights” has been organized with priority in two clauses. The owner of the intellectual right may first file a lawsuit against third parties who violate their intellectual right in the court of their domicile. Since the violation of the intellectual right is considered a tortious act, they may also file this lawsuit in court at the location of the violation or at the location where the effects of the violation are seen. Statutory Decrees express this as the court being located at the place where the crime was committed or where the effects

¹⁷ See. <<http://www.turkpatent.gov.tr/TurkPatent/commonContent/History>> Accessed 06 July 2021.

¹⁸ Fatma Özer, “6769 Sayılı Sınai Mülkiyet Kanunu’nun Genel Bir Değerlendirmesi”, *Terazi Aylık Hukuk Dergisi*, Vol. 12, Issue 128, April 2017, p. 131-167, p. 131 ff.

¹⁹ Erdem, *Fikri Haklar*, p. 191.

of the violating act are seen. In other words, the intellectual right owner may file an infringement lawsuit with the court that is located where the violating act was committed or with the court located where the infringement shows its effect if its effects and consequences are generated in another location²⁰. This regulation in the Statutory Decrees has also been maintained in the art. 156/3 of the Industrial Property Law.

With this regulation, in which lawmakers maintain art. 156/3 of the Industrial Property Law in its exact form, filing lawsuits has been made easier for intellectual property right owners for cases concerning the violation of intellectual property rights by allowing them to file their case 'at the court of the plaintiff's domicile' in place of the 'court of the defendant's domicile' as mandated in the general jurisdiction provision in art. 6/1 under the Code of Civil Procedure. This jurisdiction provision is intended to protect the intellectual right owner who thinks that their intellectual right has been violated and to facilitate their filing a lawsuit. The plaintiff, who is the intellectual right owner, may file this infringement lawsuit at a court in their own domicile as well as a court where this infringement constituting a tortious act has occurred, or in terms of the Law, the court where the crime has been committed, or if the effects of the infringement are felt elsewhere, the case may be filed with a court located where these effects are felt²¹.

If a Turkish intellectual right owner that is registered with and protected by the Turkish Patent and Trademark Institute does not have a domicile in Turkey, lawmakers have also established an authorized court in Turkey for such intellectual right owners. In this regulation that is included in the Statutory Decrees, art. 156/4 of the Industrial Property Law has been maintained. If the Turkish intellectual rights of a Turkish intellectual right owner without domicile in Turkey is violated, then this individual may file a lawsuit concerning this infringement in a court located where their registered representative resides. However, the registration of their representative may have been erased. A final authorized court has been established in Turkey for such a case, in which the court is located, where the headquarters of the Turkish Patent and Trademark Institute is located.

The purpose pursued in the Industrial Property Law and the old regulation Statutory Decrees is primarily to protect a Turkish intellectual right owner who will file an infringement lawsuit against third parties and to facilitate their filing a lawsuit. Therefore, the first jurisdiction rule has been established as

²⁰ Ibid, p. 192; B. Bahadır Erdem, "Fikri Haklara İlişkin Davalarda Türk Mahkemeleri'nin Milletlerarası Yetkisi", *Legal Fikri ve Sınai Haklar Dergisi*, 3/2005, p. 688–699, (Yetki), p. 693.

²¹ Ibid, p. 192; Erdem, Yetki, p. 693.

'the court of the plaintiff's domicile' opposite to the Code of Civil Procedure²² (CCP) art. 6/1. However, this rule which gives authority to the 'court at the domicile of the plaintiff intellectual right owner' established in the Industrial Property Law, cannot override CCP art. 6/1 in cases concerning intellectual right infringement. In the interest of protecting the intellectual right owner plaintiff and facilitating their filing an infringement lawsuit, article 156 of the Industrial Property Law has brought the ability to file a lawsuit at 'a court in their own domicile' in addition to the general jurisdiction rule in CCP art. 6/1. The intellectual right owner plaintiff can file their infringement lawsuit with a court located at their own domicile in accordance with art. 156 of the Industrial Property Law; or if they wish, with a court at the domicile of the defendant third party who has committed the act of infringement in accordance with CCP art. 6²³.

The objective in this regulation is for the Industrial Property Law and the old Statutory Decrees to facilitate the intellectual right owner in lawsuits concerning the infringement of intellectual rights, and to establish a provision that assigns jurisdiction to various courts in an effort to make sure there is an authorized Turkish court for these cases. The jurisdiction of all of these courts that have been facilitated are of a special nature and these provisions on jurisdiction cannot override the jurisdiction of courts that have gained this authority per CCP art. 6 and other articles. In other words, the Industrial Property Law article 156/3 and 156/4 jurisdiction rule is not a definitive jurisdiction rule in terms of domestic law²⁴.

As established the same in the Industrial Property Law art. 156/5 and the old Statutory Decrees, the authorized court in cases filed against the owner of an intellectual right regarding the registration or invalidity of an intellectual right, is the court at the domicile of the defendant intellectual right owner. The rule, which is regulated in the same way as the general jurisdiction rule in CCP Article 6, also protects the intellectual right owner in line with the purpose of both the Industrial Property Law and the old Statutory Decrees²⁵. If the intellectual right owner does not reside in Turkey, the court located where the intellectual right owner's registered representative has a workplace has been rendered as the authorized court with reference to the jurisdiction provision in

²² Official Journal, Date 04.02.2011, Issue 27836.

²³ Erdem, Fikri Haklar, p. 193; Erdem, Yetki, p. 693-694; *For the opinion that overrules the rule of "court of the residence of the defendant", the provisions that authorize the 'court of the residence of the plaintiff' in the infringement lawsuits to be filed against third parties by the intellectual right owner, regulated in the Decree-Law, which is the general jurisdiction rule CCP art. 9*, see. Ünal Tekinalp, Fikri Mülkiyet Hukuku, 2. Edition, İstanbul 2002, p. 441, 552, 613.

²⁴ Erdem, Fikri Haklar, p. 194; Erdem, Yetki, p. 695.

²⁵ Ibid, p. 195-196; Erdem, Yetki, p. 696.

infringement cases. There is a final court that is authorized to have jurisdiction in any case if the record of the registered representative has been erased, and hence, this is the court that is located where the headquarters of the Turkish Patent and Trademark Institute is.

According to the Industrial Property Law art. 156/2, it has been accepted that the definitive authorized courts in cases that are filed in the scope of the Law against decisions issued by the Turkish Patent and Trademark Institute are Ankara courts.

This definite authority rule, which is included in Article 156/2 of the Industrial Property Law, was regulated in the same way in the old decree laws. Accordingly, the provisions regarding the jurisdiction of the courts in cases regarding the invalidity of the intellectual right are also in the nature of 'exclusive jurisdiction'. The purpose of the provision is to both protect the defendant intellectual right holder and to establish a competent Turkish court in invalidation cases to be filed by third parties against him/her. In a lawsuit regarding the invalidity of a Turkish intellectual right registered and protected by the Turkish Patent and Trademark Office, the existence of an authorized Turkish court as the court of the state protecting this intellectual right is also in line with the principle of territoriality of intellectual rights. In the case of the invalidity of the intellectual right of third parties against a Turkish intellectual right owner, the presence of a competent Turkish court is a must due to the nature of the intellectual rights. The jurisdiction of these courts, which is a definite authority in terms of domestic law, is an "exclusive authority" in terms of international procedural law. In other words, if the lawsuit to be filed by third parties regarding the invalidity of a Turkish intellectual right is not filed in the courts authorized by the Industrial Property Law, but in the courts of another state, then the judgment of the foreign court cannot be enforced pursuant to article 54/b of IPCPL (International Private and Civil Procedure Law)²⁶.

b. Law on Intellectual and Artistic Works

Due to the difference brought about by the fact that intellectual (copyright) rights are created only by the owner of the work, without the need for registration of any authority, such as patents, trademarks, industrial designs and

²⁶ Ibid, p. 197; Erdem, Yetki, p. 697; Aysel Çelikel and Bahadır B. Erdem, *Milletlerarası Özel Hukuk*, 14. Edition, Istanbul 2016, (2016), p. 553; "The Court of Justice, in *Duijnsteer v Goderbauer* case, states that 'the courts of the Contracting States where the application for deposit and registration is filed have international jurisdiction because, due to the validity of the patent or the existence of the registration and deposit, these courts are the best places to settle disputes arising therefrom'", See. Erdem, *Fikri Haklar*, p. 196; Erdem, *Yetki*, p. 696.

geographical indications, which are among other intellectual property rights²⁷, the jurisdiction of the courts in cases related to copyright is different from the jurisdiction of the courts regarding the industrial rights subject to registration²⁸.

The fact that copyrights arise without the need for any action and registration results in the fact that the principle of territoriality is not as valid in these rights as it is in other intellectual rights, and that the principle of personality is more prominent in intellectual rights and is valid. The fact that copyrights are created only by the owner of the work, without the need for registration or any other process of any country, and that these rights approach the principle of personality rather than territoriality, results in the fact that the courts of no country do not have exclusive jurisdiction in cases related to these rights²⁹.

In Turkish law, the only provision regarding the jurisdiction of the courts in terms of intellectual property has been regulated in Article 66 of the Law on Intellectual and Artistic Works in terms of the cases of ref of the infringement (stopping the attack, art. 66-68) and prohibiting the infringement (preventing the attack, art. 69). According to Law of Intellectual Property Rights article 66, “...*The owner of the work can file a lawsuit for ref and prohibition of infringement at his/her place of residence*”. This regulation, in order to protect and facilitate the owner of the work as an intellectual right owner, as in the Industrial Property Law and the old decree laws, contrary to the court of the domicile of the defendant, which is the general provision in Article 6 of the Code of Civil Procedure, the court of the domicile of the owner of the work, who is the plaintiff, has jurisdiction in the cases of the ref of the infringement and the prohibition of the infringement, which are infringement cases. This special authorization provision in Article 66 of the Law of Intellectual Property Rights is an alternative authorization provision granted to the claimant³⁰.

If the owner of the work wishes, instead of the opportunity provided by the Law of Intellectual Property Rights article 66, he/she can file his/her case in the court of the defendant's place of residence in accordance with the jurisdiction provision in Article 6 of the Code of Civil Procedure. In addition to this condition, since the ref lawsuit filed with the aim of eliminating the infringement against the rights of the author was filed for the purpose of refusing the infringement constituting a tort, according to Article 16 of the Code of Civil Procedure, the court of the place where the tortious act was committed, is also authorized in the case of abolishing the infringement. In

²⁷ For detailed information, see Kılıçoğlu, p. 18; “*Intellectual property is the right over one's creations based on thought and artistic skill. Here, the work created by the person is protected*”, Kılıçoğlu, p. 18.

²⁸ Erdem, Fikri Haklar, p. 198-199; Erdem, Yetki, p. 698.

²⁹ Ibid, p. 198-199; Erdem, Yetki, p. 698.

³⁰ Kılıçoğlu, p. 97; Erdem, Fikri Haklar, p. 199; Erdem, Yetki, p. 698.

compensation cases, the courts that have jurisdiction pursuant to the general and special jurisdiction provisions of the Code of Civil Procedure may hear the case³¹.

All of the courts that have gained jurisdiction pursuant to all these provisions of jurisdiction also have international jurisdiction in accordance with Article 40 of the International Private and Civil Procedure Law³² and the jurisdiction of any of these courts is not a definitive jurisdiction provision in terms of domestic law and an exclusive jurisdiction provision in terms of international procedural law. Therefore, each of these lawsuits can be filed in courts abroad and can be enforced if they meet the enforcement conditions in article 54 of the International Private and Civil Procedure Law³³.

3. Jurisdiction of Authorised Courts Regarding IP-Related Contracts

Agreements on intellectual property rights are divided into two as agreements regarding the transfer of an intellectual right in its entirety and agreements regarding the transfer of the right to use an intellectual right, or in other words, license agreements regarding intellectual rights. License agreements regarding intellectual property rights can be made in various types depending on the use of the licensee. E.g; patent license agreements; according to the type of use, development licenses and rebuilding licenses are divided into production licenses, assembly licenses, usage licenses, import licenses, export licenses, sales licenses³⁴. There may also be agreements to commit IP rights as capital in a company.

When it comes to the issue of the jurisdiction of the courts in cases arising from contracts regarding intellectual property, there is no special jurisdiction provision regarding the jurisdiction of the courts in this regard. For this reason, the jurisdiction of the courts in cases arising from agreements regarding the transfer of an intellectual right and license agreements related to the transfer of the use of an intellectual right will be determined according to the provisions of

³¹ Erdem, Fikri Haklar, p. 199; Erdem, Yetki, p. 698; Sarı, Fikri Mülkiyet Hukukuna İlişkin Davalarda Türk Mahkemelerinin Milletlerarası Yetkisi, <<http://www.ahmetyum.av.tr/fikri-mulkiyet-hukukuna-iliskin-davalarda-turk-mahkemelerinin-milletlerarasi-yetki>> Accessed 07 July 2021; Supreme Court 11. CC, D. 30.04.2014, M. 2014 / 5862, D. no 2014 / 8134; “as the alleged action also constitutes a tort, in accordance with Article 16 of the CCP, the court of the domicile of the injured person is also competent. In this respect, giving a decision of lack of jurisdiction is against the procedure, and since there is a regulation on unfair competition in LIPR no. 5846 a. 84 ff, it should also be accepted that the court is in charge of the intellectual property rights law court in the dispute.”, For decision, see <<https://www.sertels.av.tr/avukat/hukuk/fsek-yargitay-kararlari/fsek-haksiz-fiil-yetkili-mahkeme-yargitay-11-hd-k2014-8134.html>> Accessed 07 July 2021.

³² Çelikel and Erdem, p. 553.

³³ Erdem, Fikri Haklar, p. 199; Erdem, Yetki, p. 698.

³⁴ Çelikel and Erdem, p. 395; Kılıçoğlu, p. 290-291.



the CCP. As it is known, according to Article 10 of CCP, “*The lawsuits arising from the contract can also be filed in the court of the place where the contract will be executed*”. In the case of breach of intellectual property agreements, the competent court will be determined according to the Article 10 of the CCP. The court determined according to Article 10 of the CCP, IPCPL art. 40, it will also have international authority,³⁵ and this authority is not an exclusive jurisdiction provision. This means that the parties to a contract on intellectual property can, if they wish, file lawsuits arising from the contract between them regarding the intellectual property in a foreign state court and may have the foreign court's judgment enforced in Turkey if it meets the conditions of Article 54 of the IPCPL³⁶.

In disputes arising from license agreements, the lawsuit can also be filed in the court of the place where the agreement will be executed. However, it is necessary to determine the place where the contract will be executed. The place of performance in license agreements must be determined in accordance with the substantive law to be applied to the agreement. The substantive law to be applied indicates the conflict of laws rules. According to the Turkish conflict of laws rules, International Private and Civil Procedure Law article 28, if Turkish substantive law rules are applied to license agreements, the place of performance of the agreement will be determined according to the Turkish Code of Obligation³⁷ (TCO) article 89. First of all, according to the article, the place of performance of the debt is determined according to the express or implicit will of the parties. If the parties do not agree on the place of performance of the contract, the provisions of article 89 of the TCO are applied³⁸. If the parties have agreed on the place of performance, the establishment of this place of performance by the international court will result in the parties having actually made a contract of jurisdiction³⁹.

C. Authorization Agreement

The powers of the courts are regulated by law (Constitution article 142). According to article 142 of the Constitution⁴⁰, the parties should not be able to

³⁵ Sarı, Fikri Mülkiyet Hukukuna İlişkin Davalarda Türk Mahkemelerinin Milletlerarası Yetkisi, <<http://www.ahmetyum.av.tr/fikri-mulkiyet-hukukuna-iliskin-davalarda-turk-mahkemelerinin-milletlerarasi-yet>> Accessed 07 July 2021.

³⁶ Erdem, Fikri Haklar, p. 198; Erdem, Yetki, p. 697-698.

³⁷ Official Journal, Date 04.02.2011, Issue. 27836.

³⁸ For the international jurisdiction of Turkish Courts in Franchise contracts, see. Sema Çörtoğlu Koca, “Franchise Sözleşmelerinde Esasa Uygulanacak Hukuk ve Mahkemelerin Milletlerarası Yetkisi”, Prof. Dr. Tuğrul Arat’a Armağan, Ankara 2012, p. 749-780, (Franchise), p. 764.

³⁹ Doğan, Milletlerarası Usul, p. 72

⁴⁰ Official Journal, Date 09.11.1982, Issue 17863.

authorize a court that is legally incompetent by contract. However, the Code of Civil Procedure accepts as a principle that the parties can make a contract of authority but puts some limits on it. In cases of definite authorization, an authorization agreement cannot be made. For this reason, in cases of final authorization, the objection to authorization is not a first objection, but a condition of action. The parties can raise the final authority objection at any stage of the case, and the final authority is observed ex officio by the court. A contract of authority cannot be concluded on matters that the parties cannot freely dispose of. E.g; An authorization agreement cannot be made for divorce, separation, paternity cases. Persons other than traders and public legal entities cannot enter into a contract of authorization⁴¹.

Provided that it is a merchant or a public legal entity, the contract made by the parties in order to authorize a court that is not legally authorized for a certain case (dispute), in fact, is called a contract of authorization. A contract of authority is a contract of procedural law. With the authorization agreement, a court that is not actually authorized becomes authorized⁴².

In the comparative law and Turkish Law, it is only accepted in the field of debt relations to make an agreement of authority in disputes with an international element. In disputes arising from debt relations with an international element, foreign courts may also be authorized for a dispute in which Turkish courts, which do not have international jurisdiction, are authorized by an agreement of jurisdiction⁴³.

1. Selection of Turkish Courts

In cases where the Turkish courts are not authorized locally and therefore international jurisdiction does not arise, the parties may decide that a certain Turkish Court may be authorized by agreement of jurisdiction. With the authorization agreement, the parties are given international authority by their will to a Turkish court, which does not have international jurisdiction, since there is actually no competent court. In cases of definite authority, a contract of authority cannot be concluded on matters that the Parties cannot freely dispose of. E.g; An authorization agreement cannot be made for divorce, separation, paternity cases⁴⁴.

The opportunity to conclude an authorization agreement is only available to traders and public legal entities. According to the law, merchants or

⁴¹ Kuru, p. 116-117; Arslan, Yılmaz and Taşpınar Ayvaz, p. 220-221.

⁴² Arslan, Yılmaz and Taşpınar Ayvaz, p. 220; Kuru, p. 117; Görgün, p. 170 ff.

⁴³ Doğan, Milletlerarası Usul, p. 73.

⁴⁴ Nomer, p. 477; "For example, it is not possible to conclude authorization agreements for cases related to the same property, bankruptcy cases, and divorce cases", Nuray Ekşi, Türk Mahkemelerinin Milletlerarası Yetkisi, İstanbul 1996, p. 110.



public legal entities may authorize one or more courts with an authorization agreement (authorization agreement or authorization condition) regarding a dispute that has arisen or may arise between them. Unless otherwise agreed by the parties, the case can only be filed in this court or courts determined by the contract (Code of Civil Procedure Art. 17). In other words, the parties establish "exclusive" competent courts in the sense of international procedural law for the court or courts they have authorized with a jurisdiction agreement⁴⁵.

The form and validity conditions of a jurisdiction agreement authorizing Turkish courts are subject to Turkish procedural law, *lex fori*. Accordingly, in order for the authorization agreement to be valid, it must be made in writing, the legal relationship arising from the dispute must be specific or identifiable, and the authorized court or courts must be indicated⁴⁶ (Code of Civil Procedure Art. 18/2). According to these conditions, agreements of jurisdiction between parties that are not merchants or public legal entities, which are not made in writing or on which the parties can freely dispose of and for which disputes are unclear, or where the authorized court or courts are not clearly specified, or where Turkish courts have certain jurisdiction, are not valid in terms of Turkish law. E.g; The record "*Turkish courts are authorized*" is not sufficient. It is necessary to have a record such as "*Istanbul courts are authorized*" or "*Istanbul or Bursa courts are authorized*"⁴⁷.

It is not necessary that the case or the subject of the case have any relation with Turkey. Regardless of their nationality, the parties may authorize a specific Turkish court for any particular dispute between them⁴⁸. The authorization agreement can be concluded before or after the dispute arises⁴⁹.

Even if the parties have not drawn up a jurisdiction agreement between them, it is stated that there is an implied jurisdiction agreement between the parties, unless the defendant makes a first objection to this jurisdiction, in case the case is filed in a Turkish court that does not have international jurisdiction. It is accepted that this situation is an implied authorization agreement as well as express authorization agreements. According to the justification, the defendant is deemed to have accepted the jurisdiction of the court by not making the first objection and entering the merits of the case. In that case, this is an authorization agreement established with the will of the parties⁵⁰.

In a case related to intellectual property law, even if the Turkish courts are not authorized according to the provisions of the domestic law (Industrial Property

⁴⁵ Ibid, p. 477.

⁴⁶ Ibid, p. 477.

⁴⁷ Çelikel and Erdem, p. 603.

⁴⁸ Nomer, p. 478.

⁴⁹ Nur Bolayır, *Medeni Usul Hukukunda Yetki Sözleşmeleri*, İstanbul 2009, p. 149.

⁵⁰ Çelikel and Erdem, p. 604.

Law, Law of Intellectual Property Rights and Code of Civil Procedure), they can try the case by gaining international jurisdiction with a valid authorization agreement made by the parties in accordance with Article 18 of the Code of Civil Procedure.

2. Selection of Foreign Courts

In disputes where there is a competent court according to Turkish international jurisdiction rules, the parties may, by mutual agreement, authorize a foreign country court. According to the regulation in Article 47/1 of the International Private and Civil Procedure Law, certain conditions are stipulated for the conclusion of the authorization agreement⁵¹. Accordingly, in order for the parties to exclude the authority of Turkish courts and to authorize the courts of foreign states with an agreement; the dispute that is the subject of the authorization agreement must be;

- a) Concerning matters for which Turkish courts are not appointed on the basis of exclusive jurisdiction,
- b) Having a foreign element and
- c) it must arise from debt relationships.

In addition, it is necessary to look for the conditions that the dispute that constitutes the subject of the contract of authorization and the court that is authorized should be "determined and identifiable"⁵².

In cases where the domestic jurisdiction of Turkish courts and, accordingly, their international jurisdiction is determined on the basis of exclusive jurisdiction, another country's court does not become authorized by a contract of jurisdiction. What is meant by the exclusive jurisdiction in the private law of the states and the exclusive jurisdiction in the procedural law is that only a certain state jurisdiction has the authority to decide on a certain dispute. If a jurisdictional rule is set to ensure that the subject of dispute is heard only in Turkish courts, it means that the Turkish court has exclusive jurisdiction in this matter, and the jurisdiction agreement authorizing a foreign state court will not be valid for this dispute⁵³.

According to Article 47/2 of the International Private and Civil Procedure Law, "*The jurisdiction of the courts specified in Articles 44, 45 and 46 cannot be eliminated by agreement of the parties*". According to this regulation, Turkish courts are deemed to have exclusive jurisdiction in favour of the worker, the consumer, the insured, and the beneficiary in disputes arising from employment contracts and business relations, consumer contracts, and insurance contracts.

⁵¹ Doğan, Milletlerarası Usul, p. 73; Şanlı, Esen and Ataman-Figanmeşe, p. 399-400.

⁵² Şanlı, Esen and Ataman-Figanmeşe, p. 400.

⁵³ Erdem, Fikri Haklar, p. 201.

In disputes arising from these contracts, the jurisdiction of the Turkish courts, determined by International Private and Civil Procedure Law articles 44, 45 and 46, cannot be abolished by a contract of jurisdiction⁵⁴.

In contracts with a foreign element regarding intellectual law, it is possible for the contracting parties to authorize a foreign state court with the authorization agreement concluded in accordance with the terms of Article 47 of the International Private and Civil Procedure Law. They may authorize a foreign state court for the future disputes arising from the transfer of an intellectual and industrial right or the transfer of use through a license agreement. However, this authorization agreement must meet the conditions specified in article 47 of International Private and Civil Procedure Law. The jurisdiction of the authorized foreign court is exclusive. If the case is filed in a Turkish court instead of the authorized foreign court, despite the authorization agreement, the party filing the case may face an objection of lack of jurisdiction. If it is filed in the Turkish Court while being heard in a foreign state court, this time a pending objection may be encountered. However, if the foreign state court considers itself to be incompetent or if no objection is made in the Turkish court, the case can be heard in the authorized Turkish court. In addition, since the violation of intellectual property right also constitutes a tort, it is possible to conclude an authorization agreement in debt relations arising from tort in accordance with article 47 of International Private and Civil Procedure Law⁵⁵.

II. INTERNATIONAL JURISDICTION OF COURTS REGARDING INTELLECTUAL PROPERTY LAW IN THE PROCEDURE OF THE EUROPEAN UNION

A. In General

The member states of the European Economic Community were aware that the effects of the decisions made by the courts of the member states should be accepted in other member states in order to establish a real common internal market. Therefore, in the 1960s, they adopted the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention), which simplifies the recognition and enforcement procedure and conditions, and introduces a uniform regulation. Towards the end of the 1990s, the member states started working on a new convention among themselves, which introduced more liberal regulations on recognition and enforcement than the regulations of the Brussels Convention, and also clarified the problems

⁵⁴ Çörtoğlu Koca, Franchise, p. 769; For detailed info, see Çörtoğlu Koca, Sema, Zayıf Tarafın Korunduğu Sözleşmelerde Mahkemelerin Milletlerarası Yetkisi (İş, Tüketici ve Sigorta Sözleşmeleri), Ankara 2016, (Yetki), p. 252 ff.

⁵⁵ Erdem, Fikri Haklar, p. 203.

that arose in the implementation of the Brussels Convention. As a result, the Regulation No. 44/2001 and dated 22 December 2000 on Jurisdiction in Legal and Commercial Matters and the Recognition and Enforcement of Judgments⁵⁶ (2001 Regulation) was adopted⁵⁷.

On 21 April 2009, the Commission's report on the implementation of the Brussels I Regulation was adopted. As a result of the report, it was concluded that the Regulation was functioning properly; however, it has been expressed that it is desirable to improve the functioning of some of its provisions, to facilitate court decisions more freely and to improve access to justice. Since many amendments to the by law were considered appropriate, it was deemed appropriate to adopt a new Bylaw in terms of legal certainty. The Regulation⁵⁸ No. 1215/2012 on Jurisdiction in Legal and Commercial Matters and the Recognition and Enforcement of Judgments (Regulation 2012) entered into force on 10 January 2013. However, the implementation of the Recast Regulation by the courts of the member states started on January 10, 2015, pursuant to the transitional provision in Article 66⁵⁹. The Regulation determines the jurisdiction of the courts in civil and commercial law cases for all European Union member states. The Regulation is applied in the courts of twenty-eight member states of the European Union⁶⁰.

The Regulation of 2012 applies to legal and commercial disputes regardless of the nature of the court. The tax does not apply to customs or administrative cases and to the responsibilities of states arising from acts and omissions related to the exercise of their sovereign powers (Art. 1/1). Statute, status and capacity of natural persons, marriage or property regimes in a relationship having the same effects as marriage under applicable law; bankruptcy, liquidation of bankrupt companies or other legal entities, concordat and similar procedures; social insurance; arbitration; maintenance obligations arising from family, custody, marriage or kinship; The provisions of the Regulation are not applicable to inheritance and testament, including alimony obligations due to death⁶¹.

⁵⁶ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133054>> Accessed 08 July 2021.

⁵⁷ Ceyda Süral, "Avrupa Birliği Usul Hukuku", Ed. Işıl Özkan, Ceyda Süral and Uğur Tütüncübaşı: Avrupa Birliği Devletler Özel Hukuku, Ankara 2016, p. 25.

⁵⁸ Regulation (Eu) No 1215/2012 of The European Parliament and of The Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:en:PDF>> Accessed 08 July 2021.

⁵⁹ Süral, p. 26.

⁶⁰ Çörtoğlu Koca, Yetki, p. 98.

⁶¹ Süral, p. 26.



The Brussels I Regulation of 2012 applies where the defendant is domiciled in EU member states (Art. 4/1, 6/1). In terms of the application of the provisions of the statute, the citizenship or place of residence of the plaintiff is not taken as a basis⁶².

B. Authorization Rules

1. General Authority Rule

Article 4 of the new regulation is based on the defendant's residence in a member state (art. 4/1) Regardless of nationality, the defendant is subject to the jurisdiction of the court of the Member State in which he/she resides. The defendant, who is not a national of a Member State, will also be subject to the jurisdiction of the Member State in which he/she resides, as a partner with its nationals (art. 4/2). Item 4 has a dual function. First, it oversees the territorial implementation of authority. Second, it is the general rule of authority. It is the same as Article 2 of the old regulation. Pursuant to Article 5, it is prohibited to designate another court within or outside the European Union as a "more appropriate" court. Article 6 deals with defendants who do not reside in a Member State. In this regard, national authority rules are applied. Article 6/1 determines the exception to the national authority rules. There are two new exceptions. These are the exclusive competences of the member states with regard to consumer and worker protection. The other is the authorization agreement (art. 18(1)) (art. 21/2) (art. 24.) (art. 25.)⁶³.

2. Special Authorization Rule

The rules contained in Article 5 of the Brussels I Regulation (Recast Regulation articles 7-9) authorize courts outside the defendant's country of residence. This is optional and is subject to the plaintiff's choice. For this issue, there should be a closer relationship between the dispute and the court. Article 5 of the Brussels Recast I Regulation governs that a person residing in one member state can only be prosecuted in the court of another member state on matters covered by sections 2-7. The rules in Article 5 of the Brussels I Regulation (Recast 7 article) are special authorization rules. These are contracts, wrongful acts, cases connected with criminal proceedings, recovery of cultural property, branches, agencies and other organizations, trust, and litigation relating to the salvage of goods at sea⁶⁴.

The subject of the Brussels I Regulation 5(1) (Recast Art. 7/1) is the contracts. This provision differs from the provision in the Brussels Convention. According

⁶² Ibid, p. 27.

⁶³ Ibid, p. 44-46.

⁶⁴ Ibid, p. 47-62.

to the Convention, in contractual matters, a resident of one Member State may be sued as a "place of performance" in the courts of another Member State. Since this provision was problematic, it was amended first in the Convention and then in the Bylaws. According to the Regulation, unless otherwise agreed by the parties, the place of performance of the contract is pursuant to Article 5/1(a) (new 7/1(a)) of the Brussels I Regulation; In the sale of goods, it is the place where the goods are delivered or can be delivered. In service contracts, it is the place where the service is provided or can be provided (5/1-b). Where 5(1)(b) (7/1(b)) does not apply, (a) applies. This provision is also included in paragraph 1(a)(b)(c) of Article 7 of the Recast Brussels I Regulation. In this way, although the old rule is preserved, it has brought an exception to two important contract types. These are the sales contract and the service contract. If these are not applied, the old rule will continue to apply⁶⁵.

When a dispute arises regarding the transfer of an intellectual property right that is not covered by the regulation regarding the sale of goods or a service contract, or the transfer of its use, namely a license agreement, the courts of the place of performance of the aforementioned contracts shall have international authority pursuant to the special jurisdiction rule in accordance with the Article (7/1(a)) of the Recast Brussels I Regulation. The plaintiff, who is a party to an intellectual right contract, can file his/her suit arising from the violation of the contract in the "*court of the defendant's residence*" in Article 4 of the Regulation, or in the court of the place of performance of the Regulation (7/1(a)). According to Article 5(3) (Recast 7(2)) of the Brussels I Regulation, the rule of jurisdiction in cases of torts that are important in cases regarding intellectual property rights, "*The courts of the place where the damage occurred or may occur... in matters related to tort, tort-like acts faced by a person residing in one member state in another member state shall be competent*"⁶⁶.

3. Exclusive Jurisdiction

The Brussels Regulation regulates the situation in which a member state has exclusive jurisdiction, regardless of the residence of the plaintiff or the defendant, with Article 22 (Recast art. 24), apart from the courts of general jurisdiction and special jurisdiction. One of these exclusive powers (Art. 24/4) concerns intellectual property rights. It authorizes the courts of the country where these rights are registered or stored. The first reason for this is the production of intellectual property in this country, and the second reason is the prevention of conflicting decisions. 24(4) includes patents, trademarks, designs and similar rights. Copyrights are not included. Exclusive authorization

⁶⁵ Ibid, p. 49-50.

⁶⁶ Erdem, Fikri Mülkiyet, p. 61.



relates only to the validity of the rights in registration (24/1) or 24(4). License agreements are not covered by 24(4) (subject to clause 42 or 7(2))⁶⁷.

C. Authorization Agreement

In article 23 of the Brussels I Regulation (Recast art. 25), it recognizes the jurisdiction agreement of a member state court. For this, one or more of the parties must reside in a member state and they must agree that any current or future disputes that may arise from a particular person will be heard in a member state's court or courts. Unless the parties agree otherwise, this jurisdiction is an exclusive jurisdiction and abolishes the jurisdiction of other courts. Contracting parties may choose one of the internationally competent courts related to the case, or they may choose a court that does not have an international jurisdiction in the case⁶⁸.

The contract may be made in writing or, if not in writing, in a practical or known manner in international trade. Electronic communication is also considered equal to written agreement. No other Member State court may hear the case unless the chosen court declares its jurisdiction. Filing an action in another member state court cancels the jurisdiction agreement. Although the authorization agreement forms part of the contract, it is considered independently of the contract. The validity of the contract and the validity of the authorization agreement or condition are separate from each other (Recast art. 25/5)⁶⁹.

Recast Brussels article 25/5 introduces three additional amendments to the Brussels I Regulation (art. 23). The scope of application of the authorization agreement has been expanded and it is considered valid even if none of the parties reside in any of the member states. The applicable law regarding the validity of the agreement has been determined. It is accepted that the law of the chosen court is authorized in the validity of the contract. Moreover, in the provision added to 25/5, it has been accepted that such agreements are separate from the other provisions of the contract. The most important change is an exception to the "lis pendens" rule. According to this provision, when the courts of one member state have been given an

⁶⁷ Ibid, p. 59-60; Süral, p. 70-71; "As in the case of *GAT v. Luk*, the Court has recognized that where the validity of an intellectual property right is at issue, the court must rule on its jurisdiction *ex officio* without waiting for a party's objection.", Süral, p. 71; "In cases regarding the infringement of an intellectual right, apart from the "court of the defendant's residence", which is regulated as a priority rule in the Brussels Treaty, the other court that finds the most application area and is applied is the "court of the place where the tortious act took place", which is regulated in Article 5/3", Erdem, Fikri Mülkiyet, p. 62.

⁶⁸ Çörtoğlu Koca, Franchise p. 773.

⁶⁹ Süral, p. 72.

exclusive jurisdiction by a contract, the courts of the other member state must stop the proceedings (art. 25)⁷⁰.

It is not possible to conclude an authorization agreement that eliminates the exclusive jurisdiction rule in cases regarding the registration or validity of intellectual property rights. In contracts related to intellectual rights, the parties to the contract shall make a contract of authority and determine the competent court or courts in disputes arising from or may arise from the contract regarding intellectual property Recast Brussels a. 25, it is possible even if the parties do not reside in the member states, provided that the court chosen is the court of the member state. In our opinion, it seems possible to conclude an authorization agreement between the parties in case of violation⁷¹ of intellectual property.

CONCLUSION

According to IPCPL article 40, the international jurisdiction of Turkish courts is determined by domestic law rules on jurisdiction in terms of location. With this regulation, IPCPL referred to the jurisdiction rules of domestic law while determining the international jurisdiction of Turkish courts.

In accordance with IPCPL article 40, the authorization rule in the Industrial Property Law will be applied for industrial rights. With the newly introduced regulation, the competent and authorized courts for all industrial property rights have been determined and unity, clarity, and convenience have been ensured in practice. It has been accepted that the Ankara courts are definitively the authorized courts in the lawsuits to be filed within the scope of the Law against the decisions made by the Turkish Patent and Trademark Office, and special powers are adopted for the lawsuits to be filed by third parties among themselves. If the plaintiff does not have a domicile in Turkey, the court of the place where the headquarters of the Turkish Patent and Trademark Office is located is authorized in the attorney's domicile.

When it comes to the issue of the jurisdiction of the courts in cases arising from contracts regarding intellectual property, there is no special jurisdiction provision regarding the jurisdiction of the courts in this regard. For this reason, the jurisdiction of the courts in cases arising from agreements regarding the transfer of an intellectual right as well as license agreements regarding the

⁷⁰ Ibid, p. 75.

⁷¹ “Although In the event that the infringement of intellectual property also constitutes a tort, though it seems legally possible according to Article 17 to create a jurisdiction convention that excludes the jurisdiction of the courts of the place where the tortious act took place (Article 5/3), which have been given a special authority, as well as the courts in the domicile of the defendant (Article 2 of the Brussels Treaty), in our opinion, it is not suitable for the nature of the tortious act”, Erdem, *Fikri Mülkiyet*, p. 70.



transfer of the use of an intellectual right will be determined according to the provisions of the CCP.

The authority rule regarding intellectual property rights is regulated in Article 66 of the Law of Intellectual Property Rights. This provision, in contrast to the court of residence of the defendant, which is the general provision in Article 6 of the Code of Civil Procedure, authorizes the court of residence of the owner of the work, who is the plaintiff, in the cases of refining the infringement and prohibiting the infringement, which are infringement cases. This special authorization provision in Article 66 of the Law of Intellectual Property Rights is an alternative authorization provision granted to the claimant. The parties may enter into a contract of jurisdiction and authorize Turkish or foreign courts, provided that they fulfil the conditions for the dispute between them.

In the European Union regulations, the Brussels I Regulation of 2012 applies to legal and commercial disputes regardless of the nature of the court. When a dispute arises regarding the transfer of an intellectual property right that is not covered by the regulation regarding the sale of goods or a service contract, or the transfer of its use, namely a license agreement; then the courts of the place of the execution of the aforementioned contracts shall have international authority pursuant to the special jurisdiction rule in accordance with the Article (7/1(a)) of the Recast Brussels I Regulation. If the plaintiff, who is a party to an intellectual right contract, wishes to file suit arising from the violation of the contract in question, they can do so in the court of the place of execution of the contract (7/1(a)) as per the Regulation (7/1(a)) in the "court of the defendant's residence" in the article.

In contracts related to intellectual rights, the parties to the contract shall make a contract of authority and determine the competent court or courts in disputes arising from or may arise from the contract regarding the intellectual property; Recast Brussels a. 25, it is possible even if the parties do not reside in the member states, provided that the court chosen is the court of the member state.

REFERENCES⁷²

Acun Mekengeç M, Ayni Haklardan Doğan Uyuşmazlıklarda Uygulanacak Hukuk ve Yetkili Mahkeme (İstanbul 2016).

Arslan R, Yılmaz E and Taşpınar Ayvaz S, Medeni Usul Hukuku (2. Edition, Ankara 2016).

⁷² * The works mentioned in the footnotes are mentioned with the surnames of the authors. References to more than one work of the same author and references to the works of authors with the same surname are shown in parenthesis in abbreviated form.

- Bolayir N, Medeni Usul Hukukunda Yetki Sözleşmeleri (İstanbul 2009).
- Çalışkan Y, Uluslararası Fikrî Mülkiyet Hukukunda Uyuşmazlık Çözüm Mekanizmaları: WIPO Tahkimi ve Dünya Ticaret Örgütü (İstanbul 2008).
- Çelikel A and Erdem BB, Milletlerarası Özel Hukuk (13. Edition, İstanbul 2014).
- Çelikel A and Erdem BB, Milletlerarası Özel Hukuk (14. Edition, İstanbul 2016).
- Çerçi O, Fikri Mülkiyet Haklarında Hakların Tükenme İlkesi (Unpublished MA Thesis, Süleyman Demirel University SBE, Isparta 2013).
- Çörtoğlu Koca S, “Franchise Sozlesmelerinde Esasa Uygulanacak Hukuk ve Mahkemelerin Milletlerarasi Yetkisi” (Prof. Dr. Tuğrul Arat’a Armagan, Ankara 2012, p. 749-780, (Franchise)).
- Çörtoğlu Koca S, Zayıf Tarafın Korunduğu Sözleşmelerde Mahkemelerin Milletlerarası Yetkisi (İş, Tüketici ve Sigorta Sözleşmeleri) (Ankara 2016, (Yetki)).
- Dessemontet F, “Fikri Mülkiyet ve Tahkim” FMR (7) (2007/1), Translator Cem Çağatay Orak, p. 85-98.
- Doğan İ, Öğretide ve Uygulamada Milletlerarası Aile Hukuku ve Milletlerarası Usul Hukuku (Ankara 2010, (Milletlerarası Aile)).
- Doğan V, Milletlerarası Özel Hukuk (4. Edition, Ankara 2016, (Milletlerarası Usul)).
- Ekşi N, Türk Mahkemelerinin Milletlerarası Yetkisi (İstanbul 1996).
- Erdem BB, “Fikri Haklara İlişkin Davalarda Türk Mahkemeleri’nin Milletlerarası Yetkisi”, Legal Fikri ve Sınai Haklar Dergisi (3/2005) p. 688–699, (Yetki).
- Erdem BB, Fikri Hukukta Türk Mahkemelerinin Milletlerarası Yetkisi (İstanbul 2003, (Fikri Haklar)).
- Görgün LŞ, Medeni Usul Hukuku (5. Edition, Ankara 2016).
- Kılıçoğlu A, Sınai Haklarla Karşılaştırmalı Fikri Haklar (Sınai Mülkiyet Kanunu’na Göre) (3. Edition, Ankara 2017).
- Kuru B, İstinaf Sistemine Göre Yazılmış Medeni Usul Hukuku (İstanbul 2016).
- Nomer E, Devletler Hususi Hukuku, (21. Edition İstanbul 2015).
- Özsoy SH, Türk Hukukunda Patent Lisansı Sözleşmesi (Ankara 2011).

Pekcanitez H, Atalay O and Özokes M, Medeni Usul Hukuku Ders Kitabı (4. Edition, Ankara 2016).

Süral C, “Avrupa Birliği Usul Hukuku” (Ed. Özkan I, Süral C and Tütüncübaşı U: Avrupa Birliği Devletler Özel Hukuku, Ankara 2016).

Şanlı C, Esen E and Figanmeşe-Ataman İ, Milletlerarası Özel Hukuk (5. Edition, İstanbul 2016).

Tekinalp Ü, Fikri Mülkiyet Hukuku (2. Edition, İstanbul 2002).

Ulukapı Ö, Medeni Usul Hukuku (3. Edition, Konya 2015).

Internet Resources

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133054>.

Regulation (Eu) No 1215/2012 of the European Parliament and of The Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:en:PDF>

<http://www.ankarabarosus.org.tr/siteler/ankarabarosus/frmmakale/2001-2/4.pdf>

<https://www.bl.uk/business-and-ip-centre/articles/what-are-intellectual-property-rights>

<https://www.sertels.av.tr/avukat/hukuk/fsek-yargitay-kararlari/fsek-haksiz-fiil-yetkili-mahkeme-yargitay-11-hd-k2014-8134.html>

<http://www.turkpatent.gov.tr/TurkPatent/commonContent/History>

<http://www.wipo.int>

Sari M, Fikri Mülkiyet Hukukuna İlişkin Davalarda Türk Mahkemelerinin Milletlerarası Yetkisi, <http://www.ahmetyum.av.tr/fikri-mulkiyet-hukukuna-iliskin-davalarda-turk-mahkemelerinin-milletlerarasi-yet>