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Ilbert H. (ed.), Tekelioglu Y. (ed.), Çagatay S. (ed.), Tozanli S. (ed.).
Indications Géographiques, dynamiques socio-économiques et patrimoine bio-culturel en
Turquie et dans les pays méditerranéens

Montpellier : CIHEAM

Options Méditerranéennes : Série A. Séminaires Méditerranéens; n. 104

2013

pages 23-28

Article available on line / Article disponible en ligne à l'adresse :

<http://om.ciheam.org/article.php?IDPDF=00006839>

To cite this article / Pour citer cet article

Yildiz B. **Protection of foreign geographical indications under Turkish law.** In : Ilbert H. (ed.), Tekelioglu Y. (ed.), Çagatay S. (ed.), Tozanli S. (ed.). *Indications Géographiques, dynamiques socio-économiques et patrimoine bio-culturel en Turquie et dans les pays méditerranéens.* Montpellier : CIHEAM, 2013. p. 23-28 (Options Méditerranéennes : Série A. Séminaires Méditerranéens; n. 104)



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Protection of foreign geographical indications under Turkish law

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Résumé Selon la loi turque, les indications géographiques sont protégées par un système *sui generis* juridique, à savoir le décret n° 555. Le décret est dans une large mesure compatible avec le système juridique de l'Union.

Le droit turc accorde une protection pour ces deux indications géographiques originaires de Turquie et pour les indications géographiques étrangères. Toutefois, la condition préalable de la protection est l'enregistrement au greffe Indication Géographique turc, tenu par l'Office turc des brevets. Par conséquent, sans enregistrement au greffe de la Turquie, les indications géographiques étrangères n'ont pas de protection *per se* en Turquie.

Mots clés. Indication géographique étrangère, législation, Turquie

Abstract. Under Turkish law, geographical indications are protected by a *sui generis* legal system, namely Decree n° 555. The Decree is to a large extent compatible with the European Union legal system.

Turkish law grants protection for both those geographical indications originating from Turkey and for the foreign geographical indications. However the preliminary condition of protection is registration at the Turkish Geographical Indication Registry, kept by the Turkish Patent Office. Therefore without registration at the Turkish Registry, foreign geographical indications do not have *per se* protection in Turkey.

Key words. Foreign geographical indication, legislation, Turkey

I – Turkish Legislation on Geographical Indications

In Turkish law, geographical indication is recognized as a type of intellectual property right and protected by a *sui generis* legal system, namely Decree no. 555 (the Decree)¹. Turkish law has considerable parallels with international and European Union legal systems regarding the protection of indications of geographical origin.

1. Turkey is one of the contracting parties of the Paris Convention² and Madrid Agreement³. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)⁴ is another international agreement to which Turkey is a contracting party⁵. Since the commitments arising from these international agreements were taken into consideration during its preparation; Decree no. 555 is substantially compatible with the abovementioned international rules.
2. Turkish geographical indication law has also been drawn up in parallel with European Union geographical indication law. Due to the fact that Turkey is not yet a member of the European Union; Council regulations are not directly applicable in Turkish law. However since Turkey undertook⁶ to align its domestic intellectual property legislation with the “*Acquis Communautaire*”, “*Decree no. 555*” was enacted in accordance with Council Regulation (EC)⁷ on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs⁸.

II –The Importance of Registration of Foreign Geographical Indications at the Turkish Patent Office

1. Foreign Geographical Indications do not have “Per Se” Protection in Turkey

The registration of a geographical indication at a national geographical indication registry has territorial effect and therefore does not grant protection to this geographical indication in other states. For instance, the registration of a French geographical indication at the French registry does not provide protection against infringements in Turkey, although both Turkey and France are parties to the leading international agreements. In such a case, in order to be protected in Turkey, the French geographical indication must also have been registered at the Turkish Geographical Indication Registry, kept by the Turkish Patent Office (TPO).

As previously mentioned, Turkey is party to the Paris, Madrid and TRIPs Agreements, regarding the protection of geographical indications and other indications of geographical origin. However these international agreements do not feature an international geographical indication registry and therefore cannot grant a worldwide protection to the geographical indications of the parties⁹. The basic commitment of a member state arising from these agreements is to grant the right of registration for other member states' geographical indications at its national geographical indication registry. In this context, Turkey gives the producers of other member states the right of registration at the Turkish Geographical Indication Registry. Once registered at this Registry, foreign geographical indications are protected under Turkish law, against any infringements in Turkey.

The registration of a geographical indication at the European Union's Geographical Indication Registry does not provide protection in Turkey, as well. Under European Union law, the geographical indications on certain agricultural products and foodstuffs are subject to Council Regulation (EC) No. 510/2006¹⁰. According to this Regulation, the Commission should maintain an updated regional registry of (protected designations of origin and) protected geographical indications. The geographical indications which are registered at this registry obtain European Union-wide protection. In other words, without requiring registration at the national registries of all member states separately, by only one registration, the geographical indication is protected in the territory of the Union. However since Turkey is not a member, such a registration does not have a *per se* effect regarding protection within Turkish territory.

2. Preliminary Condition of Protection in Turkey is Registration at the Turkish Patent Office

Turkish law protects geographical indications on the condition that they have been registered at the Turkish Geographical Indication Registry. Not only Turkish geographical indications, but also foreign geographical indications may be registered at this registry and in this way, gain the legal protection against infringements in Turkey. The Turkish Registry of (Designations of Origin and) Geographical Indications is in Ankara and maintained by TPO¹¹.

In contrast, unregistered geographical indications -regardless of whether they originate from Turkey or abroad- are not eligible for protected geographical indication status¹². Even the names which are held up as famous examples of the concept of geographical indication throughout the world, such as Cognac or Champagne, cannot be protected as geographical indications in Turkey, unless they are registered at the Turkish Registry. Unregistered indications may only be protected by unfair competition rules which provide weaker scope of protection.

III – Registrable Names

Under Turkish law, the names indicating origin of a product which possess a specific quality, reputation or other characteristics attributable to that place, area or region are considered as registrable. Registrable geographic names are classified as geographical indication and designation of origin.

Geographical indication (“*coğrafi işaret*”/“*mahreç işareti*”) is defined as the name of a region or a specific place; originating in that region, specific place or area, and which possesses a specific quality, reputation or other characteristics attributable to that geographical origin, and the production and/or processing and/or preparation of which take place in the defined geographical area. Under Turkish law, designation of origin (“*menşe adı*”) means the name of a region or a specific place; originating in that region, specific place or area, the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area.

A name cannot be registered at Turkish Registry if it has already become generic. In the same way, names that conflict with the name of a plant variety or an animal breed and as a result are likely to mislead the consumer as to the true origin of the product are not registrable. A geographical indication will also not be registered where it is contrary to public policy and morality¹³.

Turkish law lays down the rules on the protection of geographical indications for natural, agricultural, mining, industrial products and handicrafts. Compared with Council Regulation (EC) No. 510/2006, which allows the registration of geographical indications only for limited types of agricultural products and foodstuffs; it seems that Turkish law has a much more wide-ranging scope regarding the product types. According to this comparison, the product types of geographical indications that can be protected under Regulation no. 510/2006, such as cheese or olive oil, can also be registered at the Turkish Geographical Indication Registry¹⁴.

In contrast to Regulation no. 510/2006, the content of the product types has not been restricted by lists in Turkish Law. For example, the agricultural product term has a broad scope and contains inter alia, wine-sector products and spirits. Thus the geographical indications on wines and spirits can also be registered at the Turkish Geographical Indication Registry.

Turkish law also allows the registration of geographical indications on many other product types, such as mining and handicraft products. Therefore many foreign geographical indications which cannot be protected under Regulation no. 510/2006 may be registered at Turkish Registry. In this context, geographical indications on carpets, handmade baby dolls, ceramics and many handicrafts may be protected under Turkish law.

A foreign geographical indication may be registered at the Turkish Geographical Indication Registry on the condition that it is already protected in its country of origin. For instance, a geographical indication, originating from France, may be registered at the Turkish Registry if it has been registered at national registry of France and has gained protection under French law.

IV – Application for Registration

Any natural or legal person who is the producer of the product is entitled to apply for registration¹⁵. Consumer associations and public institutions related to the product or the geographical region are also entitled¹⁶.

Turkish law grants right of application for both Turkish geographical indication originating and foreign geographical indications¹⁷ as previously mentioned. The nationals of foreign states who are entitled to apply under the Paris Convention or the Agreement Establishing the World Trade

Organization may apply to the Turkish Registry¹⁸. Moreover, natural or legal persons who are domiciled or engaged in industrial or commercial activities within Turkey may benefit from the right of application. In accordance with the principle of reciprocity, the natural or legal persons who are nationals of the states that confer legal or actual protection to Turkish nationals may apply for registration as well¹⁹.

The application must be submitted to TPO²⁰. TPO publishes the application²¹ and registers the name as an application at the Geographical Indication Registry.

Within six months of the publication of the application, objections may be lodged to the application. Any natural or legal person who has a legitimate interest may lodge objection regardless of whether he/she is established or resident in Turkey or not. For instance, in the case of an application for registration of a French geographical indication by an unauthorised applicant, any French natural or legal person who has a legitimate interest may submit an objection to TPO.

If no objection is lodged or the objection is denied by TPO, the geographical indication becomes effective as of the date of publication²² and is registered at the Geographical Indication Registry as a protected geographical indication²³.

V – Scope of Protection

By registration at TPO, the geographical indication acquires legal protection under Turkish law²⁴. Such protection gives the authorized persons the exclusive right to use the geographical indication on the condition that products comply with the conditions specified²⁵. The use of a protected geographical indication is required to have at least one of the activities of production, processing or preparation of the product performed within the boundaries of the place, area or region defined and the product should conform to the quality and other specifications provided in the Registry. Protected designation of origin can be used commercially by any producers who are active in the registered geographical area on products specified in the Registry as long as they conform to the quality and other specifications.

Registration also gives the right to prevent unauthorized use through legal remedies and penal sanctions. The right of prevention is given to the persons who have the right to use the registered geographical indication and also the persons who have the right to apply for the geographical indication²⁶.

Registered geographical indications are protected against:

- (a) any direct or indirect commercial use of a registered geographical indication in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;
- (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or similar;
- (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned,
- (d) any other practice liable to mislead the consumer as to the true origin of the product.

Where a geographical indication has been registered, it cannot turn into a generic name. Registration of a geographical name as a geographical indication also prevents the registration of this name as a trademark.

VI – Cancellation of Registered Geographical Indications

Where the compliance with the conditions specified for a product covered by a protected geographical indication is not ensured, any natural or legal person having a legitimate interest may request the cancellation of the registration. For instance, if a French geographical indication is registered by an unauthorized person, by proving that the applicant is not the authorized holder of the right, a French producer may sue for the cancellation of the registration.

Notes

¹ Decree No. 555 on the Protection of Geographical Indications (*Coğrafi İşaretlerin Korunması Hakkında Kanun Hükmünde Kararname*), Turkish Republic Official Journal, 27.06.1995, No. 22326.

² Paris Convention for the Protection of Industrial Property of March 20, 1883.

³ Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 14 April 1891.

⁴ Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1/C: TRIPS of 15 April 1994.

⁵ However, Turkey is not party to the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration of 31 October 1958, which establishes an international registry of appellations (designations) of origin.

⁶ See Annex 8 of the Decision No. 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (96/142/EC), OJ L 35, 13.02.1996.

⁷ Council Regulation (EEC) No. 2081/92 of 14 July 1992 (OJ L 208, 24.02.1992) was taken into consideration, since it was in force at the moment of preparation of the Decree.

⁸ Thereby, if a geographical name can be qualified as a geographical indication according to the European Union law, this name -in principle- can be qualified as a geographical indication according to the Decree, as well. Similarly, the protection scope accorded to the geographical indications in the Decree is as broad as it is in the European Union law.

⁹ The Paris Convention only prevents the use of false indications of origin, whereas the Madrid Agreement prevents the use of both false and deceptive indications of origin. Both agreements impose seizure of such goods on importation. TRIPs provides minimum compulsory standards concerning geographical indications.

¹⁰ Council Regulation (EC) No. 510/2006 of 20 March 2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, OJ L 93/12, 31.03.2006.

¹¹ Decree Art. 6. See www.turkpatent.gov.tr.

¹² Decree Art. 4.

¹³ Decree Art. 5.

¹⁴ Wine-sector products, except wine vinegars, or spirits are not considered in the scope of Regulation (EC) no. 510/2006 (Art. 1/II).

- ¹⁵ The applicants have to pay the required charges for the application, publication and registration of the geographical indication and other charges (Decree Art. 13).
- ¹⁶ In contrast, consumer associations and public institutions are not entitled for application to European Union Registry (Regulation No. 510/2006 Art. 5/I).
- ¹⁷ Actually Turkish law favours the application of foreign geographical indications and exempts the applicants of such indications from many procedures. In the case of an application made for a foreign geographical indication, some procedures may be deemed as already satisfied (in case the registration requirements in the country of origin conform to the requirements stated in the Decree and inspection is available in country of origin and the country of origin is affording reciprocal protection to the geographical indication registration applications from Turkey). See Decree Art. 8/II.
- ¹⁸ However in case the applicant is domiciled outside Turkey, the application should be submitted to TPO by a trademark agent authorised by the applicant. This trademark agent must have been registered at the Registry of Turkish Trademark Agents (Decree Art. 14/III).
- ¹⁹ Decree Art. 2.
- ²⁰ Decree Art. 6.
- ²¹ All applications (applications both for geographical indications and designations of origin) are published in the Turkish Republic Official Journal and in one local newspaper. In case of applications for a geographical indication, the application is also published in one of the two highest circulating national newspapers (Decree Art. 9/III).
- ²² Decree Art. 12/I.
- ²³ The first foreign geographical indication registered at TPO is “Scotch Whisky”.
- ²⁴ The protection is not restricted with a certain period of time.
- ²⁵ The production, marketing and usage of geographical indications are subject to official controls (Decree Art. 20).
- ²⁶ See Decree Art. 15/I: “producers, consumer associations and public institutions related to the product or the geographical region”.