

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from Albania

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedures and remedies

1. Specify the courts which have jurisdiction over IPR infringement cases.

According to the Civil Procedures Code, all first instance courts have jurisdiction over intellectual property right infringements cases.

2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?

The right holders, and licensees. They may act on their own behalf, or may be assisted and/or represented by an attorney. There is no requirement for mandatory personal appearances before the court by the right holder, but under certain evidential procedures this may be required (interrogatories). (Article 97 of the Civil Procedure Code)

3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence that lies within its control?

As a rule the judicial authorities have the authority, subject at all times to the right of defence, to order any of the parties to submit documentation or any other type of evidence at their disposal that could be useful in clarifying the rights of the disputing parties, whether or not such evidence is held by the parties or by third persons.

In Article 223 of the Civil Procedure Code it is stated: "On the request of the interested party, the court may order the other party to present in trial a document or another thing when this is estimated as necessary by the court. In this case the court gives the necessary instructions on the time, place and manner of their presentation. The party which has requested the acquisition of the document is obliged to indicate in detail all the circumstances which make credible as to where the document is, its characteristics as well as the facts which shall be proved by this document".

¹ Document IP/C/5.

4. What means exist to identify and protect confidential information brought forward as evidence?

Whatever the type of action or proceedings, the judicial authorities are under an obligation to prevent the wrongful publication of confidential information brought forward in court or obtained by the court in the course of the dispute.

5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use;

- **injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

The judicial authorities are empowered by law to order, in final judgement, any of the acts mentioned above. It is in the discretion of the judge to determine the fine. (Article 104 of the Civil Procedure Code)

Articles 42, 70 and 89 of the Law on Industrial Property authorise the court to enjoin trademark infringements. Article 101 of the same Law foresees fines for infringements and Article 89.3 states that the Court can stop infringing actions, proceed with an effective seizure of the goods and, when necessary, can destroy illegally used marks, tools that could be used to manufacture the goods and the goods themselves in absence of possibility to remove any illegal mark from such goods.

6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods of services found to be infringing and of their channels of distribution?

In general, the judicial authorities have the power to order the defendant to supply such information, provided they do so within the context of a judicial proceeding, and they may do so, as a rule, at any moment during the proceeding subject at all times to the right of defence of the parties.

7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

In civil cases, the expenses are, as a general rule, covered by the plaintiff whose claim was rejected (Article 106 of the Civil Procedure Code). Article 72 of this Code says that the judicial authorities can be excluded from presiding over a case, if he/she displays preferential treatment. Misappropriation or a misuse may lead to liability to cover the expenses caused thereby.

In the Implementing Provisions on the Customs Code it is stated that the plaintiff is obliged to forward payment of all eventual charges related to the warehousing of the goods and is responsible for any damage caused to the defendant/importer or a third party.

8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

Articles 102 and 105 of the Civil Procedure Code deals with the costs of the proceedings. Costs of proceedings are the taxes on various acts, various costs on acts, costs for witnesses, experts

and expertise, and other necessary costs. Articles 145, 146, 147, 148, 149, 150, 151 and 152 of the Civil Procedure Code govern the length of a civil proceeding. The actual duration of the process varies from case to case, so do the costs.

(b) *Administrative procedures and remedies*

9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.

The administrative authorities do not have any role to play in relation to infringements of intellectual property rights

Provisional Measures

(a) *Judicial measures*

10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.

The legal basis to authorise provisional measures is found in Article 202 of the Civil Procedure Code. Provisional measures in the context of Article 206 of this Code include: seizure of goods and the credits of the debtor. Article 206 gives discretionary powers to the judicial authorities to select other appropriate provisional measures.

Articles 42, 70 and 89 of the Law on Industrial Property state that the owner of a patent and the applicant for a patent shall have the right to institute proceedings in the Court against any person who has performed acts or is performing acts which make it likely that an infringement will occur ("imminent infringement").

11. In what circumstances may such measures be ordered *inaudita altera parte*?

Article 205 of the Civil Procedure Code regulates the circumstances when a provisional measure may be ordered *inaudita altera parte*, and gives to the judge the discretion of ordering such a measure when particular or imperative circumstances do occur.

In Article 101.4 of the Law on Industrial Property it is stated that the judicial authorities shall have the authority to order prompt and effective provisional measures:

- to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;
- to preserve relevant evidence in regard to the alleged infringement.

12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.

Articles 202-212 of the Civil Procedure Code deal with provisional measures.

In words of Article 202 of the Civil Procedure Code, the judicial authorities on request of the plaintiff can order provisional measures, when there are reasons to doubt that the execution of the

verdict for the plaintiff's rights would be impossible or difficult. Provisional measures are allowed in cases where:

- The plaintiff's action is based on written evidence;
- The plaintiff guarantees, in the size and kind determined by the court, of the damages which affect the defendant by the provisional measures.

Article 203 says that the provisional measures are allowed on all kind of lawsuits and in every stage of the proceedings till the moment when the verdict enters in force. The Appeal Court can allow provisional measures, when the case is before it.

Article 207 provides that on request of one of the parties, the court can substitute one provisional measure for another or can lift the provisional measure already ordered. Article 209 provides for the complaints on ordered provisional measures.

13. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

Articles 203 (described above), 204 and 211 of the Civil Procedure Code contain provisions governing in general part of the length of proceedings. There is no available data as to the length and costs of the proceedings.

(b) *Administrative procedures*

14. Reply to the above questions in relation to any administrative provisional measures.

The administrative authorities do not have any role to play in relation to infringements of Intellectual Property Rights.

Special Requirements Related to Border Measures

15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?

The customs authorities upon request of the holder of a trademark or a license of production or other rights specified in sublegal acts for the implementation of Article 82 of the Customs Code, may prohibit their release in free circulation, the exportation, the re-exportation and their placing under the suspensive procedure of the goods that are recognised to be counterfeit or pirated goods, according to the procedure provided for in the sublegal acts for the implementation of this Code.

As often as the Customs authorities are informed about an infringement of intellectual property rights, they seize the goods and take operational measures.

The right holder, may lodge an application in writing at the General Directorate of Customs, for action by the customs authorities, where the counterfeit or pirated goods are placed in one of the following situations:

- in transit with definitive destination the release on free circulation, export, or re-export;
- placed under free circulation by means of posterior control structures.
- under one of the customs economic regimes (controllable at any time by the customs authorities).

16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?

The application that the right holder may lodge shall contain:

- a sufficiently detailed description of the goods to enable the customs authorities to recognise them;
- the length of the period during which the customs officers are requested to take action;
- any other useful information to identify the exporter or the importer.

The application shall be accompanied by proof that the applicant is holder of the right for the said goods, as well as other helpful documents for the identification of the goods.

After examining the application, the General Directorate of Customs issues a ruling that shall be notified to the applicant, within 30 days, according to Article 18 of the Code. The applicant may lodge an appeal against this decision, in conformity with the procedures provided for in Article 19 (4) and Article 20 (5) of the Code. When the application is accepted, the General Directorate establishes a period within which the customs authorities may intervene. This time limit may be extended upon express request of the holder of the right. The ruling for the approval of the request of the holder of the right shall be notified promptly to all customs offices.

The General Directorate of Customs may establish that, once the request is approved, the applicant shall forward a down payment, subject to repayment of any excess amount, to cover any administrative charges occurred by the customs administration for carrying out the service.

The holder of the right shall be obliged to immediately inform the General Directorate of Customs should the right cease to be validly registered or should it expire.

The customs authorities shall immediately inform the applicant about the actions taken. In accordance with the legislation in force regarding the protection of professional, commercial and industrial secrecy, the customs authorities notify the holder of the right, of the name and address of the declarant, and, if known, the name of the consignee of the goods, with a view to allow the applicant to take the legal action provided by the legislation in force in the field. The customs authorities shall afford the applicant the opportunity to inspect the goods whose release has been suspended or which have been seized.

If within 20 days from the notification of the seizure of goods or from the decision to suspend the release of the goods, the customs authorities do not receive a copy of the appeal lodged with the competent authorities by the holder of the right, the customs authorities revoke the decision to suspend the release of the goods or the seizure of the goods and release the goods.

The applicant is responsible for any eventual damage occurred to the importer or a third party. Besides this, he is obliged to forward payment of all eventual charges related to the warehousing of the goods.

17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?

Where a person requests that the customs authorities take a decision related to the application of customs rules, that person shall supply all the information and documents required by customs authorities in order to take a decision.

Such decision shall be taken and notified to the applicant within 30 days from the date when the request is presented.

Decisions taken and notified to the applicant by the customs authorities in writing which either reject requests or are detrimental to the persons to whom they are addressed, shall set out the grounds on which they are based. They shall refer to the right of appeal provided for in Articles 19 and 20 of this Code.

Customs authorities shall immediately enforce decisions taken and notified to the applicant. In cases where the disputed decision requires payment of import duties or export duties, suspension of implementation of that decision shall be subject to the existence or lodging of a guarantee.

18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?

Competent authorities are not required to act upon their own initiative.

19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.

All the orders issued by the customs authorities will become effective after the decision taken by the Court. When the decision of the Court does not contain any particular measure, it is the Customs Authorities that, based on the legislation, decide the proper measure to be taken according to the sort of goods, i.e. confiscation, destruction etc.

Criminal Procedures

20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.

The courts which have jurisdiction over criminal acts of infringement are the Criminal Courts of First Instance, whose decision may be appealed before the Courts of Appeal. These bodies are located in each of the judicial districts of the country.

21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?

Criminal procedures and penalties are available in respect of Articles 147, 148, 149 of the Criminal Code and Article 50 of Copyright Law, which deal with infringement of copyright, plagiarism, piracy.

22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?

The Prosecutor's Office is the responsible body for initiating criminal proceedings on their own initiatives or in response to complaints.

23. Do private persons have standing to initiate criminal proceedings and, if so, who?

The private persons having a standing to initiate criminal proceedings are the affected intellectual property right holders.

24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:

- **imprisonment;**
- **monetary fines;**
- **seizure, forfeiture and destruction of infringing goods and materials and implements for their production;**
- **other.**

Imprisonment (from one up to three years for misappropriation of property through fraudulence or plagiarism in Articles 147 and 148 of Criminal Code and in Article 50 of Copyright Law).

Monetary fines for misdemeanours in Articles 147, 148, 149 of the Criminal Code, Article 50 of Copyright Law and Article 101 of the Law on Industrial Property.

Seizure of goods, destruction of illegally used marks, of tools used to manufacture the goods and the goods themselves, in absence of possibility to remove any illegal mark from such goods.

25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.

The criminal procedures for intellectual property right infringements are regulated by the Criminal Procedures Code. The length and costs of proceedings vary case by case. There is no data available concerning the actual duration of proceedings or their costs.
