

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from Lithuania

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 Procedure Code of the Republic of Lithuania (CPC) (Article 136) and the Law on Copyright and Related Rights (Article 65), civil cases related to intellectual property rights are handled by County Courts; unfair competition acts by District Courts. The cases could be reviewed by the Court of Appeal and the Supreme Court under certain provisions.

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?

According to provisions of the Civil Procedure Code (Article 42), everyone whose rights are infringed or can be infringed has the right to assert intellectual property rights. They could plead a case by themselves or by lawyer or patent attorney or representative of the collective administration organisations may represent them before the court. There are no requirements for the right holder for mandatory representation before the court.

Due to the specific character of disputes arising from intellectual property, the parties in these cases are usually represented by patent attorneys and general practice lawyers (attorneys). However, under Article 56 of the new draft of the Civil Procedure Code, only attorneys or lawyers will be granted the right of representation (with only some exceptions, e.g. parents can represent their children, a person having legal education will be able to represent only his/her closest relatives).

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?

Each party may request the opposing party or a third party, not a party in the procedure, to submit evidences that are in its possession. According to the Civil Procedure Code (Articles 75, 76, 82 and 83) the court has the right to demand material, written evidence, which lies in the control of the party. The court is entitled to impose a fine if a party does not exercise this demand within a reasonable period.

¹ Document IP/C/5.

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

According to the Civil Procedure Code (Articles 10, 10²), in order to protect State, business or commercial secret or other confidential information, the court can pass a decision to try a case in a closed meeting or establish by a decision that case material or part of it, is secret. According to the Civil Procedure Code (Article 57), the facts that are State or official secrets shall not be evidence in civil cases, until they become public according to the laws.

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.**

Injunctions

According to the Civil Procedure Code (Articles 155 and 156), the court or the judge upon the request of the party or at his own discretion may order a party to desist from infringement. For the purpose of securing an action the court may, *inter alia*, order a party to desist from performing a certain activity, seize the movable property of the defendant, etc. For specific provisions, see "any other remedies".

Damages, including recovery of profits, and expenses, including attorney's fees

Applying Articles 6.245 and 6.249 of the Civil Code, the infringer shall compensate the adequate damages caused to the right holder, including the recovery of profits. According to the Civil Procedure Code (Articles 112 and 113), the court has the power to order an infringer to pay the right holder's expenses, including attorney's fees. For specific provisions regarding damages, see "any other remedies".

Destruction or other disposal of infringing goods and materials/implements for their production

Appropriate measures are set by the Code of Administrative Infringements (Article 269), the Code of Criminal Procedure (Article 93) and by specific provisions of appropriate laws (see "any other remedies").

Any other remedies

- Article 41 of the Patent Law provides the following:

The owner of a patent or the applicant shall have the right to institute court proceedings against a person who has infringed or is infringing the patent or published patent application, for which provisional protection was granted, and to require the termination of infringing acts, as well as compensation for the inflicted damage. Any of them shall also have the right to institute court proceedings against any person who is performing acts which make it likely that such infringement will occur. Such proceedings may not be instituted later than three years from the establishment of the fact of infringement.

- Article 25 of the Law on Industrial Designs provides the following:

The court may adopt a decision, according to a claim by the industrial design owner, to interrupt actions that violate or may violate the rights enumerated in Article 5 of this law. The court may adopt, in accordance with an industrial design owner's claim, a decision concerning compensation for the damages incurred by an industrial design owner, if another person performed the actions enumerated in Article 5, without his consent.

- The Law on Trademarks provides the following:

Article 50. Enforcement of Rights

1. With the aim of protecting his infringed rights, the proprietor of the mark shall be entitled to apply to court in accordance with the procedure prescribed by law, which may make a decision relating to:
 - 1) recognition of rights;
 - 2) injunction to terminate all actions which infringe or may infringe the rights specified in Article 38 of this Law;
 - 3) reimbursement of losses or damage (including moral damage), caused to the proprietor of the mark by actions which infringed the rights specified in Article 38, including lost income and other expenses;
 - 4) payment of compensation;
 - 5) re-establishment of the situation that existed before the infringement;
 - 6) seizure and, where necessary, destruction of unlawfully used marks, devices or equipment for the production thereof, also of goods when it is impossible to remove the marks unlawfully affixed to them as well as of other devices and equipment used for the infringement of the rights conferred by virtue of this Law.
2. The proprietor of the mark shall be entitled to bring an action for infringement. If he fails to exercise the right, the action may be brought by the licensee, unless the license contract provides otherwise.
3. The holder of an exclusive license may bring an action for infringement, even if the contract provides otherwise, if the proprietor of the mark, after formal notice, does not himself bring an action for infringement within an appropriate period.

Article 51. Reimbursement of Losses and Damage. Compensation.

1. The procedure for the reimbursement of losses and damage shall be regulated by the Civil Code and the provisions of this Law.

2. When assessing the amount of losses, the court shall take into account the substance of violation, the amount of the inflicted damage and the lost income, as well as other expenses incurred by the proprietor of the mark. The unlawfully marked goods may be handed over by a court decision to the proprietor of the mark, if requested.
 3. Instead of the reimbursement of losses, the proprietor may claim compensation. The amount of the compensation shall be determined according to the price of legal sale of a relevant good or service by increasing it up to 200% or up to 300% if the infringer has committed the infringement deliberately.
- Law on Copyright and Related Rights provides such remedies for intellectual property right infringements:

Article 65

With the aim of protecting their rights, owners of copyright and related rights shall be entitled to appeal to court in accordance with the procedure prescribed by law, which may make a decision relative to:

- 1) recognition of rights;
- 2) injunction to terminate unlawful acts;
- 3) redress of the infringed moral rights (injunction to make appropriate amendments, to announce the infringement in the press, or any other way);
- 4) exaction of unpaid remuneration;
- 5) reimbursement of losses or damage (material and/or moral), including the lost income and other expenses;
- 6) payment of compensation;
- 7) seizure or destruction of infringing copies of works, computer programmes, fixations of audiovisual works (films), phonograms and the devices or equipment used for their manufacture, as well as other devices and equipment used in connection with the infringement of rights under this Law;
- 8) other legislative measures for the protection of violated rights.

When assessing the amount of losses, the court shall take into account the substance of violation, the amount of the inflicted damage and the lost income, as well as other expenses incurred by the owner of copyright or related rights. Infringing copies of works or objects of related rights may be handed over to the respective owners of copyright or related rights, if requested.

Instead of the reimbursement of losses, the owner of copyright or related rights may claim compensation, the amount of which shall be determined according to the price of legal sale of an appropriate work or object of related rights, by increasing it up to 200%, or up to 300% if the infringer has committed the infringement deliberately.

Article 68

A person who has infringed moral rights of the author or performer must compensate for moral damage inflicted, the amount of which expressed in money shall be determined by the court.

The amount of compensation for moral damage in each case may not be less than LTL 5,000 (US\$ 1,250) and not more than LTL 25,000 (US\$ 6,250). In assessing the amount of moral damage expressed in money, the court must take into account the degree of the culpability of the infringer, his financial position, the consequences of moral damage, as well as other circumstances that are of significance to the case.

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?

The Civil Procedure Code foresees the following: any person, ordered to be a witness in trial, is obligated to arrive and testify (Article 70). Failure to arrive to testify upon request results in a fine of up to LTL 1,000 (US\$ 250). Providing false testimony incurs criminal liability.

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?

If a defendant turns to be wrongfully enjoined, State budget covers defendant's expenses, which have occurred due to trial procedures.

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

The provisions contained in Article 146 of the Civil Procedure Code provide for the main requirements related to a claim form and contents (a claim has to be made in writing, in addition to the details of the parties it has to indicate a claim amount in case the claim has to be valued, circumstances on which the plaintiff grounds his/her claim, and evidence proving the circumstances presented by the plaintiff, residence of witnesses and place of other evidence; requirements of the plaintiff). A claim has to be supported by a document evidencing payment of fee for filing thereof. For disputes arising from intellectual property rights a fee is fixed and totals LTL 100 (US\$ 25).

The Civil Procedure Code regulates terms of preparation for civil trials and their hearing terms. Preparation for trial has to be finalised no later than within seven days after the application filing date with the exceptions when this term may be extended up to twenty days in complicated cases. Overall hearing term of civil cases is fixed at no later than one month after the date on which preparation for trial is finalised and lasts from 6 to 36 months.

(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.

Article 214¹⁰ of the Code of Administrative Infringements provides that violation of copyright and/or related rights results in a fine of LTL 1,000 to LTL 3,000 (US\$ 250 to US\$ 750) and confiscation of pirate production as well as means of such production. Article 35 of the Code

provides that an administrative fine is to be imposed within 6 months from the date of commitment of infringement, and in case of continuous infringement, within 6 months from the date of disclosure of infringement. If initiation of a criminal case is not an option, or if a criminal case is closed, yet there is clear evidence that administrative infringement was committed, an administrative fine is to be imposed within two (2) months from the date of decision not to initiate a criminal case or from the date when decision was made to close a criminal case. If damage equivalent, inflicted by certain infringement, does not exceed LTL 500 (US\$ 125), the administrative commission and County Court's judge are authorized to impose a fine and order to compensate damage inflicted. A District Court is authorized to impose such sanctions irrespective of the value of damage equivalent, inflicted by certain infringements. In other cases question of compensation of damage that resulted from certain infringements is solved pursuant to the Civil Procedure Code.

Provisional Measures

(a) *Judicial measures*

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

Article 156 of the Civil Procedure Code provides such provisional measures:

- 1) property or cash equivalent of the defendant can be taken into custody;
- 2) defendant can be prohibited to carry out certain activities;
- 3) other persons may be prevented from passing property or fulfilling other duties and obligations to the defendant;
- 4) sale of property can be suspended, if a claim is submitted to cancel arrest of that property.

The court may use several provisional measures simultaneously. The total sum of provisional measures, however, may not exceed the value of suit.

Besides, Article 69 of the Law on Copyright and Related Rights provides such provisional measures:

In urgent cases, with the presence of sufficient evidence about the infringement of copyright or related rights, the court may, upon receiving a claim application of an owner of copyright or related rights, apply provisional measures necessary for the execution of the court's decision:

- 1) to order persons to terminate the unlawful exploitation of works or objects of related rights;
- 2) to prohibit the release into circulation of infringing copies of works, fixations of audiovisual works (films) and phonograms;
- 3) seize infringing copies of works, fixations of audiovisual works or phonograms, as well as technical devices and equipment used for reproduction thereof, and appropriate documents;
- 4) to apply other similar measures.

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

Article 155 of the Civil Procedure Code provides that "in cases provided by the Civil Code and other laws in accordance with the motivated written request by the concerned party, temporal measures can be enforced both without submitting a claim and in any stage of the civil procedure in a procedure set by this section. If the court enforces provisional measures by the date of submission of the claim to the court then the court has to set the term during which the claim has to be submitted. This term may not exceed fourteen days. Prior to the date of submission of the claim a person applying for enforcement of provisional measures has to indicate to the court due to what reasons the claim has not been submitted immediately and provide evidence proving certain threat to the proprietary interests of the applicant."

Furthermore, according to Article 69 of the Law on Copyright and Related Rights, where essential irreparable damage may be caused to the owner of copyright or related rights, or where the evidence may be destroyed, the court or the judge may, at his own discretion, apply provisional measures without informing the other party and without calling it to the court hearing.

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.

See the answer to question 11.

Furthermore, Article 159 of Civil Procedure Code provides the following:

Provisional measures may be initiated by the court with or without a claim of concerned party. If provisional measures were applied without a claim of concerned party, a court sets a time period during which such a claim must be submitted. Maximum length of such a period is 14 days. If a claim is not submitted within a specified period, provisional measures are cancelled. In order to protect legitimate interests of defendant, a court may order plaintiff to ensure availability of compensation of losses which may occur due to provisional measures applied to defendant. If court rejects a claim of plaintiff, a defendant has a right to ask for compensation of losses which occurred due to provisional measures that were applied.

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

With respect to the length of proceedings, see the answer to question 12. Article 160 of the Civil Procedure Code also provides that decision whether provisional means should be applied must be made the next day after reception of a request to apply provisional measures. A submission of a request is free of charge.

(b) *Administrative measures*

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

Provisional measures are available only in the civil proceedings.

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?**

According to the Law on the Protection of Intellectual Property in the Field of Import and Export of Goods, it is possible to apply for the suspension by the customs authorities not only when infringement of trademarks and copyrights is suspected, but also in the cases when infringement of the rights of the owner of the industrial design or patent is suspected. The provisions of the above-mentioned law are applicable not only in the cases of release for free circulation, but also in the cases of entry into the customs territory of the Republic of Lithuania (including transit), outright exportation and re-exportation, other export and import procedures and entry into a free zone and free warehouse.

Actions by the customs authorities prescribed by this Law shall not be taken if the goods, which are intended for entry into the customs territory of the Republic of Lithuania or to be placed under the above-mentioned customs-approved treatment or use, without a specific consent of the holder of intellectual property rights relating to certain goods (a licence for using an object of intellectual property rights in the Republic of Lithuania):

- bear a trade mark licensed for use abroad or a trademark licensed for use in the Republic of Lithuania, however, not according to the terms and conditions laid down in the trademark licence contract;
- in relation to which remedies afforded to the owner of the patent for invention, owner of industrial design, holder of copyright or holder of related rights or their successor in title are applicable; which are produced under licence to manufacture abroad or in respect of which the said remedies open to the holder of intellectual property rights are applicable; which are produced under licence authorising the production thereof in the Republic of Lithuania, however, not according to the terms and conditions laid down in the licence contract concluded with the holder of the relevant rights.

Actions by the customs authorities prescribed by this Law shall not be taken either with respect to goods (articles) of non-commercial nature nor those not intended for production purposes, contained in the travellers' personal luggage, for which relief from import duty is granted or permission to make an export declaration in a simplified manner (orally or by act, i.e. using the dual channel system) is given according to the procedure established by the Government.

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?

In order to apply border measures for the protection of intellectual property rights the holder of the rights shall lodge a corresponding application in writing with the Customs Department under the Ministry of Finance (the central administration of Lithuanian Customs).

The form of application for action to be taken by the customs authorities is established by the Customs Department. This application shall contain / be accompanied by:

- a detailed description of the goods (including the HS code, elements of packaging and costs, if known to the applicant), samples, photographs, drawings of the goods and/or any other pertinent information relating to the features of goods which would help the customs authorities to distinguish the goods infringing an intellectual property right from the lawfully produced goods;
- proof that the applicant is the holder of intellectual property rights for the goods in question or a representative of the holder;
- information about the applicant (name of the legal person or name and surname of the natural person, the official address, phone and fax numbers) and about other persons of the Republic of Lithuania entitled to import or export the goods in question (if such persons are known to the applicant).

The application shall be lodged with the following proof that the applicant is the holder of intellectual rights for the goods in question or his representative attached thereto:

- certificate of registration of a trademark or an extract from the Register of Trade Marks of the Republic of Lithuania if the person is the right holder of a registered trademark;
- an effective court decision to recognise the mark as well-known in the Republic of Lithuania if the person is the right holder of a well-known mark;
- a patent for invention or an extract from the Register of Patents of the Republic of Lithuania if the person is the owner of a patent;
- certificate of industrial design or an extract from the Register of Industrial Design of the Republic of Lithuania if the person is the owner of a registered industrial design;
- any available proof of the authors' rights or related rights if the person is the holder of copyright or related rights;
- a licence contract and appropriate evidence if the person possesses a licence for the use of a trademark, well-known mark, patented invention or industrial design, a work or an object of related rights;

- the proof referred to above and the document of authorisation and/or any other documents evidencing the person's powers granted to him, if the person is a representative of the holder of intellectual rights.

The following shall be submitted with the application as well (if the information is available for the applicant):

- all information relevant to the lodged application and pertinent to the examination thereof, in order to enable the Customs Department to take a decision in full knowledge of the facts related to the application as well as evidence of infringement of the applicant's rights available to him, submitted in support of the application;
- information on the place of storage of the goods or the presumed place of carrying of the goods across the state border of the Republic of Lithuania and/or the intended destination, particulars identifying the consignment or packages, the scheduled time (date) of arrival or dispatch of the goods, the means of transport which are or could be used for carrying the goods, also the identity of the producer, importer, exporter or holder of the goods.

The applicant must also specify in the application the length of the period during which action by the customs authorities should be taken with respect to the goods suspected of infringing his rights and to pledge to provide an appropriate security after his application is granted and after the customs detains the goods suspected of infringing his rights, and to give the customs assistance needed in identifying the goods.

Where a decision is taken by the Customs Department to grant the application, the maximum one-year time limit of action by the customs authorities with respect to the carried goods suspected of infringing the applicant's rights shall be indicated in the decision. The time limit may be extended upon the applicant's request, however, for not longer than one (1) year. Moreover, the set or extended time limit of action taken by the customs authorities may not be longer than the period of validity of the rights of the holder of intellectual property rights or his representative.

Where the customs office detains the goods suspected as being infringing intellectual property rights it shall promptly inform the applicant, the Customs Department, the declarant or, in certain cases, the person who brought the goods into the customs territory of the Republic of Lithuania and the Tax Police Department, which is one of the responsible institutions for the protection of intellectual property rights in Lithuania.

If, within a period of ten (10) working days after the applicant has been notified of the detention, the document evidencing the application to court by the holder of intellectual property rights or his representative has not been submitted with the customs authorities and if no request for extension of the time limit has been received from the holder of intellectual property rights or his representative, the formalities of placement of goods under a customs procedure or assigning the goods any other customs-approved treatment or use for which the detained goods have been presented to customs, shall be carried out.

If the holder of intellectual property rights or his representative has been unable for valid reasons to apply to the court within the above period of detention of goods the customs authorities, having received a written request from the holder of intellectual property rights or his representative, may extend the time limit by a maximum of ten (10) working days.

If the customs authorities is submitted, within the time period of detention of goods, a document evidencing the institution of legal proceedings by the holder of intellectual property rights

or his representative, the period of detention of the goods shall be extended pending the issuing of the court order on the imposition of provisional measures or the taking of a substantive decision.

After detention of the goods the customs office, that has taken this action, may require the applicant, after his application has been granted by the Customs Department, to provide, within a three-day period after his notification of the action having been taken, a security:

- to cover any liability on his part vis-à-vis the customs authorities if claims are lodged against it by persons involved in the action by the customs authorities, where the procedure initiated by detention of the goods is discontinued owing to an act or omission by the applicant or where it appears evident that action by the customs authorities has been taken with respect to goods which are subsequently found not to be goods infringing an intellectual property right;
- to ensure payment of the costs incurred in delivering the goods detained by the customs authorities to the place under customs control and in keeping the goods in question under customs control.

The procedure of assessment of the amount of above security is to be established by the Customs Department, which is authorised to establish this procedure by the Government.

The provision of security may be considered not mandatory if:

- the applicant undertakes in writing to pay the amount requested by the customs authorities after he has received its first written request for the covering of his liability or for the payment of the costs, and
- the value of the goods with respect to which action is taken by the customs authorities does not exceed the amount fixed by the Customs Department, which is authorised to fix this amount by the Government.

On suspicion that the detained goods are products or components thereof infringing the rights of the owner of a patent for invention or owner of registered industrial design or the successor in title of any of the above persons, the formalities of placement of goods under a customs procedure or assigning the goods any other customs-approved treatment or use for which the detained goods have been presented to customs may be carried out at the request of the owner, consignee or importer of the goods not only in cases when the period of detention of the goods is expired, but also when the following conditions are met:

- the customs authorities has been submitted, within the time period of detention of goods, a document evidencing that the holder of intellectual property rights or his representative has applied to the court with a statement of claim;
- the customs authorities has not been submitted, within the time period of detention of goods, the court order on the imposition of provisional measures;
- all the requirements laid down by legislation for the placement under a customs procedure or assigning any other customs-approved treatment or use have been fulfilled;
- the owner, consignee or importer of the goods has provided a security to cover any liability for possible claims lodged by the above-mentioned holder of intellectual property rights or his representative.

The amount of the above security, which shall be assessed in the manner prescribed by the Customs Department, which is authorised by the Government, must be sufficient to cover the claims of the holder of intellectual property rights, which might be lodged against the customs authorities if not satisfied by other remedies open under law to the holder in protection of intellectual property rights.

Damage inflicted by unlawful actions of customs officers and employees as well as damage caused by the applicant's acts or omission shall be compensated in accordance with the procedure established by the Civil Code and other laws.

Having detained the goods the customs authorities shall notify the applicant, at his request, of the name and address of the declarant and, if known, of those of the consignee and shall also furnish information on the detained goods and their quantity. The customs authorities shall provide the above information in compliance with the laws and other legal acts regulating the protection of personal data, State, official and commercial secrets.

Having regard to the conditions of customs control of the goods, the customs office which detained the goods shall afford the applicant and the persons having the right to dispose of the goods the opportunity to inspect the goods and take samples thereof.

If the goods detained by the customs authorities are recognised by the court decision to be infringing an intellectual property right the customs authorities shall provide the applicant, upon his written request, the information which has not been given earlier on the goods in question and their quantity, the names and addresses of the consignor, of the importer or exporter and of the manufacturer of the goods as well as information on similar goods earlier imported by the same importer (received by the consignee) or exported by the exporter (dispatched by the consignor).

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?

Upon receipt of an application meeting the requirements set forth in the Law on the Protection of Intellectual Property in the Field of Import and Export of Goods, the Customs Department shall deal with it within ten (10) working days. Where additional information is necessary for reaching a substantive decision which may be obtained only through expert examination, investigation or by addressing other authorities or through similar actions, the Director of the Customs Department may, by way of exception, extend the time limit set for dealing with the application, but for not longer than ten (10) working days. The applicant shall be given a written notification of the decision taken or of the extension of the time limit for dealing with the application.

A fee shall be charged for customs services related to dealing with the application. The amount of the fee has been set by the Government in proportion to the costs of the services provided. The amounts of this fee are the following:

- for services related to dealing with application submitted after the detention of goods by the customs authorities acting *ex officio*: 100 LTL (25 US\$);
- for services related to dealing with application submitted before the detention of goods by the customs authorities: 500 LTL (125 US\$).

The maximum time limit of the validity of a decision to grant the application is one (1) year. This time limit may be extended upon the applicant's request, however, for not longer than one (1) year. Moreover, the set or extended time limit of action taken by the customs authorities may not be longer than the period of validity of the rights of the holder of intellectual property rights or his representative. A request for the extension of the time limit shall be dealt with according to the procedure applied for dealing with the initial application.

The length of court proceedings is approximately half a year.

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?

Where, in the course of controls carried out, it appears evident to the customs authorities that goods are infringing intellectual property rights, whereas the application for action to be taken by the customs authorities has not yet been lodged or the Customs Department has not yet made a decision to grant the application, the holder of intellectual property rights or his representative, if known, shall be promptly informed of the possible infringement of his rights to enable the person to lodge, within three (3) working days from his notification, an application with the Customs Department.

In the cases of detention of goods by the customs authorities acting *ex officio*, goods shall be detained for a period of up to three (3) working days from the date of notification of the holder of intellectual property rights or his representative. Within the said three-day period the person may lodge an application with the Customs Department. In this case the time period established for the detention of goods shall run from the date of receipt by the Customs Department of the application by the holder of intellectual property rights or his representative. The declarant and the Tax Police Department shall also be notified of detention of the goods by the customs authorities acting *ex officio*.

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

The court, having recognised the goods detained by the customs authorities as infringing an intellectual property right and taking into consideration the requests of the holder of intellectual property rights or his representative (if filed), shall adopt a decision:

- to dispose of the goods outside commercial channels (recycle or utilise the goods and apply other similar measures) in such a way as to preclude injury to the holder of intellectual property rights, without compensation of any sort and at no cost to the State;
- to take, in respect of such goods, any other measures (at the request of the holder of intellectual property rights or his representative, transfer the goods to them or any persons indicated in their request and apply similar measures), which effectively deprive the persons concerned with unlawful delivery of detained goods of the economic benefits of the transaction. If the goods are transferred not to the holder of intellectual property rights or his representative, but to other persons indicated in their request, the court may obligate the persons to remove the trade marks, which have been affixed to the goods without authorisation;
- to destroy the goods at the defendant's expense.

Criminal Procedures

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

According to Article 37 of the Code of Criminal Procedure criminal acts of infringement of intellectual property rights are dealt with by County Courts. The cases could be reviewed by the Court of Appeal and Supreme Court under certain provisions.

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

The Criminal Code provides for the criminal liability for such infringements of intellectual property rights:

- appropriation of authorship and moral rights of the inventors (Article 142);
- illegal reproduction of a literary, scientific or artistic work, audiovisual work or a phonogram, importing, exporting, distribution, transportation or keeping for commercial purposes of infringing copies (Article 142¹);
- destruction or alteration of copyright or related rights management information (Article 142²);
- unauthorised removal of technical protection measures of copyright or related rights (Article 142³);
- unauthorised use of trade marks and service marks (Article 308).

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?

Under the provisions of the Code of Criminal Procedure a criminal action may be initiated by a report of such crime by anyone to the responsible authorities (inquiry offices, investigators, prosecutors or judges (Criminal Police, Tax Police, Prosecutor Office)), or on the own initiative of these authorities.

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

Private persons have standing to initiate criminal proceeding by reporting criminal deeds to the Police or Prosecutors Office.

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.**

In cases of counterfeiting, the following penalties are available: imprisonment; monetary fines; seizure, forfeiture and destruction of infringing goods and materials and implements for their production; confiscation of property as an additional penalty is available.

Article 308 of the Criminal Code provides:

The manufacture, keeping, transportation or distribution for commercial purposes of the goods marked with a trade mark or service mark identical or confusingly similar to the trademark and service mark protected by the law, as well as reproduction, use, keeping, transportation or distribution for commercial purposes of the trademark and service mark itself (copies) which is protected by law, without the authorisation of the holder of the trademark and service mark,

- shall be punishable by a term of imprisonment for up to two (2) years or a fine.

The said act committed on a large scale or by a group of conspiring persons, or which caused considerable damage to the plaintiff or which endangered or could have endangered human life or health;

- shall be punishable by a term of imprisonment from two (2) to five (5) years or a fine.

The act provided for in paragraph 2 of Article 308 of this Code shall be considered committed on a large scale where the number of illegally manufactured, kept, transported or distributed items of goods exceeds 1000 or where the number of illegally reproduced, used, kept, carried or distributed trademarks and service marks (copies) exceeds 10 000.

In cases of the appropriation of authorship the Criminal Code provides for

- imprisonment for a term of up to three (3) years or a fine.

In cases of illegal reproduction of a literary, scientific or artistic work, audiovisual work or a phonogram, importing, exporting, distribution, transportation or keeping for commercial purposes of infringing copies the Criminal Code provides for

- imprisonment for up to two (2) years or a fine.

In cases of destruction or alteration of copyright or related rights management information the Criminal Code provides for

- imprisonment for up to one (1) year or a fine.

In cases of unauthorised removal of technical protection measures of copyright or related rights as well as the manufacture, import, export, keeping, transportation or distribution for commercial purposes of appropriate devices (decoding devices, decoding cards, etc.), enabling to remove such technical protection measures the Criminal Code provides for

- imprisonment for up to two (2) years or a fine.

According to Article 32 of the Criminal Code court has the authority to make a decision what fine to impose (it shall be from 200 to 50000 minimum living standards (MLS), 1 MLS = LTL 125 (US\$ 31.25)).

According to Article 35 of the Criminal Code confiscation of property is an additional penalty mandatory imposed by the court for the commission of the illegal reproduction of a literary, scientific or artistic work, audiovisual work or a phonogram, importing, exporting, distributing, carrying or possessing infringing copies (Article 142¹ of the Criminal Code).

The Code of Criminal Procedure establishes seizure of material evidences (for example, it could be illegal intellectual property right goods) until the case will be solved. The court shall have the authority to order that these evidences have to be confiscated or destroyed when the case is solved (Article 93 of the Code of Criminal Procedure).

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 Procedure Code provides the following terms:

Article 139

In criminal cases, where preliminary investigation is indispensable, it must be finished within one month from the date of initiation of criminal case. A prosecutor has a right to prolong a term of preliminary investigation maximum for one month. In exceptional cases a period of investigation may be prolonged according to provisions of Article 150 of Criminal Procedure Code.

Article 150

Preliminary investigation in criminal cases must be finished within a maximum of two months from the date of initiation of criminal case. If the case involves organized crime, investigation must be finished within a maximum of six months from the date of initiation of criminal case.

The period of preliminary investigation is the elapse of time from initiation of a criminal case till the submission of the case and bill of indictment to prosecutor or till the case is closed.

Article 262

The question of taking a case to court must be solved within fifteen days from the date when the court physically receives a case. Proceeding of a case must start within fifteen days from the date when a decision is made to take a case to a court. If a case is complex, those terms can be prolonged to two months and one month accordingly.

Submission of a request to initiate a criminal case is free of charge.
