

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses by Tunisia

Revision

Civil and administrative procedures and remedies

(a) Civil judicial procedures and remedies

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

Under Article 21 of the Code of Civil and Commercial Procedure (CCCP), the jurisdiction of the courts depends on the nature and amount of the claim.

Moreover, under Article 22 CCCP, where the value of the subject-matter of the proceedings cannot be determined, the court of first instance alone may hear the case and rule at first instance. Similarly, Article 40 CCCP calls for the court of first instance to hear all cases at first instance, unless expressly provided otherwise by law.

As regards territorial jurisdiction, "whether he be a natural or a legal person, proceedings against the defendant must be brought before the court of his effective or elected domicile" (Article 30 CCCP) and, according to Article 31 CCCP, "if the defendant does not have a known domicile in Tunisia, proceedings shall be brought before the court of domicile of the plaintiff".

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?

Which persons have standing to assert IPRs?

Under Article 19 CCCP, an action may be brought by anyone having the standing and capacity to assert his rights before the courts. At the same time, the plaintiff must have an interest in bringing the action. The same Article also states that "the court must, of its own motion, declare the action inadmissible if the file shows the plaintiff to be incompetent or to lack standing".

In accordance with these provisions, any natural or legal person holding intellectual property rights may assert his rights before the courts.

¹ Document IP/C/5.

Literary and artistic property (copyright and related rights):

Pursuant to Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, the body responsible for the overall management of copyright and related rights is empowered to act on behalf of right holders as their representative ...

How may they be represented?

According to Article 68 CCCP, "[r]epresentation by an attorney shall be compulsory before the court of first instance, except in matters of personal law".

"The attorney's chambers shall be regarded as his client's elected domicile at the level of jurisdiction for which he is responsible".

Moreover, in the particular case of appeals against decisions of the legal representative of the body responsible for industrial property, the industrial property legislation and, in particular, Article 44 of Law No. 2000-84 on Patents, Article 32 of Law No. 2001-20 on the Protection of Layout-Designs of Integrated Circuits, Article 22 of Law No. 2001-21 on the Protection of Industrial Designs, and Article 42 of Law No. 2001-36 of 17 April 2001 on the Protection of Trademarks, provide for the plaintiff to be represented before the court by an agent.

Are there requirements for mandatory personal appearances before the court by the right holder?

There are no requirements for mandatory personal appearances by the right holder.

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 which lies within its control?

- Authority is conferred on the judicial authorities by various statutory provisions, in particular those of Chapter II of the CCCP entitled "Orders on *ex parte* application" (Articles 213 to 223).
- Under Article 214 CCCP in particular judges may, in accordance with ordinary rules of jurisdiction, grant orders on an *ex parte* application to prescribe any measures designed to protect rights and interests that must not be left unprotected ...
- Article 225 CCCP provides that "at any stage of the proceedings, the court may, of its own motion, order a third party to be joined in the proceedings where it considers that the presence of the latter is indispensable to the assessment of the case".
- Moreover, under Article 101 CCCP, "if it is necessary to proceed to an expert examination and the parties are unable to agree on the choice of an expert, the expert shall be appointed by the judge".

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

There are numerous statutory provisions that deal with this situation, in particular the General Regulations for State Employees, the General Regulations for Magistrates, and other general regulations ... which bind those concerned to professional secrecy. Breach of this duty is punishable by disciplinary action, as well as criminal penalties and payment of damages:

- Article 253 (Criminal Code) provides that "[a]ny person who, without authorization, reveals the content of a letter, a telegram or any other document belonging to another person shall be sentenced to imprisonment ..."
- Article 254 (Criminal Code) provides that "[a]ny person who is the depositary, by status or profession, of secrets confided to him and who, except in cases where the law compels or authorizes denunciation, has revealed these secrets shall be sentenced to imprisonment and payment of a fine".
- Article 168 of the Labour Code "members of company consultative committees and staff representatives are bound by the obligation of professional secrecy with respect to all information of a confidential nature coming into their possession while serving in that capacity, and to all matters relating to manufacturing processes.

Any breach of this obligation renders them liable to the penalties laid down in Articles 61*ter*, 138, 253 and 254 of the Criminal Code.

- Article 138 of the Criminal Code specifies, in addition to a fine, a two-year term of imprisonment for a factory manager, clerk or worker who discloses or communicates a manufacturing secret. Attempted disclosure or communication is also punishable.
- Article 61*ter* of the Criminal Code states that "[a]ny Tunisian or any foreigner who, without the prior authorization of the competent authority, delivers or communicates to a person acting on behalf of a foreign power or enterprise an invention of interest for national defence or information, research or manufacturing processes relating to an invention of interest for defence shall be guilty of a breach of external State security".

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:

The judicial authorities may take various types of decisions, in the form of interim orders, payment orders, and final or other judgments.

- Interim orders:

Under Article 201 CCCP, "interim orders may be made on urgent applications without prejudice to the main proceedings".

Interim orders on urgent applications may be made by the president of the court of first instance or his deputy, or by the district judge, where so authorized by law (Article 202 CCCP).

Interim orders on urgent applications are enforceable twenty-four hours after being served, except where the court has granted an extension.

The order will be enforced without security, unless the judge has ordered that security be provided (Article 207 CCCP).

- Payment orders

Under the terms of Article 59 CCCP, any claim for the payment of a debt, where the latter, whatever its nature, is for a specific amount and has a contractual origin, may be submitted under the payment order procedure.

- Judgments

The judgment will not be final if the decision can be appealed. However, it may still be made provisionally enforceable, with or without security, depending on the circumstances of the case (Articles 126 and 286 CCCP).

- Final judgments

The final judgment brings the case to a close by deciding the question forming the subject-matter of the proceedings.

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

Under Articles 82 and 83 of the Code of Obligations and Contracts (COC), anyone who knowingly or deliberately causes pecuniary or non-pecuniary damage to others must make good the damage, where it is established that his action was the direct cause.

Moreover, it is in this spirit that Article 82 of the Law on Patents, Article 34 of the Law on the Protection of Layout-Designs of Integrated Circuits, Article 24 of the Law on the Protection of Industrial Designs, and Article 44 of the Law on the Protection of Trademarks provide for civil liability of the infringing party.

Article 51 (new) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property (copyright and related rights), as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides that "[a]ny infringement of copyright or related rights entails payment of damages to the right holders for material and moral injury, without prejudice to criminal penalties (fine and imprisonment)".

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

According to Article 55 of the Law on the Protection of Trademarks, Article 36 of the Law on the Protection of Layout-Designs of Integrated Circuits, and Article 26 of the Law on the Protection of Industrial Designs, if the court finds against the defendant it may order the destruction or disposal outside the channels of commerce of the products or goods found to be infringing and the forfeiture of the implements used to make them.

Literary and artistic property (copyright and related rights): Article 55 (new) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides that "[t]he competent courts may order the confiscation or destruction of copies, materials or means predominantly used for committing the infringement".

Any other remedies

Under Article 34 of the Law on the Protection of Layout-Designs of Integrated Circuits, Article 24 of the Law on the Protection of Industrial Designs, and Article 54 of the Law on the Protection of Trademarks, in every case the court may order that the entire judgment or excerpts thereof be published, at the expense of the unsuccessful party, in the newspapers it specifies and displayed in the places it designates, in particular at the main gates of factories or workshops of that party or in said party's shop windows.

Literary and artistic property (copyright and related rights): Article 55 (new) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides that "[t]he courts may order the cessation of the infringing activity on the premises in which the infringement has been ascertained, on a temporary basis for a period not exceeding six months or permanently in the case of repeat infringement.

The competent courts may order that the judgment, in its entirety or in the form of excerpts, be published for a specified duration in the newspapers they designate, and that a copy of the judgment be displayed in the places they determine, at the expense of the unsuccessful party.

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 or services found to be infringing and of their channels of distribution?

Within the context of criminal proceedings for infringement, the judicial authority and its aides are authorized to request from the person charged any information or clarification concerning his accessories, the beneficiaries of the infringing act and the whereabouts or status of the subject-matter of the infringement. The person charged does of course have the right to remain silent and may decline to answer any questions. The court will, however, take such silence into account when considering the penalty to be imposed, the logical consequence of which is to dissuade the accused from adopting a recalcitrant attitude.

The results of the criminal investigation may be used to support a civil action, whether brought separately or concurrently with the criminal action.

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?

Article 87 of the Law on Patents, Article 38 of the Law on the Protection of Layout-Designs of Integrated Circuits, Article 28 of the Law on the Protection of Industrial Designs, and Article 49 of the Law on the Protection of Trademarks provide that where an action for infringement is brought before the court, the judge may, provisionally and on pain of a fine, prohibit the continuation of the allegedly infringing acts or make the prohibition of continuation subject to the provision of security designed to ensure the possible indemnification of the defendant if the action for infringement subsequently proves to be unfounded.

Moreover, the application for prohibition or the provision of security will be accepted only if the action on the merits is deemed to be serious and is initiated within one month of the date on which the holder of an industrial property right became aware of the facts on which it is based.

Literary and artistic property (copyright and related rights): Article 54 (new) and Article 54 (*bis*) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, stipulate as follows:

- The authorities of the aforementioned officials may on no account be held liable if the officials are unable to determine the goods constituting an infringement of copyright and related rights.
- The president of the competent court may, under an order on *ex parte* application, order the posting of security by the petitioner before proceeding to attach the counterfeit goods.

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

In general, the length and cost of proceedings are not fixed. Both depend on the nature and complexity of the case, the fees of the attorneys and experts, etc.

However, there are several provisions that place time-limits on court proceedings.

Thus, according to Article 207 CCCP, interim orders on urgent applications are enforceable twenty-four hours after being served, except where the court has granted an extension.

This Article also provides that in cases of extreme urgency the court may order immediate enforcement before registration. It may also order enforcement without prior service.

(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.

Tunisian legislation does not provide for such remedies.

Provisional measures

(a) *Judicial measures*

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

Several types of provisional measures may be taken depending on the category of the right infringed.

Thus, Law No. 2000-84 of 24 August 2000 on Patents provides for a detailed description, with or without attachment, of the allegedly infringing products or processes by a bailiff assisted by an expert under an order made by the presiding judge on an *ex parte* application. In the event of attachment, the order may require the applicant to furnish security which must be posted before the goods are attached.

Similar measures can be found in:

- Law No. 2001-20 of 6 February 2001 on the Protection of Layout-Designs of Integrated Circuits (Article 38);
- Law No. 2001-21 of 6 February 2001 on the Protection of Industrial Designs (Article 28); and
- Law No. 2001-36 of 17 April 2001 on the Protection of Trademarks (Article 50).

Protective measures may also be ordered in the event of the infringement of a right attaching to indications of source or appellations of origin, in particular under Article 30 of Law No. 99-57 of 28 June 1999 according to which the officers responsible for monitoring appellations of origin and indications of source may seize products put on sale under guaranteed appellations of origin or indications of source and suspected of not coming from the geographical area designated by the appellation or indication. They may also seize products coming from the geographical area designated by the appellation or indication but not meeting the specified technical production requirements. Seizures must be made in accordance with the procedures laid down in the consumer protection legislation in force (Law No. 1992-117 of 7 December 1992 on Consumer Protection).

Literary and artistic property (copyright and related rights): Article 54 (*bis*) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides as follows:

"The right holder or his representative may, as a protective measure and under an order on *ex parte* application made by the president of the competent court, have a bailiff, assisted where necessary by an expert appointed by the president of the competent court, undertake a detailed description, with or without attachment, of the goods constituting an infringement of copyright or related rights".

Where appropriate, attachment shall be confined to the seizure of any samples necessary to prove the infringement.

Public performances already under way or announced may be stopped or prohibited under an order on *ex parte* application granted by the president of the competent court.

The presiding judge may also order the suspension and confiscation of unlawfully produced or reproduced copies and the seizure of revenue ...

Under an order on *ex parte* application, the president of the competent court may require the petitioner to provide security before proceeding with the seizure".

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

These measures may be ordered in any case of extreme urgency or urgency, or when there is danger in delay, or in the event of difficulties relating to the enforcement of a ruling or a writ of execution. They are taken by the president of the competent court or his deputy sitting in chambers (Articles 201 to 223 CCCP).

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.

The measure is initiated under the interim procedure by *ex parte* application to the president of the competent court who may prohibit, provisionally and on pain of a fine, the continuation of the allegedly infringing acts or make such continuation subject to the provision of security designed to ensure the indemnification of the owner of the mark or an exclusive right (Article 49 of the Law on the Protection of Trademarks).

A similar provision is also contained in the legislation concerning patents, layout designs of integrated circuits, industrial designs, and trademarks, trade names and service marks.

Literary and artistic property (copyright and related rights): Article 54 (*bis*) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides as follows:

- "Under an order on *ex parte* application, the president of the competent court may require the petitioner to provide security before proceeding with the seizure".
- The respondent may request that the order be annulled.
- The description, seizure, cessation, or prohibition shall be revoked automatically if the petitioner fails to initiate legal proceedings (on the merits) within fifteen days ..."

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

The length of the proceedings is generally shorter and the cost usually less than in the case of proceedings on the merits.

As with proceedings on the merits, the costs of provisional proceedings are borne by the losing party.

(b) *Administrative measures*

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

- Tunisian legislation does not provide for any administrative provisional measures.

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?**

Apart from counterfeit trademark and pirated copyright goods, applications for suspension by the customs authorities of the release into free circulation of goods involving infringements of intellectual property rights have also been extended to:

- Goods that infringe a patent;
- goods incorporating a counterfeit industrial design;
- goods incorporating a copied layout-design of an integrated circuit.

Literary and artistic property (copyright and related rights): Article 50 (*bis*) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides as follows:

"The customs authorities may suspend customs clearance procedures for goods in respect of which there is manifest evidence of infringement of copyright and related rights.

They may request the author or holders of related rights or their representative to supply any information that might assist them in discharging their duties. They shall inform those concerned of the suspension, who shall have seven days in which to file a written application for suspension ..."

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?**

Competent authorities

Patent owners, creators of layout-designs of integrated circuits, proprietors of protected industrial designs, owners of registered trademarks or their successors in title who have good grounds for suspecting that goods that infringe their rights are being imported may lodge an application in writing with the customs authorities for the suspension of the customs clearance of those goods at importation.

The author or holders of related rights or their representative may apply in writing to the customs authorities for the suspension of import or export clearance for goods in respect of which they have good grounds for suspecting that the goods constitute an infringement of copyright or related rights.

Requirements for an application

Under the terms of the provisions in force, the application must contain:

- The full name/business name and address of the applicant;
- evidence that the applicant is the holder of a right in the goods at issue;
- a description of the goods detailed enough to enable the customs authorities to recognize the goods.

In addition, the applicant should provide any other useful information at his disposal that might enable the customs authorities to take a decision in full knowledge of the facts, although the provision of this information does not constitute a condition of admissibility of the application. In particular, such information may relate to:

- The location of the goods or their intended destination;
- the identification of the consignment or packages;
- the estimated date of arrival or warehousing of the goods;
- the means of transport used;
- the identity of the importer, exporter or holder of the goods.

The application must also include an undertaking on the part of the applicant to assume liability in respect of the importer if it is formally proved that the goods withheld by the customs authorities do not constitute an infringement of the protected industrial property right.

The applicant must inform the customs authorities if his right is no longer validly registered or has expired.

Literary and artistic property (copyright and related rights): Article 50(*ter*) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides that:

"The form in which to apply for the suspension of customs clearance procedures and the data to be submitted are established by joint order of the ministers responsible for finance and culture (Order in the process of adoption)".

Various requirements related to the duration of suspension

Where the customs authorities find, if necessary after consulting the applicant, that the goods correspond to those described in the application, they will proceed to withhold those goods.

The customs authorities will immediately inform the applicant and the importer of the action taken and give them the opportunity to inspect the goods withheld and take samples for the purpose of carrying out any tests or analyses needed to ascertain infringement, in accordance with the provisions of the Customs Code and without prejudice to the principle of confidentiality of information.

Provided that all customs formalities have been satisfied, the withholding measure will be revoked automatically, unless within ten working days of being notified of the detention of the goods

the applicant can show to the satisfaction of the customs authorities that he has initiated civil or criminal proceedings before the competent court and that protective measures have been ordered by the president of the court and security sufficient to cover his liability in respect of the persons concerned has been posted.

The amount of this security is fixed by the court.

Where appropriate, the above-mentioned initial period may be extended by a maximum of ten working days.

Moreover, the owner of the goods, the importer and the consignee may obtain the release of the goods by posting security the amount of which will be fixed by the court and must be sufficient to protect the interests of the applicant, provided that all the customs formalities are satisfied.

If the withholding measure is discharged, the customs authorities must promptly inform the owner, the importer and the consignee, together with the applicant.

Literary and artistic property (copyright and related rights): Article 50 (*quater*) and Article 50 (*quinquies*) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provide as follows:

"The customs authorities shall withhold the goods when these are found to constitute an infringement of copyright or related rights.

They shall immediately notify the author or holders of related rights or their representative, as well as the owner, importer, exporter or consignee, of the withholding of the goods, giving them the opportunity to inspect the goods withheld, in accordance with the provisions of the Customs Code and without prejudice to the principle of business secrecy.

The withholding measure shall be revoked automatically, unless within ten days of being notified of the withholding of the goods the author or holders of related rights or their representative can show to the satisfaction of the customs authorities that they have:

- Secured appropriate protective measures from the competent court;
- initiated civil or criminal proceedings;
- posted security sufficient to cover their liability in respect of the persons concerned, if it is subsequently found that the goods at issue do not infringe copyright or related rights.

The amount of the security is fixed by the competent court.

Where appropriate, the customs authorities may extend the above period by a maximum of ten days".

Security or equivalent assurance and indemnification of the importer and of the owner of the goods

The detention measure will be discharged *ipso jure*, unless within ten working days of being notified of the detention of the goods the applicant can show to the satisfaction of the customs authorities that he has initiated civil or criminal proceedings and that protective measures have been

ordered by the competent court and security sufficient to cover his liability in respect of the persons concerned has been posted.

The amount of the security is fixed by the court.

The owner of the goods, the importer or the consignee may obtain the release of the goods by providing security the amount of which is fixed by the court and must be sufficient to protect the interests of the applicant, provided that all the customs formalities are satisfied.

Moreover, where the application has been accepted or where detention measures have been taken, the customs authorities may require the applicant to post security sufficient to ensure payment of the costs incurred as a result of keeping the goods under customs control.

Literary and artistic property (copyright and related rights): Article 50 (*sexies*) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides as follows:

"The owner, importer, exporter or consignee may obtain the release of the goods at issue by the competent court by providing security sufficient to protect the interests of the author or holders of related rights, provided that:

- The customs authorities have been informed within ten days that the matter has been referred to the competent court for a ruling on the merits;
- all customs formalities have been satisfied".

Right of inspection and information

Upon receipt of an application drawn up in accordance with the provisions governing the lodging of applications, the customs authorities will examine the application and immediately inform the applicant of their decision in writing.

The reasons for the decision must be duly given.

Where the customs authorities find, if necessary after consulting the applicant, that the goods correspond to those described in the application, they will proceed to detain those goods.

The customs authorities will immediately inform the applicant and the importer of the action taken and give them the opportunity to inspect the goods detained and take samples for the purpose of carrying out any tests or analyses needed to establish the existence of an infringement, in accordance with the provisions of the Customs Code and without prejudice to the principle of confidentiality of information.

Upon production of an order made by the president of the court on an *ex parte* application and in order to facilitate the initiation of legal proceedings, the customs authorities will inform the applicant of the full names and addresses of the exporter, the importer and the consignee of the goods, if they are known to them, as well as of the quantity of the goods forming the subject of the application.

Literary and artistic property (copyright and related rights): Article 50 (*quater*) and Article 50 (*quinquies*) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides as follows:

"The customs authorities shall promptly notify the author or holders of related rights or their representative of the suspension of the goods that infringe copyright or related rights, who shall to lodge their application within seven days of the date of notification.

The customs authorities, having reviewed the application, shall proceed to withhold the goods if these are found to constitute an infringement of copyright or related rights.

They shall immediately notify the author or holders of related rights or their representative, as well as the owner, importer, exporter or consignee of the withholding of the goods, giving them the opportunity to inspect the goods withheld, in accordance with the provisions of the Customs Code and without prejudice to the principle of business secrecy.

In order to facilitate the initiation of legal proceedings by the author or holders of related rights or their representative, the customs authorities, upon production of an order on *ex parte* application, shall inform them of the full names and addresses of the owner, importer, exporter or consignee, if they are known to them.

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?

Notwithstanding the rules concerning the provision of security to cover any liability of the applicant in respect of the importer in the event of it being duly proved that the goods detained do not infringe the protected right and those concerning the posting of security with the customs authorities to ensure the payment of costs incurred as a result of keeping the goods under customs control, the border measure procedure is always applicable.

Literary and artistic property (copyright and related rights): Article 50 (*quinquies*) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides as follows:

"The withholding measure shall be revoked automatically, unless within ten days of being notified of the withholding of the goods the author or holders of related rights or their representative can show to the satisfaction of the customs authorities that they have:

- Secured appropriate protective measures from the competent court;
- initiated civil or criminal proceedings;
- posted security sufficient to cover their liability in respect of the persons concerned, if it is subsequently found that the goods at issue do not infringe copyright or related rights.

The amount of the security is fixed by the competent court.

Where appropriate, the customs authorities may extend the above period by a maximum of ten days".

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?

The customs authorities may on their own initiative suspend the customs clearance of goods that infringe a protected industrial property right. In this case:

- The customs authorities will immediately inform the right holder or his successors in title, who must lodge an application in accordance with the above-mentioned application procedure within three days of being notified by the customs authorities whereupon the provisions concerning suspension will apply *ipso jure*;
- a detention measure applied in the context of an action undertaken by the customs authorities on their own initiative will be discharged *ipso jure* if the holder of the protected industrial property right or his successor in title fails to lodge an application in accordance with the application procedure within three days of being notified by the customs authorities.
- "The customs authorities may suspend customs clearance procedures for goods in respect of which there is manifest evidence of infringement of copyright and related rights.

Literary and artistic property (copyright and related rights): Article 50 (*bis*) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides as follows:

"The customs authorities may suspend customs clearance procedures for goods in respect of which there is manifest evidence of infringement of copyright and related rights.

The withholding measure shall be revoked automatically, unless within ten days of being notified of the withholding of the goods the author or holders of related rights or their representative can show to the satisfaction of the customs authorities that they have:

- Secured appropriate protective measures from the competent court;
- initiated civil or criminal proceedings;
- posted security sufficient to cover their liability in respect of the persons concerned, if it is subsequently found that the goods at issue do not infringe copyright or related rights.

The amount of the security is fixed by the competent court.

Where appropriate, the customs authorities may extend the above period by a maximum of ten days".

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

If, by virtue of a final judgment, the goods are found to be infringing, the court will decide the fate of those goods, namely either:

- Destruction under customs control; or

- disposal outside the channels of commerce, provided that the rights of the holder of the protected industrial property right are not infringed.

Criminal procedures

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

In criminal cases, as in civil proceedings, the question of which court has jurisdiction will be decided by the nature and the amount of the claim (Article 21 CCCP).

Thus, criminal proceedings are brought before the court of first instance which, under the terms of Article 40 CCCP, hears all cases at first instance, unless expressly provided otherwise by law.

As regards territorial jurisdiction, "whether he be a natural or a legal person, proceedings against the defendant must be brought before the court of his effective or elected domicile" (Article 30 CCCP) and, according to Article 31 CCCP, "if the defendant does not have a known domicile in Tunisia, proceedings shall be brought before the court of domicile of the plaintiff".

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

Anyone who infringes industrial property rights is liable to criminal prosecution and sanctions. Thus, infringement is punishable by:

- A fine of 5,000 to 50,000 dinars (Articles 82 and 83 of Law No. 2000-84 of 24 August 2000 on Patents);
- a fine of 1,000 to 50,000 dinars (Article 34 of Law No. 2001-20 of 6 February 2001 on the Protection of Layout-Designs of Integrated Circuits);
- a fine of 5,000 to 50,000 dinars (Article 24 of Law No. 2001-21 of 6 February 2001 on the Protection of Industrial Designs);
- a fine of 5,000 to 50,000 dinars (Article of Law No. 2001-36 of 17 April 2001 on the Protection of Trademarks).

It should also be noted that in all these cases of infringement repeat offenders will be liable to imprisonment for one to six months and the doubling of the fine.

Literary and artistic property (copyright and related rights): Article 52 (new) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides as follows:

"Anyone who uses a protected work without authorization pursuant to the provisions of the aforementioned Law shall be liable to a fine ranging from 1,000 to 50,000 dinars. In the event of a repeat offence, the fine shall be doubled and a term of imprisonment of one to twelve months may be imposed".

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 Article 1 of the Code of Criminal Procedure (CCP), any offence gives grounds for the commencement of criminal proceedings with a view to the imposition of penalties and, if damage has been caused, a civil action for damages.

Criminal proceedings may be instituted against the perpetrator of the offence, his co-principals or accessories. They are initiated and conducted by the judges, criminal investigation officers or duly authorized and sworn officers to whom they are entrusted by law.

However, Article 83 of the Law on Patents, Article 34 of Law No. 2001-20 on the Protection of Layout-Designs of Integrated Circuits, and Article 24 of Law No. 2001-21 on the Protection of Industrial Designs provide for criminal proceedings to be commenced by the Public Prosecutor's Office only upon a complaint by the injured party.

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

Anyone who considers his protected rights to have been infringed has standing to initiate criminal proceedings in accordance with the rules of the Code of Criminal Procedure.

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.**

Infringements of industrial property rights, as defined by the industrial property legislation, are subject, under that same legislation, to the following penalties:

- Patents

Any violation of the rights of a patent owner, as defined in Article 46, shall constitute an infringement and shall render the infringer civilly and criminally liable.

- Infringements shall be punishable with a fine of 5,000 to 50,000 dinars.
- In the event of a repeat offence, a term of imprisonment of one to six months may be imposed in addition to a fine, the amount of which shall be doubled.
- Anyone who improperly assumes the status of owner of a patent application or patent shall be liable to a fine of 1,000 to 5,000 dinars.
- In the event of a repeat offence, the fine shall be doubled.
- Persons entitled to bring an action for infringement may, under an order made by the presiding judge on an *ex parte* application, have a bailiff assisted by an expert undertake a detailed description, with or without attachment, of the allegedly infringing goods or processes.

Where attachment is authorized, it shall be confined to the seizure of any samples necessary to prove the infringement.

Where goods are attached, the order may require the applicant to provide security which must be posted before any goods are seized (Article 86 of Law No. 2000-84).

- Layout-designs (topographies) of integrated circuits

Any violation of the rights of the holder of a layout-design registration, as defined in Article 17, shall constitute an infringement and render the infringer civilly and criminally liable.

- Anyone who knowingly infringes such rights shall be liable to a fine of 1,000 to 50,000 dinars.

- Anyone who causes to appear on his business documents, his advertising or his products words that tend to encourage the belief that a layout-design of an integrated circuit has been registered under this law when in fact it has not or the registration has been cancelled or expired shall be liable to a fine of 500 to 2,000 dinars.

- Repeat offenders shall be liable to a term of imprisonment, in addition to a fine, which shall be doubled.

- In the event of a guilty verdict, the court may order the destruction of the infringing goods or their disposal outside the channels of commerce, together with the forfeiture of the implements used for making them (Article 36).

- The injured party may, even before publication of the registration, cause a detailed description, with or without attachment, of the infringing articles or implements to be undertaken under an order made by the president of the competent court, upon submission of an application and production of the registration certificate.

The president of the court may require the applicant to provide security, which the latter must post before having the action mentioned in the preceding subparagraph of this Article undertaken (Article 38).

- The court may order that the judgment be displayed, at the expense of the guilty party, in the places it determines and published, in its entirety or in the form of excerpts, in the newspapers it designates (Article 34).

- Industrial designs

Any violation of the rights of the owner of an industrial design, as defined in Article 4 of this law, shall constitute an infringement and render the infringer civilly and criminally liable.

Anyone who knowingly infringes such rights shall be liable to a fine of 5,000 to 50,000 dinars.

- Anyone who causes to appear on his business documents, his advertising or his products words that tend to encourage the belief that an industrial design has been registered under this law when in fact it has not or the registration has been cancelled or expired shall be liable to a fine of 1,000 to 5,000 dinars (Article 24).
- Repeat offenders shall be liable to imprisonment for one to six months, in addition to a fine, which shall be doubled (Article 25).
- In the event of a guilty verdict, the court may order the forfeiture of the implements used for making the infringing articles (Article 36).

The injured party may have a bailiff undertake a detailed description, with or without attachment, of the infringing articles or implements under an order made by the president of the competent court, upon submission of an application and production of proof of registration (Article 28).

- The court may order that the judgment be displayed, at the expense of the guilty party, in the places it determines and published, in its entirety or in the form of excerpts, in the newspapers it designates (Article 24).

- Trademarks

Any violation of the rights of the owner of a trademark shall constitute an infringement rendering the infringer civilly and criminally liable.

- Violation of the provisions of Articles 22 and 23 of the Law shall constitute an infringement of the rights in the mark (Article 44).
- Anyone who brings an action for infringement under Article 48 of the Law may have undertaken, in any place, by a bailiff assisted by an expert and under an order made by the president of the competent court, a detailed description, with or without the taking of samples, or the attachment of goods or services allegedly marked, offered for sale, delivered or supplied, to his detriment or in violation of his rights.
- Where attachment is authorized, it shall be confined to the seizure of samples necessary to prove the infringement. The presiding judge may make attachment subject to the provision by the applicant of security sufficient to compensate for any injury suffered by the defendant if the action for infringement subsequently proves to be unfounded (Article 50).
- Subject to the penalties provided by special legislation, anyone who:
 - reproduces, copies, uses, affixes, removes or alters a mark in violation of the rights conferred by its registration and the resulting prohibitions, or
 - imports or exploits goods presented under a counterfeit mark shall be liable to a fine of 5,000 to 50,000 dinars (Article 51).

- If one of the offences defined in Articles 51 and 52 of the law is repeated, the offender shall be liable to imprisonment for one to six months, in addition to a fine, which shall be doubled (Article 53).
- If the defendant is found guilty of infringing the provisions of Article 51, 52 or 53, the court may order the forfeiture of the goods and of the implements used for committing the offence.
- The court may also order the destruction of the goods (Article 55).
- In every case, the court may order that the judgment, in its entirety or in the form of excerpts, be published, at the expense of the guilty party, in the newspapers it designates and displayed in the places it determines, in particular at the main gates of the factories or workshops of the guilty party or in the party's shop windows.
- Indications of source and appellations of origin

The officers responsible for monitoring appellations of origin and indications of source may seize products put on sale under guaranteed appellations of origin or indications of source and suspected of not coming from the geographical area designated by the appellation or indication.

They may also seize products coming from the geographical area designated by the appellation or indication but not meeting the specified technical production requirements (Article 30 of Law No. 99-57 of 28 June 1999 on guaranteed appellations of origin and indications of source of agricultural products).

Notwithstanding the penalties provided for by the Decree of 10 October 1919 on the repression of fraud in trade in goods and the manufacture of foodstuffs and agricultural or natural products and by Law No. 91-44 of 1 July 1991 on the organization of the distributive trades, as amended by Law No. 92-117 of 7 December 1992 on consumer protection, and the seizure provided for in Article 30 of this law, anyone who infringes the provisions of Articles 9, 16 and 16 (paragraph 2), 26 and 27 of this law shall be liable to a fine ranging from 1,000 to 20,000 dinars. In the event of a repeat offence, this penalty shall be doubled.

Literary and artistic property (copyright and related rights): Article 52 (new), Article 54 (new) and Article 55 (new) of Law No. 94-36 of 24 February 1994 on Literary and Artistic Property, as amended and supplemented by Law No. 2009-33 of 23 June 2009, provides as follows: "Anyone who uses a protected work without authorization pursuant to the provisions of the aforementioned Law shall be liable to a fine ranging from 1,000 to 50,000 dinars. In the event of a repeat offence, the fine shall be doubled and a term of imprisonment of one to twelve months may be imposed".

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 rules in force are described above. In general, the length and cost of proceedings are not fixed and depend on numerous factors.

Moreover, according to Article 191 of the Code of Criminal Procedure "the costs of the proceedings shall be ordered against the person convicted" and according to Article 192 of the Code of Criminal Procedure "the party claiming damages shall always be ordered to pay court fees to the State, subject to recourse against third parties".
