3-in-1 developments in IP law (Greece, Romania, Albania)

It is vital for IP rights holders to protect their rights in Greece, Romania and Albania, where things are developing fast. Each of these jurisdictions offers rights holders a range of options for protection, as well as a variety of solutions and alternatives

By **Eleni Lappa**, **Adrian Roseti** and **Gjergji Gjika**, Drakopoulos Law Firm

Greece

Administrative court reform: easier, clearer, faster

A new piece of legislation, published in the *Official Gazette* on 17th December 2010, is designed to simplify administrative court procedure in Greece. Law 3900/2010 aims to consign the problems of IP dispute resolution to the past - the long delays, the uncertainty over proceedings and the frustrating prolongations of pending disputes, with the issue being finally resolved only at the highest level of appeal.

In Greece, trademark matters are heard by the administrative courts on issues of validity, conflict with other prior rights and similar issues; however, they fall within the competence of the civil courts if they involve the infringement of rights in the market, whether online or offline.

Previously, various trademark matters were left pending for many years before the administrative courts, rendering judicial resolution almost pointless. The problem was especially frustrating wherever infringement proceedings were running concurrently before civil and administrative courts, as the civil case was normally stayed until the administrative courts had irrevocably resolved the issue with the trademark – a process which usually took years. Clearly, reform was needed.

The new law establishes rules for direct recourse to the highest administrative court, the Council of State. Such recourse may be sought directly by a lower court for the parties' benefit, in order to cut out the intermediate courts and avoid years of pendency. Any party with a legitimate interest in the resolution of a particular question of law brought before the Council of State may file a legal brief to set out its position.

Other practical improvements include the following:

- Formal notices for hearings that were stayed owing to extraordinary circumstances are no longer required to be submitted afresh.
- The court rapporteur is expressly required to attach his or her written report to the court file at least three days before the hearing for the parties' own information. The report must include the historical background, the common grounds of evidence filed and the questions arising in the matter at hand.
- "Documents only" proceedings will receive expedited treatment by the Council of State.
- The Council of State can undertake an initial examination of the matter in order to determine whether there is a *prima facie* case; if necessary, the case can be dismissed or remanded to a lower court.
- An appeal to the Council of State must include in its preamble a confirmation by the appellant that no relevant Council of State precedent exists or that the lower court's decision directly conflicts with earlier Council of State precedent.

- If there are credible reasons to believe that an administrative officer who is involved in the matter before it goes to court has breached his or her fiduciary duty to abide by the law and apply reasonable care, an *ex officio* investigation may be ordered.
- The statute of limitations does not start to run until the pending case is irrevocably decided or until the hearing is cancelled.

These measures are intended to create a more reliable administrative court process and one that has an internal procedure for weeding out unnecessary claims. They should alleviate the Council of State's caseload, eliminating referrals that may be unnecessarily pending on matters that have previously been decided.

ADR and IP disputes

The Supreme Civil Court has issued a number of decisions that are favourable to alternative dispute resolution (ADR). Taken in conjunction with Law 3898/2010 (published in the *Official Gazette* on 16th December 2010), which establishes mediation as a formal procedure for resolving disputes, this trend is expected to improve the position of parties in IP dispute resolution processes in Greece, whether in the form of judicial review or ADR. The new law on mediation, in conformity with the EU Mediation Directive (2008/52/EC), sets a proper foundation for mediation based on party autonomy, certainty and efficiency — all of these are key factors in securing a counterparty's confidence in opting for ADR. As well as establishing the certification standards for ADR providers in general and mediators in particular — whose formal status is not well recognised in Greece — it sets out parameters that ensure the viability of the procedure and its practical value. It confirms the confidentiality of the mediation procedure, as an additional and complementary benefit to its essentially voluntary nature. In addition, it caps mediators' compensation in order to avoid over-long proceedings and defines the process for securing the enforcement of the mediation agreement, which becomes equivalent to a court order if filed with the relevant court. For years, ADR was overlooked as an option for resolving commercial disputes in Greece, especially in relation to IP matters (with the exception of domain name and advertising complaints, which have their own dedicated mechanisms). It is very promising to see that ADR is being integrated into the Greek legal system and that steps are being taken to make it a significant and well-recognised means of addressing a dispute and a viable alternative to immediately resorting to the courts.

In a time of crisis in the Greek economy, the changes regarding the administrative courts and ADR are positive developments for the legal environment. Perhaps a difficult period was necessary to reveal the need for change on these significant issues, which have a major role to play in the development of the country's IP practice. As an IP jurisdiction, Greece can point to a number of positive factors that are geared to development. It is hoped that these will prevail over the negative practices of the past and broadcast to the world the real and robust substance of Greece's IP culture.

Romania

Amendments on trademarks and geographical indications

In Romania, 2010 brought significant changes in the law on trademarks and geographical indications. On 9th May 2010 Law 66/2010 entered into force, amending and supplementing the Law on Trademarks and Geographical Indications (84/1998); regulations on the enforcement of Law 84/1998 followed on 3rd December 2010.

The main purpose of the amendments was to bring national legislation into line with EU law; in particular, they are intended to eliminate *ex officio* examinations on relative grounds by the State Office for Inventions and Trademarks for refusing an application for trademark registration upon filing. Therefore, the State Office for Inventions and Trademarks examines only absolute grounds *ex officio*; an examination of relative grounds for refusal related to similar or identical trademarks and risk of confusion is performed only if such grounds are invoked in an opposition filed by interested parties.

Another significant aspect is the introduction of a new chapter related to Community trademarks, which supplements the provisions in the old law on the registration of Community trademarks and identifies the court with competence over first instance hearings related to Community trademarks.

The new law has also increased the fines that may be imposed on infringers, so that such penalties are a more powerful deterrent for those intending to infringe the rights of IP holders.

Constitutional Court overrules royalties legislation

In 2010 amendments were also made to the law on copyright and related rights. In this regard, the Constitutional Court issued a decision whereby Articles 121(2) and 134(2)(g) were deemed unconstitutional.

The former article was deemed to breach constitutional provisions because holders of copyright in works that were rebroadcast by television stations as part of a "must-carry" package were deprived of their right to payment in respect of such broadcasts. It was deemed that the provisions in question created an imbalance and discriminated against certain authors whose works were generally the subject of such repeat broadcasts.

The latter article was deemed unconstitutional because it imposed a limit on the payment of copyright royalties and on related negotiations. The provision was deemed to breach the exclusive prerogative of holders of copyright-related rights to take free and absolute decisions with regard to their own creations by denying them the right to negotiate their own royalties.

Merger for copyright and trademark bodies?

Although no decision has been officially announced, the management bodies of the two institutions with a decisive role in the field of intellectual property are considering proposals to merge. The idea is still at the discussion stage, but uniting the Romanian Copyright Office and the State Office for Inventions and Trademarks and creating a single institution could lead to more powerful enforcement through the implementation of uniformly applied, consistent actions.

National IP strategy

The two institutions are cooperating in a large-scale collaborative project — the National Strategy for Intellectual Property 2011 — 2015. Among other objectives, it aims to:

- Improve enforcement of Romania's IP laws.
- Create adequate administrative infrastructure within the national institutions involved in IP protection.
- Provide specialised human resources training for entities involved in the field.
- Achieve transparent cooperation between national institutions and bodies involved in ensuring IP protection, educating the public and improving awareness of the key issues related to IP rights.

Moreover, the Romanian Copyright Office and the State Office for Inventions and Trademarks are promoting a cultural focus on IP rights by organising regular activities, such as seminars, public awareness campaigns, roundtables, workshops and scientific reunions involving specialists in intellectual property. The two institutions encourage all interested parties to participate.

In pursuit of the aims of IP protection, an awareness campaign called "Stop Pirateria" (Stop Piracy) has been developed. Its aim is to eliminate piracy and counterfeiting by promoting the website www.stoppirateria.ro, which provides information about the campaign. The website also presents information about cases settled by partner institutions, which include the Prosecutor's Office attached to the High Court of Cassation and Justice, the General Inspectorate of Police, the Border Police, the National Customs Authority, the Romanian Copyright Office and the State Office for Inventions and Trademarks.

Albania

EPO membership

On 1st May 2010 Albania became a member of the European Patent Office (EPO) by implementing the European Patent Convention through the Law on the Ratification of the European Patent Convention (10179/2009). As a result, patent protection can now be obtained in Albania on the basis of a single application filed directly with the EPO or with any local IP office in any of the contracting states of the convention.

A European patent may now be protected by extension in Albania on the applicant's request. Within three months of publication of the granting of the European patent, the patent owner may submit to the Albanian Patent and Trademark Office (ALPTO) an Albanian translation of the claims in the European patent. Subject to payment of the relevant publication fee, the ALPTO will proceed to publish the Albanian translation, provided that it has been duly submitted. If the patent owner fails to submit the translation or make the payment within the designated period, the extension of the European patent shall be deemed void *ab initio*.

Rising standards in an emerging market

The ALPTO has been making various efforts to ensure that local IP laws are up to date with the corresponding EU legislation, with the aim of bringing local practices into line.

This process includes a programme of seminars and roundtables. A statutorily appointed committee, including leading legal experts in the field, has been appointed to ensure that local IP laws are consistent with international standards. Committee members are able to offer insight and know-how on methods of ensuring a safe, reliable and risk-free IP protection environment – expertise derived from the international practice of IP law is particularly useful in this respect. The extent of the IP issues handled so far and the attention to detail evidenced in their examination are clear signs that a safety net for a secure and stable IP rights environment exists. This is particularly important in an emerging IP market such as Albania, where various concerns may arise for rights holders in terms of treatment and feasibility. At present, with the progressive steps already taken and plans for improved accessibility and further upgrades to the ALPTO database, the forecast is promising.

In various infringements handled for multinational companies, both in the online and offline environments, the main requirements of expediency, reliability and respect for the letter of the law have been in evidence. This experience is further proof of an eagerness in the Albanian jurisdiction to make up for lost time and repair some of the systemic errors of the past. With this approach well in hand, further developments in IP rights protection will be achieved sooner rather than later. **iam**



Eleni Lappa graduated with an LLB (Hons) from Kingston University in the United Kingdom and has a combined knowledge of the UK, US and Greek legal systems, having worked for a considerable time in all three jurisdictions in various positions and firms. She has extensive experience in IP law and international ADR.

Ms Lappa has been an active member of INTA for several years and an elected ITMA overseas member; she is also an ECTA and a PTMG member. For the last decade, she has been involved in various international publications in relation to IP law. She advises major multinational corporations on infringement matters in respect of patents, trademarks and unfair competition, and has extensive experience in UDRP/domain name matters.

In 2009 Ms Lappa joined Drakopoulos Law Firm as a partner.

Eleni Lappa
Partner
elappa@drakopoulos-law.com
+30 210 6836 561

Drakopoulos Law Firm
Greece
www.drakopoulos-law.com/ip



Adrian Roseti graduated from the Law School of Titu Maiorescu University in Bucharest and worked for several years in IP law. As a legal expert for the Romanian Parliament, serving on the parliamentary commission for the implementation of the acquis communautaire, he assisted with the adaptation and harmonisation of Romania's IP legislation. Thereafter, he worked as a litigator in various IP law matters, including trademarks (registered and unregistered rights), copyright and advertising/promotional campaign matters.

Mr Roseti works as both a consultant and a litigator, with an emphasis on international clients expanding their operations to Romania. He joined Drakopoulos Law Firm as a partner in 2007.

Adrian Roseti
Partner
aroseti@drakopoulos-law.com
+40 21 3000 154

Drakopoulos Law Firm
Romania
www.drakopoulos-law.com/ip



Gjergji Gjika graduated from the Law School of the University of Tirana. He has several years' experience of prosecution and contentious work for various IP rights; he is a trademark agent registered with the Albanian Patent and Trademark Office and a European patent attorney registered with the European Patent Office. Mr Gjika represents foreign and domestic clients in a variety of IP matters and is involved in various local and international publications. He joined Drakopoulos Law Firm in 2008 as a senior associate and was made partner in 2010.

Gjergji Gjika
Partner
ggjika@drakopoulos-law.com
+355 42 400 900

Drakopoulos Law Firm
Albania
www.drakopoulos-law.com/ip