



CIOPORA

International Community of Breeders of
Asexually Reproduced Horticultural Plants

CIOPORA WORKING GROUP ON ENFORCEMENT

ENFORCEMENT TOOLKIT

Greece



About CIOPORA:

CIOPORA is the International Association of Breeders of Asexually Reproduced Horticultural Plants. Breeders of such varieties account for two-thirds of all Plant Variety Right (PVR) titles in the world. For 61 years, CIOPORA has been representing these breeders in all matters of Intellectual Property (IP) protection, aiming to foster an environment in which innovation of these breeders can flourish. The main priority of CIOPORA is the constant development and enhancement of systems of Intellectual Property protection for plant innovations. CIOPORA is a member-based, non-profit organisation.

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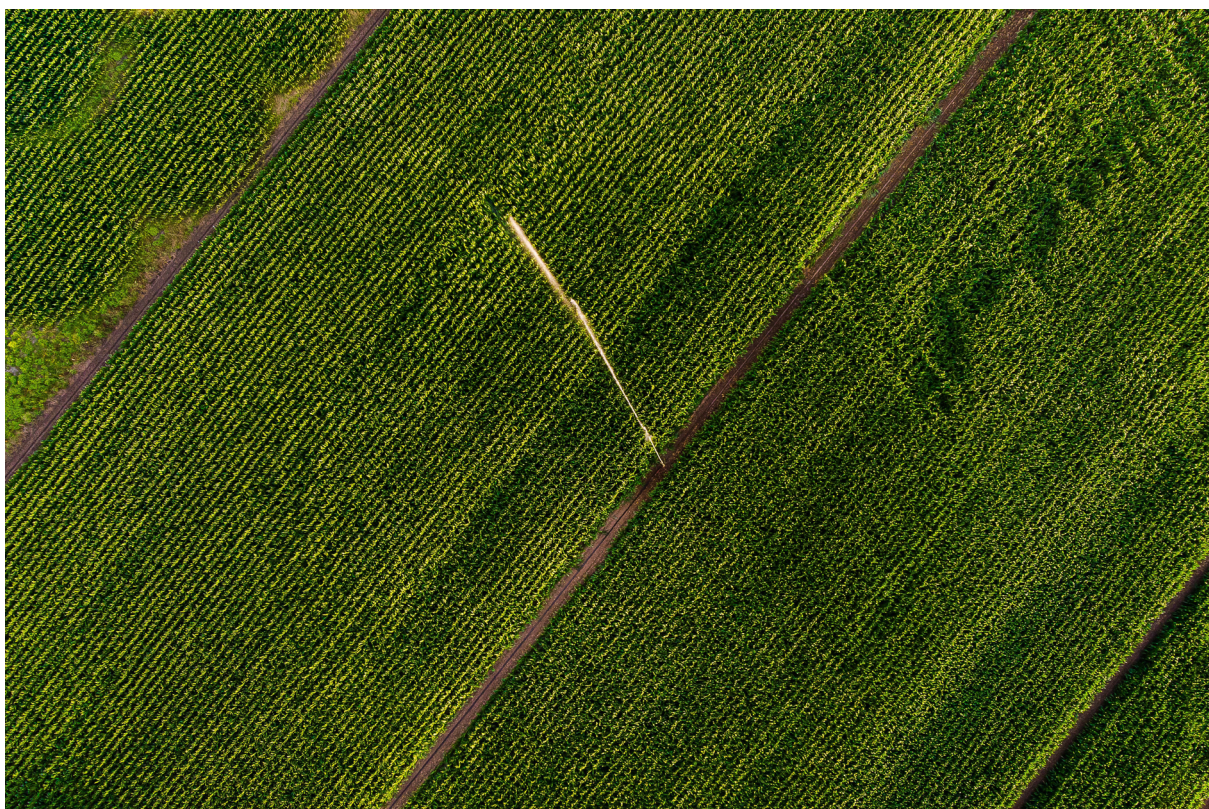


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I. GREECE'S LEGAL FRAMEWORK

1. Main laws and regulations:

- i. **Plant Breeders' Rights** (also Plant Variety Rights, further – PBR): Law 1564/1985 on the Organization of Production and Marketing of Propagating Material of Plant Species.
- ii. **Plant Patents/Utility “Varietal” Patents:** There are no Plant Patents or Utility Varietal Patents in Greece. Law 1733/1987 regarding “Technology transfer, inventions, and technological innovation and establishing the Atomic Energy Committee”, as amended and valid today, is the main patent law in Greece.
- iii. **Trademarks: Law No. 4679/2020** on the Protection of Trademarks and the Incorporation of the Directive (EU) 2015/2436 to Approximate the Laws of the Member States relating to Trademarks and the Directive 2004/48/EC on the Enforcement of Intellectual Property Rights and Other Provisions
- iv. **Trade Secrets: Law 4605/2019** (GG 52, A', 1.4.2019) on “Harmonization of Greek Legislation to Directive (EU) 2016/943 of the European Parliament of June 8th, 2016, on the Protection of Undisclosed Know-How and Business Information (Trade Secrets) against their Unlawful Acquisition, Use and Disclosure (EEE 157 Of 15.6.2016) – Measures to Speed-Up the work carried out by the Ministry of Economy and Development and other Provisions”



has implemented in Greece the Trade Secrets Directive 2016/943.

The protection of plant varieties is provided for by Article 8 of the Law 1564/1985, indicating that the creator of a plant variety species has an absolute and exclusive right to a) produce and market the propagating material of the relevant variety of plant species, and, b) exploit or transfer his production and marketing rights. Nevertheless, the Presidential Decree that would have implemented this Article has yet to be published (see Articles 29 and 30 of said Law). Consequently, **there is essentially no local (Greek) law, currently in force, on the protection of plant varieties and there are no national plant varieties grants.**

However, the EU legislation provides protection through **Regulation (EC) No. 2100/94**, as amended and currently in force. This Regulation, which is binding in its entirety and directly applicable in all Member States, established a uniform (see Article 2), supranational right on plant varieties arising from the EU legislation.

Article 6 of the aforementioned Law No. 1564/1985 first introduced the National Catalogue of Varieties of Cultivated Species. Registration at a National/EU Variety Catalogue, at the Register of Businesses producing and commercializing plant material and at the Phytosanitary Register, compliance with the phytosanitary regulations, and certification of plant material (compulsory or optional) are required for the commercialization of propagating material.

Greece is not a UPOV member, whereas the EU became a member in 2005. It should also be noted that Article 27(3)(b) of the TRIPS Agreement, ratified by Greece by Law No. 2290/1995, states that Members shall provide for the protection of plant varieties. Greece essentially complies with this obligation by its participation in the European Union and the direct application of Regulation 2100/1994.

The New trademark law 4679/2020 was enacted in Greece on March 20, 2020. Said law finally transposed Directive (EU) No. 2015/2436 in Greece and efficiently approximates the treatment of the national trademark to that of the EU trademark, as regulated by the Regulation (EU) No. 2017/1001. Under the new trademark law, earlier plant variety denominations are considered as both absolute and relative grounds for refusal.

2. PBR: Acts exclusively reserved for right holders:

The holder has the exclusive right to carry out any act aimed at:

(a) production or reproduction (multiplication);

- (b) conditioning for the purpose of propagation;
- (c) offering for sale, including advertising;
- (d) selling or other marketing;
- (e) exporting;
- (f) importing
- (g) stocking for any of the purposes mentioned above.

3. PBR: Scope of protection:

The holder has the aforementioned exclusive right with respect to both **variety constituents** (entire plants or parts of plants as far as such parts are capable of producing entire plants) and the “**harvested material**” of the protected variety, i.e., the product of the harvest.

However, for harvested material, said provisions shall apply only if this material was obtained through the unauthorized use of varietal constituents of the protected variety and unless the holder has had the reasonable opportunity to exercise his right in relation to the said variety constituents. Harvested material, for its part, is covered by a ‘secondary’ right.

Varieties that are essentially derived from the variety in respect of which the Community plant variety right has been granted as well as varieties whose production requires the repeated use of the protected variety are included in the scope of protection.

All derogations of the scope of the rights and limitations/exemptions (farmer’s exemption, acts performed privately and for non-commercial purposes, for experimental purposes, or for the purpose of breeding other plant varieties, etc.) applicable under EU law also apply in Greece.

Like all intellectual and industrial property rights, the right on a plant variety is subject to exhaustion. Exhaustion is a form of limitation of the right. According to the general principle applying to all rights of intellectual and industrial property, the right is exhausted, i.e. becomes extinct and may not be opposed any longer, from the moment that its holder, or any person acting with the consent of the holder of the right, markets within the European Union products incorporating the relevant right and carries out in this manner the “first sale” and obtains some financial benefit from the exploitation of the relevant intellectual or industrial property right.

4. PBR. Protected genera and species:

All genera and species are protectable (including hybrids between genera or species).

5. Patent. Patentable subject matter:

Plant varieties are not subject to patentability in Greece. According to art. 5 paragraph 8b of the aforementioned law 1733/1987 “patents shall not be granted for plant or animal varieties or biological processes for the production of plants or animals”. It is commonly accepted that the prohibition concerns only macro-biological processes for the production of plant or animal varieties. Indeed, as specified in the same article, patents are allowed for inventions which result from a microbiological process

As an exception to this rule, it is stated by Presidential Decree No. 321/24.09.2001 regarding “Adaptation to Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions” that inventions which concern plants or animals are patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety.

Said decree also states that a patent may be granted to an invention which concerns a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used, if the basic requirements of patentability are fulfilled. **Biological material which is isolated from its natural environment or produced by means of a technical process may be the subject of an invention even if it previously occurred in nature.**

6. PBR. Provisional Protection:

Provisional protection is given through the granting of the application date and its official publication. Under Article 95 of the Regulation, the holder of a Community Plant Variety Right may require reasonable compensation from any person who has, in the time between publication of the application for a Community Plant Variety Right and grant thereof, affected an act that he would be prohibited from performing subsequent thereto.

7. PBR. Exemptions to the right:

- All derogations of the scope of the rights and limitations/exemptions applicable under EU law also apply in Greece.

Consequently, excepted from these rights are the following acts for:

- Private and non-commercial use.
- Experimental purposes.
- the purpose of breeding, or discovering and developing other varieties (“breeders’ exemption”). The resulting varieties may be protected and commercialized without any obligation towards the right holder of the protected variety. This contributes to the continued creation of improved varieties and allows access to genetic variation.
- Use of farm-saved seed (farmers’ exception/privilege). The exception applies to certain species only. The provision allows seeds produced on a farm to be re-sown on the same farm, with an equitable remuneration being payable to the right holder. “Small farmers” do not have to pay such a remuneration.
- Can titleholders contract out of these exemptions?

No related case law is available. All will depend on whether the courts will consider that the exemptions (particularly the farmers’ exemption) introduce an overriding mandatory provision, a mandatory legal rule of public order. In such a case, if the parties contract out the exemption, the clause and even the entire agreement will become void.



II. LICENSING IN GREECE: BEST PRACTICES

As previously mentioned, there is essentially no local law currently in force on the protection of plant varieties and, consequently, there is no special regulation for PBR license agreements and no legal provision for their recordal. Such licenses are generally governed by Greek contract law and private international law.

As in the case of other intellectual property rights, plant variety rights can be freely licensed, exclusively or non-exclusively, following a written agreement. A plant variety right can only be licensed by its owner or by a person/entity authorized by the owner or by law to use the right. The agreement must include a full list of rights licensed and it is definitely advisable for the contract to define the duration of the license and its territorial scope. The contract should also determine the fees payable to the licensor, the licensor's audit and inspection rights, and the grounds for/events of termination of the agreement. It is also highly recommended that license agreements provide for the governing law and jurisdiction as well for the way disputes between the parties are resolved.

In the case of trademarks, the recordal of the license agreement with the Greek Trademark Office is necessary in order for the licensee to claim and enforce its rights against third parties.

III. ENFORCEMENT OF IP RIGHT IN GREECE

A. GENERAL ASPECTS

8. General attitude towards IP in Greece:

As a rule, IP rights are efficiently and properly enforced in Greece and Greece can be considered as an IP-friendly jurisdiction. Nevertheless, with respect to PVRs, although the legislative framework appears to be adequate and robust in the paper, there is inadequate awareness on the part of the community in general, the farming community in particular and even of the competent enforcement authorities, of the scope, nature, and rights conferred by protected plant varieties. Breeders still face a rather hostile attitude due to the structure of the local agriculture, still dominated by rather small family-owned farms.

Very few plant variety cases make it to the courts every year.

9. Who is entitled to enforce the rights?

The actions for infringement of the right may be brought by both the holder of the right and the licensee, unless the licensee has been explicitly prohibited from bringing such actions (see Article 17 G and 17 F of the Law No. 1733/1987 on Technology Transfer, Inventions and Technological Innovation). Therefore, where in doubt, the licensee is also entitled to bring an action.

Although the law does not specify whether any licensee (exclusive or non-exclusive) can introduce court proceedings, it follows, from the teleological interpretation of the



Article, that only the exclusive licensee is allowed to sue to exercise the rights. Of course, the infringer shall only pay compensation once, either to the holder of the right or to the licensee.

In the case of trademarks, the law expressly provides that the exclusive licensee may independently and without the consent of the proprietor initiate such proceedings, if the trademark owner, after formal notice, does not himself bring infringement proceedings within a reasonable time period. Of course, the licensing contract may provide otherwise.

10. Enforcement actions available for PBR:

Administrative, civil, and customs measures are applicable to rights on plant varieties. This also applies to trademarks. In general, intellectual property rights can primarily be enforced by way of civil proceedings.

11. Rules for collecting and preserving evidence:

a. Burden of proof:

The burden of proof lies on the plaintiff, who must collect related evidence to substantiate his claims. Lawsuits in Greece must be precise and refer to all points of fact that will be under judicial review.

b. Evidence collection:

The means of evidence are exhaustively listed in Article 339 of the Code of Civil Procedure, and they include admission, on the spot inspection, expertise, documents, evidence given by the parties and by witnesses, and legal presumptions, which are freely assessed by the court by virtue of Article 390 of the Code of Civil Procedure.

c. Conditions for entering premises and taking samples:

Greece has implemented EU Directive 2004/48 on the enforcement of IP rights. The Directive offers considerable assistance in obtaining and preserving evidence during either summary or ordinary legal proceedings when such evidence is in the possession of the infringer. If the plaintiff provides reasonably available evidence to support an allegation of infringement, a court may issue an order, allowing the plaintiff to obtain evidence in the possession of the alleged infringer. In this respect, the plaintiff may be allowed to make a detailed list of infringing products in the possession of the infringer, to take samples, or even to provisionally arrest infringing goods or materials used in the production of infringing goods, or documents and other information relating thereto. Such information

may comprise the names and details of distributors, suppliers, customers, quantities produced and manufactured, prices, and even bank account details and payments to third parties. Courts do have great discretion in providing such severe measures and do take into account the factors of proportionality and legitimate trade secrets. In practice, courts are often somewhat reluctant to apply the Directive against well-established local companies and to order such measures *ex parte*.

d. Affidavits:

Affidavits are considered as means of evidence and are very common in Greece.

e. DNA analysis as evidence:

A crucial question in the field of plant varieties is whether DNA testing/analysis carried out by the plaintiff is a lawful means of evidence in civil proceedings.

In accordance with Article 390 of the Code of Civil Procedure means of evidence also include private opinions by persons having special knowledge in science or art. These are freely assessed by the court

According to a well-substantiated view, these private opinions are assimilated to documents (Supreme Court Plenary judgment 8/2005, NoV 2005/1063, Supreme Court Plenary judgment 848/1981, NoV 1982/441, Supreme Court Plenary judgment 111/1981, NoV 1981/1218, Supreme Court judgment 1964/2009 EPoID 2010/110, Supreme Court judgment 1127/2009, NoV 2010/392, Supreme Court judgment 976/2009, Legal DataBase (NOMOS), Supreme Court judgment 209/2001, EllDni 2001/1554, Supreme Court judgment 47/1997, Legal DataBase (NOMOS). According to another view, they represent legal presumptions (Supreme Court judgment 621/2000 Legal Data Base [NOMOS], Supreme Court judgment 1020/1994, EllDni 1996/87).

DNA testing should be treated as a private opinion and a lawful means of evidence under the Code of Civil Procedure. Nevertheless, it is strongly recommended that said evidence be supplemented with other means of evidence, such as affidavits.

B. ADMINISTRATIVE PROCEEDINGS (in the broad sense)

12. Competent authorities:

The main administrative authorities involved in the indirect and direct protection of plant variety rights, are:

1. the Greek Trademark Office (: The Examiner and the Greek Trademark

Committee);

2. the Interdepartmental Market Control Unit (known as “DIMEA”) of the Ministry of Development and Investment (as regards infringements of plant varieties in the market), an interagency structure for controlling the market. DIMEA’s enforcement authorities/control bodies – which include, inter alia, the police, the municipal police, the Financial and Economic Crime Unit of the Ministry of Finance, the coastguard and customs authorities- take action against plant variety infringements in the market by seizing and destroying counterfeit goods and imposing administrative fines on the infringers.

In the context of administrative proceedings, the following remedies are available:

1. rejection of trademark application on the basis of an earlier right to a plant variety.
2. opposition on the basis of an earlier right to a plant variety denomination;
3. invalidity/revocation on the basis of an earlier right to a plant variety denomination;

(Indirect protection, through trademark law)

4. seizure and destruction of counterfeit goods on the basis of plant variety infringement; and
5. administrative fines.

(Direct Protection)

a. Proceedings before the Greek Trademark Office: plant variety denominations as grounds for trademark refusal:

Under the new trademark law, plant variety rights are considered as both absolute and relative grounds of refusal.

The Examiner is tasked with ascertaining that no absolute grounds for refusal, such as a prior plant variety right, exist. The Examiner’s decision to reject a trademark can be challenged by filing a recourse action before the Trademark Administrative Committee.

In general, the forum for challenging trademarks is the Greek Administrative Trademark Committee, which is a quasi-judicial body. In the case of opposition proceedings, re-

courses/appeals thereto are heard by the Administrative Courts. On the other hand, in the case of invalidity/revocation proceedings, the Committee's decisions are subject to appeal before the civil courts and not before the administrative courts. It is also possible to file a counter-claim for declaration of invalidity or revocation of a mark in infringement proceedings. It is also worth noting that such a counterclaim may be filed via interim measures, but the declaration of invalidity or the revocation of the mark will be temporary.

The completion of the aforementioned proceedings takes on average:

- Opposition Proceedings before the Greek Trademark Committee and the Administrative Courts: Adversarial proceedings before the Greek Trademark Committee usually last 10-18 months until the issuance of a decision. Proceedings before the Administrative Courts of First Instance now last 2-3 years, while proceedings before the Court of Appeal last significantly less (i.e., 12-14 months).
- Invalidity/revocation proceedings before the Greek Trademark Committee and the Civil Courts: Adversarial proceedings before the Greek Trademark Committee usually last 10-18 months until the issuance of a decision. Proceedings before the Courts of First Instance last approximately 10-16 months, while proceedings before the Court of Appeal usually last 9-12 months.

Nonetheless, the above timeframes may vary depending on the circumstances of the case and/or the workload of the competent administrative/judicial authorities.

Law 4796/2021 (Government Gazette A'63/17.04.2021) provides for the transfer of responsibilities regarding trademarks, to the Hellenic Industrial Property Organization



(“HIPO, OBI in Greek). Thus, a single national policy for all intellectual property rights is created, in harmonization with the practice followed in other countries.

b. Proceedings against counterfeiting and piracy

Law No. 4155/2013 first introduced a simplified and accelerated procedure for the destruction of pirated and counterfeit goods, thus providing a fast and economical tool to fight counterfeiting and IP infringement in general.

In a similar vein, the recent Law No. 4712/2020 on the establishment of an Interdepartmental Market Control Unit (known as ‘DIMEA’) of the Ministry of Development and Investment, which is responsible, inter alia, for receiving infringement complaints and information and proceeding to related investigations, provides for an analogous simplified procedure, in the context of which the rights holder plays a prominent role.

In particular, DIMEA’s enforcement authorities/control bodies:

- conduct inspections either ex officio or upon request of the right holder in any indoor or outdoor trade area (such as warehouses, stores, flea markets and motor vehicles);
- seize the goods that are suspected of being counterfeit/pirated; and
- draw up a seizure report (indicating, inter alia, the full details of the holder of the goods, the place and date of seizure and a brief description of the seized goods).

In the absence of any objection from the holder of the goods, the counterfeit or pirated goods seized by DIMEA may be destroyed immediately through any available means. The immediate destruction procedure does not apply to seizures that customs authorities are involved. In addition to this seizure-destruction procedure, DIMEA imposes administrative fines of up to €100,000 on the holder of the goods, depending on the quantity of the seized items.

Where the holder of the goods objects to their seizure, the following procedure applies:

- The goods are stored and put in escrow.
- A seizure report, indicating the quantity of the seized items and the infringed IP right, is issued and notified to both the holder of the goods and the right holder.
- The right holder obtains a sample of the seized items and submits, within 10 days, a declaration on whether an IP right has been infringed.
- The competent authority, within 30 days of the issuance of the seizure report, and

taking into account the right holder's declaration, concludes whether an IP right has been infringed. If such finding has not been issued within the 30-day deadline or no IP infringement has been confirmed, the seizure is lifted.

- When the competent authority concludes that infringement has occurred, the finding is notified to both the holder of the goods and the right holder, and within three days of the notification the seized items are destroyed. The right holder bears the costs of the destruction. In this case as well, administrative fines are also imposed on the holder of the goods.

Although there were concerns regarding the effectiveness of Law 4712/2020 – mainly owing to the seizure–destruction procedure, the complex organizational structure of the enforcement agencies and the heavy administrative fines – the inter-agency market control unit seems to be a valuable ally in tackling counterfeiting during its first year of operation. Its control bodies monitor the internal market on a regular basis and investigate any information of counterfeiting activity that is brought to their attention. Monthly reports on the number and kinds of seized goods are also notified to the brand owners' representatives. The numbers for 2021 are impressive since more than 285,000 counterfeit items were seized and destroyed by DIMEA.

Although said law expressly includes plant variety rights among the protected IP rights, it has never been applied to cases of suspected plant variety infringement possibly because the evidence to support an allegation of infringement is more difficult/complicated and less obvious in the case of plant varieties than e.g., in the case of trademark infringement and no agency of the Ministry of Rural Development is involved. Furthermore, enforcement authorities, as previously mentioned, are not generally familiar with plant variety rights.

C. CIVIL PROCEEDINGS

Two types of civil proceedings are available in Greece: 1) ordinary proceedings, and 2) preliminary/summary proceedings.

Two preliminary proceedings are available, the Petition for a Temporary Restraining Order ("TRO") and the Petition for Injunctions. Urgency is a prerequisite in the case of injunctions, while utmost urgency must be proved in the case of TRO.

In case of infringement of a right on a plant variety, the same actions may be brought as in the event of an infringement of other industrial property rights, i.e., action for enjoin-

ing the infringement, action for abstaining from infringing on the right in the future, and action for compensation.

It should be noted that Article 17 G of the aforesaid Law No. 1733/1987 on Technology Transfer, Inventions and Technological Innovation provides that, with regard to plant varieties, Article 17(1) of said Law is also applicable. The latter provides in turn that, in the event of infringement or threat of infringement of the right, legal protection is provided in the form of ceasing the infringing activity and prohibiting such infringement in the future, and that enjoinder of the infringement involves, in particular, withdrawal from the market of products that infringe on the relevant rights and of the materials mainly used for manufacturing them, as well as the destruction of such products and materials.

13. Competent Courts:

Pursuant to Law No. 2943/2001, special divisions have been established for IP matters in the civil first and second instance courts of Athens and Thessaloniki. Although said law does not expressly mention plant variety cases among those falling within the jurisdiction of said divisions, the same are definitely included (cf article 17Z of law 1733/1987). According to the leading opinion, said specialized divisions are not competent for preliminary proceedings. However, if the Athens or Thessaloniki courts are competent *ratione loci*, the proceedings are to be introduced to the special divisions.

14. Administrative verification:

Not any kind of prior administrative verification is required.

15. Average timeframe:

Ordinary civil proceedings until the issuance of a first instance decision will take on average 14-20 months. Appeal proceedings usually last 10-14 months.

16. Preliminary measures:

Preliminary proceedings include petitions for injunctions and temporary restraining orders. The judge may invite the respondents to appear at the hearing of the TRO, which is usually the case, even though *ex parte* proceedings are also a possibility provided by law.

17. Discovery process:

Greek law does not provide for a formal pre-discovery procedure. It is nevertheless possible (but not always easy in practice) for the plaintiff to obtain a court order to preserve evidence without any prior notification to the defendant (comparable to an Anton Piller order). As previously mentioned, the plant variety owner may obtain an order, allowing

him to obtain evidence in the possession of the alleged infringer. In this respect, the plaintiff may be allowed to make a detailed list of infringing products in the possession of the infringer, to take samples, or even to provisionally arrest infringing goods or materials used in the production of infringing goods, or documents and other information relating thereto. Such information may comprise the names and details of distributors, suppliers, customers, quantities produced and manufactured, prices, and even bank account details and payments to third parties.

18. Enforceability of contractual rights:

Contractual rights are generally efficiently enforced in Greece.

19. Enforceability of a contractual clause providing for a right to enter premises for the right holder:

Such a clause will be enforceable, unless, under the circumstances, same be considered as in abuse of rights. It ultimately all depends on the phrasing of the clause and of the whole contract.

20. Rules for appeals:

Any of the parties to the first-instance proceedings based on an ordinary lawsuit can file an appeal:

- within 30 days of the decision being served, if the party resides in Greece;
- within 60 days of the decision being served, if the party resides abroad; or
- within two years of the decision's issuance, if the decision has not been served.

21. Enforceability of the decision

General principles on enforcement of decisions apply. The procedure followed for the enforcement of domestic court decisions (or other executory titles) is strictly regulated by the Greek Law of Civil Procedure. Said legislation defines the procedural steps and formalities that are to be followed for a claim to be enforced.

In general, the main requirements are:

- the existence of an executory title;
- the existence of a certain and fixed claim;
- the appending of an executory mark/formula to the executory title;
- the locus standi of the parties to the proceedings;
- the existence of a legitimate interest; and
- compliance with the procedure provided by law.

The Greek Law of Civil Procedure includes detailed provisions with regard to the service of documents, including the service of the copy of the executory transcript. The copy of the executory transcript is served to the defendant by a court bailiff and is accompanied by a mandate for voluntary compliance or compulsory enforcement. In case the defendant does not voluntarily abide by the mandate, the creditor may instruct the court bailiff to proceed with the enforcement.

22. Damages:

With regard to the claim for compensation, the following distinction should be made after comparing the last subparagraph of Article 94(1) of the Regulation with paragraph 2. The Regulation distinguishes between what is referred to as “reasonable compensation” in the last subparagraph of paragraph 1 of Article 94 and what is referred to as “further damage” in paragraph 2. Reasonable compensation is independent from fault (intention or negligence) and is due even when there is no intention or negligence. The term “reasonable” means limited, i.e., not full compensation to repair the entire damage, but fair, limited compensation. The term “reasonable compensation” is also used in this sense, i.e., meaning reduced or limited compensation, in Article 387 of the Civil Code.

However, where fault, i.e., intention or negligence, may be demonstrated, then full compensation and not only limited (reasonable) compensation shall be awarded. This is the case of “further damage” referred to in paragraph 2. It should be noted that the wording of the English version of the Regulation is «liable to compensate the holder for any further damage resulting from the act in question». Therefore, this is not the case of further damage as understood by Greek civil law, where further damage means damage not resulting from a causal link, i.e., not arising in the ordinary course of business, which is, as a rule, not compensated. As part of Article 94(2), the term further damage makes refer-

ence to full compensation.

In the past, Greek law was very cumbersome with respect to establishing the volume of damages in IP infringement and it was indeed difficult to prove lost profits in IPR cases. The legislation has now changed and provides for more relaxed alternative criteria for determining the volume of damages. There are three alternative possibilities of a damages claim:

- actual damage suffered, including the lost profits, a criterion which raises significant difficulties since actual damages and loss of profits need to be evidenced with accuracy;
- the benefit obtained from the infringement; again, difficulties arising from the issue of burden of proof are not easy to overcome;
- the license fees that would be requested if a license agreement existed (“hypothetical royalties”), a criterion that, in most cases, is more straightforward with respect to evidence and burden of proof.

Article 17 D of Law 1733/1987 (also applicable to rights on plant varieties, according to the explicit reference of Article 17 G of the same Law) has particular practical value. Article 17 D has transposed into Greek law Directive 2004/48/EC and provides that the amount of damages to be awarded may be commensurate to the actual prejudice suffered due to the infringement and that to determine such actual prejudice the court may take into account the lost profits suffered by the right holder, the unfair profits made by the infringer, as well as the moral prejudice caused to the right holder. As an alternative, damages may be determined as a lump sum on the basis of elements such as the amount of royalties or fees which would have been due if the infringer had requested authorization to use the intellectual property right in question. According to the same provision, court expenses shall include any other relevant and reasonable expenses, such as witness expenses, attorneys’ fees, expert and technical advisers’ fees, and expenses incurred to identify the infringer.

In addition to damages, moral damages (: claim for monetary compensation due to moral harm, under article 932 of the Greek Civil Code) can be requested and are often the only compensation that can realistically be awarded in IP infringement cases. Lately, however, Greek courts appear to be reluctant in granting moral damages to legal entities.

Greek courts still face difficulty in calculating and awarding compensation comprehensively.

As a rule, courts award lawyers' fees far below the amounts actually spent and the right holders should only expect to collect part of the actual costs of the litigation.

- **Do the courts award statutory damages?**

As a rule, the courts do not award statutory damages. Nevertheless, the courts may set the damages as a lump sum on the basis of elements such as the amount of royalties or fees, which would have been due if the infringer had requested authorization to use the IP right.

23. Costs for publishing the court decision (i.e., trade magazine):

The Court may allow publication of the whole or part of the court judgment in the press and/or online media at the expense of the unsuccessful party.

24. Prescription of the action:

Under article 96 of the Regulation, claims relating to plant variety infringement are time barred after three years from the time at which the plant variety right has finally been granted and the holder became aware of the damage and the person liable to compensate him, but, in any case, not longer than 30 years from the termination of the act concerned.

Under Greek law, the limitation for commercial transactions is five years and claims for unjust enrichment are subject to a 20-year limitation period.

25. Judgements from a foreign jurisdiction:

The domestic legislation with respect to the recognition and enforcement of foreign judgments in Greece is the Code of Civil Procedure. Where EU regulations or interna-



tional conventions and bilateral treaties are applicable, those instruments supersede the national provisions of the Code of Civil Procedure.

Under Greek law, there is a fundamental distinction between recognition and enforcement of a foreign judgment. ‘Recognition’ refers to the binding (*res judicata*) effects of foreign judgments which are automatically extended to Greece. No formal procedure is required (: recognition of a foreign judgment applies *ipso jure*), provided that the conditions set out in the relevant provisions of the Code of Civil Procedure are met. On the other hand, enforcement of a foreign judgment presupposes that the judgment has been declared enforceable by the competent single-member first-instance court through the issuance of a relevant judgment according to the relevant applicable law and regulations. In this respect, the interested party must submit an application to the competent single-member first-instance court requesting that the foreign judgment be declared enforceable according to the relevant provisions of the Code of Civil Procedure. The applicant must then submit pleadings with supporting documentation in *ex parte* proceedings and the court will schedule a hearing date in order to hear the application.

D. CRIMINAL PROCEEDINGS

Infringement of plant variety rights is not a criminal offense in Greece, unless the same could qualify, under very special circumstances, as fraud (article 386 of the Greek Penal Code). This does not facilitate the legal seizure of plant material e.g., through competent authorities. Infringement of patents again is not a criminal offense in Greece.

Article 45 of the new Trademark Law No. 4679/2020 criminalizes a number of acts of trademark infringement. The criminal prosecution for the aforementioned acts does not generally take place *ex officio* but only after the filing of a complaint by the trademark owner.

In the case of IP infringement, general criminal law provisions, such as those for forgery and/or fraud may be also applicable, depending on the facts of each case.

E. CUSTOMS PROCEEDINGS

There is no national customs legislation with respect to the enforcement of IP rights in Greece. The EU Customs Regulation (EU) 608/2013 is directly applicable in Greece and also sets out the domestic customs intervention procedures. Said Regulation covers a wide range of IP rights, including plant varieties. To the best of our knowledge, Greek Customs Authorities have never suspended up to now the release of goods allegedly infringing plant variety rights.

F. OTHER PROCEEDINGS

Plant variety infringers often also commit tax-related offenses, phytosanitary violations, and violations of labeling rules.

IV. ADDITIONAL ISSUES

26. Informal barriers to enforcement in Greece:

Taking into account that there is no national plant varieties protection in Greece, there is inadequate awareness by the community in general, the farming community in particular, and even by the competent enforcement authorities, of the scope, nature, and rights conferred by protected plant varieties. This lack of familiarity with the related rights and the traditional structure of local agriculture in fact result in hostility to the details and nuances of plant variety laws and related protection and, even, to negative publicity in the case of PBR informative/instructive or enforcement action.

V. CASE LAW

27. Some annoying/disturbing facts:

Evidence collection constraints are the single greatest impediment to effective enforcement of PVRs and to effective legal redress of the PVR owners in Greece.

As previously mentioned, infringement of plant variety rights is not a criminal offense in Greece, which does not facilitate the legal seizure of plant material. Furthermore, courts are sometimes restrained in taking measures for obtaining and preserving evidence in accordance with EU Directive 2004/48 and are often reluctant to order such measures *ex parte*. Furthermore, it is often difficult for the plaintiffs to provide reasonably available evidence to support an allegation of PVR infringement in order to issue in their favour an order allowing them to obtain evidence in the possession of the alleged infringers.

Plant variety infringement is quite widespread in Greece. Difficulties in enforcing PVRs and lack of awareness are inevitably linked with an increased amount of plant variety infringement. Furthermore, hostility towards breeders and social tolerance of plant variety infringement, related to the traditional structure of the agricultural community, characterized by a preponderance of small family-owned farms result in a very substantial dark figure of infringement.

Although the legislative framework is adequate and robust, few plant variety cases make it to court and there is clearly an obviously limited amount of legal precedent in



Greece.

In the few decisions issued:

- It was confirmed that the plant variety owner is entitled to request from the infringer the ceasing of the infringement activity (production, packaging, procurement, storage, distribution, sale marketing, etc.) and omitting the infringing activity in the future, irrespective of any fault (intention or negligence) on the part of the infringer.
- A penalty clause was included for each future infringement of the court order.
- Infringers were ordered to provide information on sale figures, channels of distribution, etc.
- DNA analysis was admitted in the court proceedings as a lawful means of evidence.
- Publication of a summary of the decision to newspapers and specialized/trade magazines was ordered.

To the best of our knowledge, none of the decisions issued in adversarial proceedings awarded compensatory damages/moral damages.

ABOUT CIOPORA WORKING GROUP ON ENFORCEMENT

Intellectual Property Right (IPR) and Plant Breeder Right (PBR) infringements present a serious problem in horticulture causing significant losses for plant breeders worldwide. In 2019, seeking to increase its capacities and experiences in enforcement and anti-infringement, CIOPORA established a Working Group on Enforcement (WGE) with the following objectives :

- to develop country enforcement toolkits based on best practices for combating infringements;
- to share best practices and trends in enforcement in different territories and various crops;
- to serve as a platform and provide strategic leadership for joint enforcement actions;
- to advise CIOPORA on enforcement-related lobby activities and education offers.

Do you have questions about the CIOPORA Enforcement Toolkits or the CIOPORA Working Group on Enforcement? Contact:

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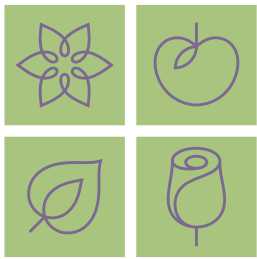


Fotini Kardiopoulis, Partner at Dr Helen G Papaconstantinou and Partners

Fotini Kardiopoulis is one of the founding partners of HP&P and heads the anti-counterfeiting and plant breeders' rights departments. She has practised in a broad spectrum of IP matters for more than 20 years, with an emphasis on trademarks, geographical indications, copyright and plant breeders' rights and has extensive experience in IP litigation, consultancy and contract drafting as well as in devising and implementing anti-counterfeiting programmes and strategies.

She is member of the International Trademark Association, MARQUES and CIOPORA.

She graduated with first-class honours from the Law School of the University of Athens, holds an LLM from the London School of Economics and Political Science and is admitted to practice before the Supreme Court and the Council of State.



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