

in cases of IP rights infringements<sup>24</sup>. Apart from the analysis of the actual situation regarding IP enforcement infrastructure in the Baltic countries, the analysis on a possible establishment of a common judiciary in the framework of Community rights system<sup>25</sup> could be undertaken from the view of the named sub-region.

By considering a dimension of a complex of the local cultural, social, and economic elements, the dynamic spread of new technologies, the growing usage of ‘knowledge-based’ products, the substantial rapid changes in the national IP enforcement infrastructure system of the Post-Soviet legal system<sup>26</sup>, the actual enforcement system of intellectual property rights in the Baltic countries could implicitly mirror the search for more efficient ways of complying with the western standards after the Soviet Union period, by reflecting the “IP mentality” issues as well as conflicts of local and foreign incentives to pursue certain enforcement processes. However, certain assumptions and improvements in relation to regional intellectual property rights enforcement issues are to be viewed in terms of mentioned innovation, by attempting to anticipate whether strengthening measures and procedures could have influence on low-level enforcement and whether more temperate enforcement provisions could have influence on high-level enforcement of rights in the Baltic countries in view of certain psychological aspects of the compliance with enforcement-related provisions. It is believed that such an approach could be discussed by pointing to various enforcement-related solutions in other countries, such as Germany, France, Italy, and the UK, and by tentatively drawing a specific historical line which covers adoption of national legislation processes reflecting some “*small vs. big*” processes in the Baltic region and in the EU as well.

## **B.     *Structure of this study***

With a consideration of further analysis of the very provisions of the Enforcement Directive and their actual implementation and application in the national court practice of the Baltic countries, § 3A of the thesis focuses on specificity of the geopolitical situation of the Baltic countries. Further, § 3B covers a history of IP legislation in the Baltic region by covering two main periods of such legislation, *i.e.*, before and after the Baltic countries’ accession into the European Union, by comprising the IP rights which are mainly practically relevant for the region, *i.e.* copyright, trademarks, designs and patents, and by taking the specificity of the geopolitical situation of the Baltic countries and its impact on national legislation, including IP legislation, into account. The historical overview, which mainly covers the then legislative pro-

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24 *Ibid.*, pp. 884-923.

25 As established under Council Regulation 40/94/EC on Community Trade Marks, Council Regulation 6/2002/EC on Community Designs. Also see *Kur*, New Framework for IPR – Horizontal Issues, p. 3; *Drexler et al.*, Proposal for a Directive – A First Statement, p. 534.

26 *E.g.*, the courts competent to hear IPRs infringement cases and administrative institutions competent to enforce intellectual property rights, which are closely related to effectiveness of the implementation of the IP enforcement-related provisions, are meant herein.

visions and some unique empirical data, is followed by § 3C, which describes the current regulatory and institutional framework for enforcement in the Baltic countries which is deemed to be relevant to the further analysis of the IP enforcement related provisions.

It is believed that the analysis of an actual implementation of the provisions of the Enforcement Directive, especially those related to industrial property rights, cannot be fully accomplished without considering the economic development in the Baltic market, some social and economic factors, in particular, those related to the IP and R&D sector, important to the enforcement of IPRs in the Baltic states. Those considerations could provide a possibility of depicting some aspects of a local creative and innovative landscape as well as helping to better explore the national legislative solutions and court practice in question. Therefore, § 4 of the study describes some aspects of local research, industry and innovation in the light of a level of government regulation and support in the IP field, IP teaching, scientific research, and the creation of innovative products and their practical applications.

Furthermore, by considering the legal IP context of the Baltic countries as well as important R&D, IP industry and teaching factors which are described in the previous chapters of the study, § 5 *first briefly reviews* the objectives, the scope of application, and the substantial provisions of the Enforcement Directive in view of the TRIPS Agreement and, *second*, describes general procedural IP litigation principles under the national legislation, examines the specific and newly enacted IP enforcement legal institutions which are deemed to be important for the Baltic region.

As a result, the Enforcement Directive overview on its substantial provisions, the catalogue of the enforcement measures and remedies focusing on “grandfather” provisions and novelties, and procedural provisions is followed by an analysis of the national procedural, as well as substantive, laws of the Baltic countries, *i.e.* the provisions on persons having a right to claim their IP rights’ protection (*locus standi*), collection of evidence, actual applicability of the measures for preserving evidence in intellectual property rights infringement cases (in particular actualities on *civil (ex parte) searches* in the court practise of Lithuania in comparison with other European jurisdictions), provisional and precautionary measures, remedies, namely, damages, alternative measures, publication of judgments and their preventive role. Judicial tendencies and disparities concerning the listed subject-matters, also some aspects of correlation among civil, administrative, and criminal litigation are likewise examined in order to estimate various implementation of the Enforcement Directive outcomes, such as influence on substantive intellectual property laws of the Baltic

countries<sup>27</sup>, the creation of a favourable environment for local research and innovation, and the best enforcement model for the Baltic countries to follow<sup>28</sup>.

The analysis on the civil enforcement of IP rights in the Baltic countries regarding their historical, social, economic, and cultural factors, and economic and pragmatic reasons<sup>29</sup>, without which anticipation of future developments would be impossible, have an immediate connection with the intent to follow-up with certain conclusions, observations and suggestions. Considering the declared aim to implement stronger civil enforcement rules as pursued by the Directive, also further legislative ambitions in the field of harmonization of criminal enforcement measures within the EU<sup>30</sup> (which are not analysed in depth in this study, since they could be the subject-matter of a separate analysis), the conclusions and observations which are listed and described in the last part of the thesis, § 6, generally aim at the establishment of a more effective intellectual property rights enforcement model. Such model can be valued in terms of civil measures and remedies and its actual application by highlighting the specificity of the Baltic markets, their supplies and demands, their legal traditions of protection of IP rights, so that the idea and objectives of the TRIPS Agreement and the Enforcement Directive as well as local incentives to innovate and create grows not only in ambition, but also in reality<sup>31</sup>.

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- 27 As mentioned, the actual application of the measures and procedures could be even relevant to some future changes outside the intellectual property field, *e.g.*, company and labour law, and contract and privacy law. Such issues, though, can be considered as the subject-matter of an additional study and analysis. See more in *Kur*, New Framework for IPR – Horizontal Issues, pp. 1-4.
- 28 *E.g.*, on this point the question could be raised which society and legal traditions the Baltic countries resemble most – Scandinavian, German, or Russian, by considering which society type the Baltic countries represent – ‘industrial’ or ‘consumer’ in view of the economic and social landscape analyzed.
- 29 This view has been taken into consideration by some other scholars, by mentioning that the socio-economic analysis has an inherent value while analysing the context of enforcement of IPRs. The remarks on this view can be found in, *e.g.*, *Kur*, New Framework for IPR – Horizontal Issues, pp. 13-14.
- 30 Amended proposal for a Directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights (presented by the Commission): COM (2006) 168 final, April 26, 2006 is meant here; see also references and discussion in IP Watch, *EU Seeks Stronger IP Enforcement at Every Level* (2007).
- 31 As it is provided, “<...> without effective means of enforcing intellectual property rights, innovation and creativity are discouraged and investment diminished”, see Recital 3, Dir.

