

### § 3 Protection of IP rights in the Baltic countries: retrospective observations and the current infrastructure

#### A. *Specificity of the geopolitical situation of the Baltic countries: the general context*

It is hardly possible to conceptualize the legal intellectual property traditions of the Baltic countries and to conceive of their IP infrastructure and the realities of an actual IP enforcement without a brief reference to the geopolitical situation of the East-Baltic. It is believed that a brief overview of geopolitics with a further link to the analysis of IP infrastructure and certain aspects of IPR enforcement help to assess the current situation of the Baltic states in the IP international arena. Despite the fact that nowadays geographical barriers and the deployment of natural resources have less influence on the power of the states, the geography of the Baltic states remains important due to an uneven distribution of creative works and inventions, various capital flows which influence their living standards and types of industry.

As rightly pointed out by some local scholars analysing the aspects of the Baltic countries from the perspective of political science<sup>32</sup>, industrial, social, and intellectual capital, certain investments in innovations, along with a creation of an effectively functioning legal system to promote and protect those innovations form a favourable infrastructure in which business can develop.

The contemporary Baltic countries are the result of their complex historical development<sup>33</sup>, while at the same time being a particular challenge to Russia which, throughout the existence of the Baltic countries, has been involved in the politics of the western world and its democratic processes<sup>34</sup>. The East-Baltic lands constantly faced external unfavourable situations which did not allow them to form stable political institutions along with a coherent legal infrastructure, including an IP protection infrastructure. Moreover, due to lack of political traditions, in the Baltic countries politics was mainly based on ethnic and linguistic ties and the geopolitical research supports the statement that the Baltic countries were and are dependant on the great powers, which predisposed them to the traditional balance of power and interests in all fields<sup>35</sup>.

One may agree with the statement that the East-Baltic is a sub-region which formed through a constant circumvention of a collision of two main geopolitical powers – Russia (and during one historical period – the Soviet Union) and Germa-

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32 See *Laurinavičius et al.*, Aspects of Geopolitics of the Baltic Countries, p. 60.

33 More about formation and development of the Baltic countries see in *Meissner (Hrsg.)*, Die Baltischen Nationen, p. 11 et seq.

34 See *Laurinavičius et al.*, Aspects of Geopolitics of the Baltic Countries, pp. 24, 25.

35 See *Ibid*, Aspects of Geopolitics of the Baltic Countries, p. 407.

ny<sup>36</sup>. The similarities of the historical circumstances (especially because of the experience of the pre-war independence<sup>37</sup>), the geographical characteristics, the existing problems and the present foreign policy objectives of the Baltic countries allow us to refer to the so-called “Baltic identity” or the “Baltic region”. However, such reference immediately faces criticism based on the fact that three countries are inherently different in a few aspects. Linguistically and geographically Estonia belongs to the group of Northern countries, whereas Lithuania belongs to the country group of Central Europe. Only Latvia’s characteristics can support the idea of the Baltic region with its specific identity<sup>38</sup>.

Importantly, in the last decade of the twentieth century, as a response to the political objectives of the aforementioned countries, the Baltic states tried to shape their political and military landscape into an institutionalized sub-region. However, such intentions did not succeed because of external forces as well as too many differences among the Baltic countries themselves in their geopolitical orientation. The Baltic countries are also sometimes referred to as being a region presenting one legal tradition, but such statements can be reasonably denied because of the mentioned language and religion differences as well as the different historical paths and political orientation aspects of the three countries<sup>39</sup>.

On the other hand, it is often argued that, mainly due to their accession into the EU and other international organizations and structures, also due to their “intricate geo-historical fate”<sup>40</sup> Estonia, Latvia, and Lithuania are considered to comprise a specific European sub-region<sup>41</sup>, and a special and unique geopolitical and geo-economic phenomenon<sup>42</sup>, which has been nowadays strongly influenced by its geographical situation as well as by external forces from superpowers and from its big neighbours, particularly Russia<sup>43</sup>. The geopolitical position of the East-Baltic and, as referred, its lack of political tradition and well-defined civilization potential<sup>44</sup> could

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- 36 Interestingly, in comparison with Lithuanians, both Latvians and Estonians absorbed more material and immaterial values from German culture as well as introduced a so-called 'city culture' and related intellectual and economic potential in their social elements. See more *Laurinavičius et al.*, Aspects of Geopolitics of the Baltic Countries, p. 87.
- 37 As referred in *Elsuwege*, State Continuity and its Consequences: The Case of the Baltic States, p. 381.
- 38 See *Ahola et al.*, Baltic Region. Conflicts and Cooperation, pp. 59-60. *Note*: Lithuania and Latvia belongs to the Baltic language group, whereas Estonian belongs to the Finno-Ugric one. Lithuanian society is mostly a catholic one; Estonian and Latvian societies mainly follow Protestantism.
- 39 Additional historical discussion can be found in *Heiss (Hrsg.)*, Zivilrechtsreform im Baltikum, pp. 3-18.
- 40 See *Laurinavičius et al.*, Aspects of Geopolitics of the Baltic Countries, p. 407.
- 41 It is argued that the formation of the East-Baltic region was forced from outside, considering the fact that the Baltic countries had their specific geopolitical orientation and gravitation. See *Laurinavičius et al.*, Aspects of Geopolitics of the Baltic Countries, p. 10.
- 42 See *Ibid*, p. 23; also *Elsuwege*, State Continuity and its Consequences: The Case of the Baltic States, p. 381.
- 43 See *Meissner (Hrsg.)*, Die Baltischen Nationen, pp. 11-44.
- 44 See *Laurinavičius et al.*, Aspects of Geopolitics of the Baltic Countries, pp. 24-25.

be reflected in the processes related to the formation of a local IP system and, consequently, the tradition of IP rights protection and enforcement of such rights schemes as well. The geopolitical and geo-strategical position of the so-called East-Baltic is and often plays the role of gatekeeper to the Western countries.

While analysing the social and economic structure of the Baltic countries with the aim to understand the processes in relation to the IP legislation, environment and the enforcement of IP rights, it is to be considered that nowadays the Baltic countries are deemed to be more oriented to the so-called “*maritime states*”<sup>45</sup> with a strong “*Nordic dimension*”<sup>46</sup> with a tendency to export their own creations and innovations rather than to utilize them in the local markets. The orientation of their citizens, however, is ambivalent, especially taking the “heritage” of the Soviet era into account. Moreover, according to historical, cultural and political analyses, Lithuania, Latvia, and Estonia belong to the Western Latin civilization; though, from a geo-economic point of view, they belong to peripheral lands<sup>47</sup>. This is to be considered by analysing the processes of, *inter alia*, the implementation of certain legal models as far as IP rights and their enforcement in the Baltic region are concerned.

## **B. Historical overview of the protection of IP rights in the Baltic countries**

The current legal IP infrastructure in the Baltic countries reflects a unique period of IP development comprising legislative improvements regarding the enforcement of those rights as well as their actual application. It is sometimes argued that its past aspects have no need to be revised, although its historical overview is deemed to be important, as it allows scholars, practitioners, and local and foreign IP industry “players” to better understand the birth and growth of a regional IP protection system and to evaluate actual applications of the enforcement provisions related to IP rights.

In the Baltic countries the development of the national intellectual property systems started during the period of the so-called first independent republics (1918 – 1940), and later was strained during the Soviet occupation beginning in 1940/1941. Only 50 years later, when the Baltic countries regained their second independence in 1990/1991<sup>48</sup>, were those systems re-established. In the beginning of the twentieth century, the formation of intellectual property systems in the Baltic countries was mainly influenced by growing relationships with other foreign states as well as by

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45 It is more essential to Latvia and Estonia, though, as referred in *Laurinavičius et al.*, Aspects of Geopolitics of the Baltic Countries, p. 71.

46 As argued by the monographers on the geo-strategic position of the Baltic and Scandinavian countries, the geo-strategic position of the Nordic countries, the cooperation with them is in general very important to all Baltic states, see, e.g., *Daniliauskas et al.*, Geo-strategic Importance of the Nordic Countries to Lithuania, pp. 113-115.

47 See *Laurinavičius et al.*, Aspects of Geopolitics of the Baltic Countries, pp. 65-66.

48 Note: hereinafter the period from 1918 to 1940/1941 is called “the first independence” and the period after 1990/1991 “the second independence”.