photographic works, and also embodied a range of provisions reflecting international obligations[78].

Moreover, Articles 695(21) – 695(26) of the Civil Laws embodied the provisions regarding damages to be adjudicated in case of infringement of copyright[79]. In the field of copyright in Latvia there were some attempts to amend the national legislation due to the harmonization with the IP legislation of the Western countries by starting to draft legislation on "Economic Authors' Rights"; however, the legislative processes were discontinued in 1940[80].

II. The Soviet occupation (1940 – 1990/1991): the strained existence of IP rights

1. IP as a part of Soviet civil law

One can fully agree with the types of creation and innovation behaviours in a totalitarian society, listed by the Estonian scholar *Pisuke*[81], as a reflection of the influence of a communist ideology in creative works which were mainly state-oriented, centrally planned, and centrally controlled, with the possibility of repression if a work did not fit into the frames of those established creative and innovative behaviours. The Soviet occupation and accession of the Baltic countries in 1940-1941 increased their cultural, social, and political ambivalence by forming a dual society and culture – the so-called "front" and the unofficial culture or "underground" – which was also reflected in the legal systems of Latvia, Lithuania, and Estonia. Regarding social structure, the Baltic people faced a wide-spread influx of the "front-society" because of the high rate of Russian emigrants and strong Soviet reprisal and control infrastructure[82].

Formally, intellectual property was regarded as a part of Soviet civil law, which was incorporated into the Civil Codes and Civil Procedural Codes (definitely covering Soviet procedural norms) of the Soviet Republics of Estonia, Latvia, and Lithuania. The Codes changed the pre-existing concepts of general civil law of the Baltic countries by embodying the principles of abolishment of private law and private estate, and by limiting legal sources only to Soviet ones[83]. In 1940, when the Baltic

78 See *Mizaras*, Lithuanian Copyright: Historical and Modern Aspects and Trends of Development, p. 833; also *Šalkauskis,* Civil Laws, pp. 192-206.

79 The actual applicability of the provisions in regard with civil remedies in copyright infringement cases illustrate a few cases in the Lithuanian court practice related to an adjudication of damages in which the court (*the Chief Tribunal*, at that time) made the conclusions that, *e.g.* damages in the copyright cases did not depend on the income received by the infringer who infringed those rights or stated that the courts had full discretion to decide on an amount of damages to be adjudged on a case-by-case basis without considering the opinion of the cassation instance, as referred in *Šalkauskis,* Civil Laws, pp. 196, 197.

80 As described in *Latvian Patent Office Information (2008).*

81 See *Pisuke*, Estonia: Copyright and Related Rights, p. 101.

82 See *Laurinavičius et al.,* Aspects of Geopolitics of the Baltic Countries, p. 27.

83 See *Heiss (Hrsg.)*, Zivilrechtsreform im Baltikum, p. 10.

countries were incorporated by force into the USSR, the 1922 Civil Code of the Russian Federation and other civil laws came into effect. Following the 1961 Fundamentals of Civil Laws of the USSR and the Soviet Union Republics, the Civil Codes, which basically resembled the Fundamentals, were adopted in 1964 in Lithuania, Latvia, and Estonia, coming into effect in 1965.

The Civil Codes regulated five legal intellectual property institutes, namely, copyright law, discovery and invention rights, and the rights of industrial models and obligations, which arise in regard to publication of contest (*i.e.*, competition in the fields of art, literature, science, etc., in which the best competitor is awarded by the state)[84]. Notably, Soviet legislation did not recognize the neighbouring rights of performers and producers of phonograms; however, broadcasting organizations enjoyed copyright of their broadcasts[85].

Although the USSR Constitution and the Constitutions of the Soviet Republics of the Baltic countries provided for freedom of scientific, technical, and artistic creativity[86], it is important to note that state control and non-recognition of the freedom of contracts were typical for intellectual property regulation in the Soviet Union[87]. The rights of right holders were strictly regulated by the State and treated as socialist subjective rights, for instance, according to the Soviet legislation which was fully applicable in the field of inventions, industrial designs, and trademarks. The so-called Author's Certificate (not a patent[88]) did not provide for exclusive rights; however, it was used as a protection document that could be centrally obtained only through the Soviet Union Committee for Inventions and Discoveries in Moscow[89].

In the field of copyright, authors during the Soviet occupation either had to support the official communist ideology[90] or adapt to official requirements with an attempt at expressing oneself by allegory, either by giving up creative activities or by expressing one's own ideas in works in defiance of certain sanctions. Although the state advertised that it provided the best conditions to all creators and innovators by, *inter alia*, assessing remunerations (on the basis of benefits to the general public, however), by providing them with the best working conditions, and by awarding

84 See Soviet Civil Law, p. 236 et seq.

85 See *Pisuke*, Estonia: Copyright and Related Rights, p. 103.

86 See Soviet Civil Law, pp. 236-238.

87 See *Sergejev,* IPRs in the Russian Federation, p. 40; there was, though, room for certain negotiations concerning remuneration, but only within the limits of the state-prescribed rates, as referred in *Pisuke,* Estonia: Copyright and Related Rights, p. 103.

88 There were two types of protection for an invention in the USSR: the Author's Certificate and a patent. An inventor had a right to choose either to claim or to recognize his/her authorship, by transferring exclusive rights to the invention to the state (an Author's Certificate), or to claim his/her exclusive rights to an invention (a patent). Similarly, the rights regarding an industrial model were regulated. The Soviet civil rules also protected rights to a discovery and to a rationally-based (rationalization) offer. Arts. 557-566, *Civil Code of the Lithuanian SSR*.

89 The subjective rights to the invention belonged to the state, which guaranteed the inventor a fixed remuneration and a very limited list of moral rights, as referred in *Pisuke*, Protection of IP in Estonia, p. 11.

90 See *Sergejev*, IPRs in the Russian Federation, p. 40.

them with state rewards, meaning also moral satisfaction of those persons[91], in actuality, Soviet citizens had to participate in the creation of cultural products without authorization and without receiving a payment[92]. This condition during 50 years of Soviet occupation of the Baltic countries formed a certain attitude towards IPRs in general, whose rudiments are still being seen today.

The terms of protection also reflected the ideology of dominant state ownership of any type of intellectual property rights. The term of copyright in the Baltic countries was 15 years after the death of the author and was extended up to 25 years p.m.a.[93] only after the Soviet Union's accession to the UCC in 1974[94], whereas a patent was granted for 15 years from an application date[95].

2. Aspects of enforcement of IP rights under the Soviet regulation

Considering the provisions concerning the enforcement of intellectual property rights during the Soviet occupation[96], it should be noted that even the Soviet Civil and Civil Procedural Codes provided for a right to submit a claim to the courts or other administrative institutions[97], such claims were usually solved on the administrative-organizational level with so-called "means of mediation". Generally, disputes were solved according to administrative[98], court, or so-called mixed (administrative-court) procedure. As far as copyright infringement cases were concerned, the plaintiffs who submitted complaints were exempted from an obligation to pay state fees, and copyright owners were exempted from court fees (a stamp duty and court expenses). The civil remedies in such cases covered adjudication of damages, amendments to works, publications about the infringement or prohibition of a publication, reproduction, or distribution of a work. The laconic Soviet civil rules provided that, in case of moral rights infringement, a copyright holder had a right to claim a restitution of rights (corrections or a publication to be made), a prohibition of a publication

91 See Soviet Civil Law, p. 240.

92 The broad Soviet IP-related free-use provisions also demonstrate a "socialist IP thinking" which, along with other factors, such as a lack of technological innovations, contributed to an increasing gap between East and West countries. See *von Lewinski*, Copyright in Central and Eastern Europe, p. 42.

93 Art. 536, *Civil Code of the Lithuanian SSR*. Interestingly, the term of copyright belonging to legal persons was termless. After the reorganization of a legal person, such right was transferred to its successor, and, in case of its liquidation, to the state (Art. 538, *Civil Code of the Lithuanian SSR*).

94 Universal Copyright Convention of 1952, as revised at Paris on 24 July, 1971 (hereinafter – the "*UCC*").

95 Art. 562, *Civil Code of the Lithuanian SSR*.

96 *Note:* the civil cases from the Soviet time are currently contained in the national court archives without specific references to IP infringement cases, though. The described aspects of IP enforcement can be mainly featured by analysing the then legislative provisions and the corresponding commentaries only.

97 Arts. 539, 540, *Civil Code of the Lithuanian SSR*; also *Commentary of Civil Code of the Lithuanian SSR*, p. 367.

98 Art. 539, *Commentary of Civil Code of the Lithuanian SSR*, p. 353.

of a work, or a termination of a distribution of a work. Moreover, in case of economic rights infringement, a copyright holder had a right to claim damages.

As far as invention and rationalization rights were concerned, all disputes regarding acceptance of an offer for invention or rationalisation were solved according to the administrative provisions, except the disputes regarding a priority for a rationalization offer, an amount of remuneration, an assessment of such remuneration and its payment and an establishment of a fact of use of a rationalization offer. Such disputes could be solved in the courts as well. However, the administrative procedures were mainly used[99]. Disputes concerning industrial design were solved either in courts or by administrative or administrative-court procedure. It should also be mentioned that judges or a panel of judges in the administrative procedures were not always lawyers[100]. This fact also certainly could influence the lower legal quality of the decisions and judgements in the cases.

III. The period of substantial changes of IP rights protection (1990/1991 – 1994)

1. Adoption of the new national IP legislation

Beginning in 1988-1989, the Baltic countries lived through one of the most important changes in their 20th century history, namely, the liberation from Soviet occupation. This led to the very difficult process of making changes to their national legislations, including those on intellectual property regulation, while facing a rapid transformation from a centralized economy into a free market. Certainly, after the declarations of independence of the Baltic countries in 1990-1991, the Russian core of the "front culture" had been clearly disposed of. While the influence of the Russian economy declined, the relationship between the Western European countries and the Baltic countries began to grow. Later the Western European/Baltic relationship developed to a high institutional level, *i.e.* in the form of membership in the EU or NATO. Even so, a sizable Russian minority in the Baltic States, especially in Latvia and Estonia[101], and the inheritance of the Soviet mentality towards social,

99 See Soviet Civil Law, p. 236 et seq.

100 With a reference to the commentaries regarding the articles on the disputes on, *e.g.* ownership of an invention and payment of a remuneration, it is observed that the cases could be heard by the representatives from the organizations in which an invention had been made and the trade-unions *or* the courts, Art. 566, *Commentary of Civil Code of the Lithuanian SSR*, p. 370.

101 The Russian-speaking population comprises approx. 29 % of the whole population in Latvia, approx. 26 % in Estonia and approx. 6 % in Lithuania, following the information provided by the national statistic departments, see in *Statistics Department of Estonia (2008)*, *Statistics Department of Latvia (2008)*, *Statistics Department of Lithuania (2008)*. As argued, the presence of large Russian-speaking minorities in Latvia and Estonia reflect the Soviet legacy; see more in *Elsuwege*, State Continuity and its Consequences: The Case of the Baltic States, pp. 381–384.