

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”.

the so-called global IP societies<sup>49</sup>. They were therefore influenced by international obligations<sup>50</sup>, and at the same time reflected the developing national economies in the Baltic region.

The brief historical overview of intellectual property legislation<sup>51</sup> may begin with the beginning of the 20th century for the following reasons: *first*, the historical, social, and political contexts of the Baltic countries at the end of the 18th century and, especially, in 1795, when most of the Baltic region became part of the Russian Empire after the third division of the Austrian-Hungarian Empire<sup>52</sup>, do not substantiate a discussion on national IP-related regulation before the so-called first independence in 1918/1919. *Second*, the twenty two-year period before World War II, when the Baltic States were developing as sovereign modern states with rudimentary modern IP laws (although the sources of the laws are quite modest), is the most important in terms of the formation of an intellectual property notion, its definition in national legal documents, and the creation of an IP protection system and an enforcement infrastructure.

Although the historical overview is mainly limited to the description of the existing national legislation and some data in relation to the rights registered during the analysed historical periods, it is considered to be quite illustrative for a depiction of an overall context, which is substantial for the further analysis of contemporary legislative provisions, namely, the provisions on the enforcement of IP rights.

## *I. Before World War II (1918 – 1940): the origins of modern national IP legislation*

### *1. Industrial property legislation*

Before World War II, protection of intellectual property in the Baltic countries was established through contemporary civil laws which generally reflected czarist Russian civil tradition<sup>53</sup> and whose historical value provides the possibility to use past

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49 See *Pisuke*, Estonia: Copyright and Related Rights, p. 98.

50 Notably, the Baltic countries became members of the most important international treaties on IP rights valid at that time during their first independence period. See also the overview in *infra* § 3B.III.2 in relation to the adherence to the international treaties during the period 1918/1919-1940/1941.

51 The overview is mainly focused on the national IP legislation, since the sources of national court practice during the first independence are very modest.

52 *E.g.*, in 1795 the joint Lithuanian-Polish state was dissolved by the third division of the Commonwealth, which forfeited its lands to Russia, Prussia, and Austria. Over 90 % of Lithuania was incorporated into the Russian Empire and the remainder into Prussia. The territories of Latvia (from 1795) and Estonia (from 1710) also became parts of the Russian Empire after the long-term dominance of Poland and Sweden, and partially Russia, in their territories. See also more in *Heiss (Hrsg.)*, *Zivilrechtsreform im Baltikum*, p. 7.

53 Although, *e.g.* Lithuania had old traditions of Civil Law codification, the national codified legal system, also comprising IPRs, was not created during the Interwar period in Lithuania. See *Mikelėnas*, *Reform of Civil Law in Lithuania*, p. 51. The 1864 codified civil laws which

experience in a perspective of implementation of new IP enforcement rules by understanding the context of legal IP traditions in the East-Baltic. Generally, during the entire first independence period, the Baltic states were creating and improving their legal systems. During the same period similar law creation and development processes could be also seen in other countries, such as Finland, Poland, or the Weimar Republic. However, unlike these countries, these processes in the Baltic states had been ended by the occupation by the Soviet Union in 1940/1941, which deleted them from the “map” of the Roman-German legal tradition<sup>54</sup>.

During the Russian occupation from 1795 to 1917, industrial property rights in Lithuania<sup>55</sup> were regulated according to the 1812 Manifest of Privileges to Inventions and Discoveries of Art and Handicraft, the law of 1870, and the 1913 Statute of Industry<sup>56</sup>. Even after the declaration of independence of Lithuania in 1918, the laws and codes of czarist Russia were still applicable for some time. Moreover, temporary documents for inventions began to be issued in 1924 according to czarist Russia’s Statute of Industry (Arts. 69-103)<sup>57</sup>. In Lithuania the first patent under this law was issued in 1929 to the British company Photomaton Patent Corporation Ltd., situated in London, with priority beginning 18 September, 1928<sup>58</sup>. The Statute of Industry was changed in 1928 by adopting the Law on Protection of Inventions and Improvements, which was valid until 21 July, 1940, and in which, important for the time, non-patentable subject-matter as well as the persons eligible to apply for a patent protection were for the first time listed in the laws<sup>59</sup>. Concerning the number of patents issued during the first independence period in Lithuania, it is important to note that in 1928 patents were mainly issued to foreign natural and legal persons. 34 patents were issued to Germans, 15 patents to French citizens, 10 patents to American applicants, and only one was issued to a Lithuanian citizen. The majority of the patents were issued in 1929. However, Lithuanian patentees comprised only 7,84 %

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reflected Roman-German civil legal tradition, however, were valid in Estonia and Latvia (in the latter with some later changes). See more in Heiss (*Hrsg.*), *Zivilrechtsreform im Baltikum*, p. 20.

54 As observed in Heiss (*Hrsg.*), *Zivilrechtsreform im Baltikum*, p. 9.

55 The term “*industrial property rights*“, as used in this sub-chapter, covers inventions and partially industrial designs.

56 See Kasperavičius, Žilinskas, *Intellectual Property*, pp. 220, 221.

57 The Statute of Industry (Arts. 69-103) of czarist Russia, however, did not provide for a definition of invention and for invention patentability criteria, except for novelty, which was a conditional worldwide novelty. See Kasperavičius, Žilinskas, *Intellectual Property*, p. 220.

58 See Lithuania, *Patents before the 2nd WW*, p. 3.

59 Under the Law on Protection of Inventions and Improvements, patents could be issued for 15 years from the application date. The Law also provided for an additional patent as well as for a dependent patent. After a period of 3 years from the publication of the patent, the possibility to submit a protest to the court was provided on the basis of which a criminal case could be initiated. The owner of the patent had an exclusive right to use an invention with an obligation to inform the national Ministry of Finance in case of a license to any third parties. Although the persons eligible to apply for a patent protection were not clearly listed in the law, it can be presumed that it was both national and foreign natural and legal persons as well as successors of natural persons, as referred in Kasperavičius, Žilinskas, *Intellectual Property*, p. 221.

of them. In comparison with 1930, when 107 patents were issued, only 37 patents were issued in 1940. During the period from 1928-1940, 1021 patents were issued, mainly to foreign natural and legal persons<sup>60</sup>.

In Latvia the formation of the national industrial property protection system started in 1919 with the drafting of laws on patents and trademarks. The czarist Russian 1913 Statute of Industry was also taken as a basis and contained the provisions pertaining to patents. Only in 1921 could actual granting of patents commence due to certain amendments to the Statute which, generally, had been amended several times until the national Law on the Protection of Inventions, Models, Factory Drawings and Trademarks in Exhibitions was adopted in 1925<sup>61</sup>. Approximately 4,500 patents were granted in Latvia during the first independence period<sup>62</sup>.

Similarly, the czarist Russian 1913 Statute of Industry was applicable in Estonia after the declaration of its first independence in 1919. The first patent act was enforced in 1921, and a completely new national Estonian Patent Act was adopted in 1937 and was enforced in 1938<sup>63</sup>; however, it was only valid for two years, up to the Soviet occupation in 1940. About 3,000 patents were granted during the first Estonian independence, approximately 143 patents a year, with a majority of patents granted to foreign applicants<sup>64</sup>. As far as industrial design was concerned, it should be mentioned that industrial design certificates were issued under the Law on Protection of Inventions and Improvements of 1928, and up to 1940 only 125 certificates were issued in Lithuania, mainly to foreign applicants<sup>65</sup>.

In the field of trademark protection the influence of the czarist Russian IP tradition was likewise obvious. In Lithuania the national Law on Trademarks was adopted in 1925, and was actually applied together with the Statute of Industry of the czarist Russia, and on the basis of which 5588 trademarks and 125 industrial design certificates were issued until 1940<sup>66</sup>. The Statute of Industry of czarist Russia was also applicable in Latvia and Estonia for trademark registration until the adoption of new amendments<sup>67</sup>. Similar numbers appear in Latvia, in which the Statute of Industry with certain Amendments to the Regulations on the Procedure of Granting Protection Certificates and Patents for Inventions, Models, and Trademarks was in force beginning in 1919: 4744 trademarks had been registered as of 1928, and in the

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60 All numbers are taken from *Kasperavičius, Žilinskas, Intellectual Property*, pp. 230, 231, as well as from Lithuania, Patents before the 2nd WW, p. 3.

61 As indicated in *Latvian Patent Office Information (2008)*.

62 The numbers are taken from the short summary of patent law and practice history in Latvia prepared by the Latvian Patent Office, see more in *Ibid*.

63 See *Pisuke, Protection of IP in Estonia*, pp. 10, 11.

64 More information about the patents registered during the first independence in Estonia as well as the work of the Patent Office can be found in the overview prepared by the Estonian Patent Office, see *Estonian Patent Office Information (2008)*.

65 See *Kasperavičius, Žilinskas, Intellectual Property*, p. 228. *Note*: there are no data provided for industrial design registered in Latvia and Estonia during the interwar period.

66 Mainly foreign citizens and foreign companies applied for national trademark and industrial design protection, as observed in *Ibid*, p. 231.

67 See *Pisuke, Protection of IP in Estonia*, p. 10. Also concerning Latvia see more information prepared by the Latvian Patent Office, see *Latvian Patent Office Information (2008)*.

last years of independence, there had been approximately 500 trademarks registered<sup>68</sup>. In Estonia, however, had the largest number of trademarks registered during 21 years of the first independence: 6,587 in total, with the number of foreign trademark registrations 1,5 times larger than the domestic one<sup>69</sup>. Importantly, the then Lithuanian Law on Trademarks established terms of signs which could be registered as trademarks, applicants for the trademark registration, and a term of protection<sup>70</sup>. As regards the enforcement of rights in the case of infringement of registered trademarks, the owner had a right to claim compensation for actual damages done<sup>71</sup>.

The adoption of the industrial property legislation could arguably reflect economic growth during this interwar period in the Baltic countries, especially when the bilateral patent agreements were signed, for instance, between Lithuania, Latvia, and Czechoslovakia<sup>72</sup>, which provided the incentive to protect industrial property rights. On the other hand, during the last decade of the first independence of the Baltic countries a certain innovative “stagnation” became evident. This recession could be explained by referring to the then political situation in Lithuania and also in the other two Baltic countries, which faced authoritarian regimes<sup>73</sup> as well as to the general world-wide economic depression.

## 2. Copyright legislation

Concerning the Baltic copyright legislation during the interwar period, it is to be noted that, for instance, national copyright legislation did not exist in Estonia. The Russian Empire’s 1911 Copyright Act<sup>74</sup> was in force until the Soviet occupation<sup>75</sup>, which could be considered a clear example of absorption of the Russian IP tradition and as a reflection on the contemporary public and political position in Estonia that “copyright was not regarded as an important economic or legal instrument in the society”<sup>76</sup> at that time. In comparison with Estonia, copyright protection in Lithuania reflected a differing position and was regulated under the Civil Laws Chapter 8 “Regulation of Copyright”<sup>77</sup>, which established the subject-matter of protection, author’s rights to written and oral literary works, musical works, artistic creations, and

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68 See *Ibid.*

69 See *Estonian Patent Office Information* (2008).

70 The mark could be registered for a term from 1 to 10 years with a possibility of an extension, as reported in *Kasperavičius, Žilinskas*, Intellectual Property, p. 231.

71 *Ibid.*, p. 232.

72 E.g., Estonia had bilateral agreements in the field of industrial property with Denmark, Luxembourg, Great Britain, the Soviet Union, and Lithuania. See more at *Pisuke*, Protection of IP in Estonia, p. 11.

73 The authoritarian regimes existed in Lithuania since 1928, and in Latvia and Estonia since 1934 until the Soviet occupation and annexation in 1940/1941.

74 The Copyright Act of the Russian Empire was treated as “one of the most modern acts in Europe at that time”, though; as referred in *Pisuke*, Estonia: Copyright and Related Rights, p. 99.

75 *Ibid.*, p. 98.

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

77 See *Vansevičius*, Copyright under Czarist Law, pp. 120, 121.

photographic works, and also embodied a range of provisions reflecting international obligations<sup>78</sup>.

Moreover, Articles 695(21) – 695(26) of the Civil Laws embodied the provisions regarding damages to be adjudicated in case of infringement of copyright<sup>79</sup>. 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<sup>80</sup>.

## 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*<sup>81</sup>, 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<sup>82</sup>.

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<sup>83</sup>. In 1940, when the Baltic

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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.