

can be appealed to, respectively, the Tallinn Administrative Court¹⁸⁸, the Riga Regional Court and the Vilnius District Court¹⁸⁹. Based on statistical data on appealed decisions of the patent office in Lithuania, the tendency that the Board of Appeals is playing an evidently important role is observable¹⁹⁰. Moreover, the specialization and work of the members of the Board of Appeals is likewise significant in the pre-trial procedures.

III. The role of the government institutions responsible for IP rights enforcement

1. The police authorities: a good start in IP rights infringement cases is crucial

Regarding prosecution of infringers of IP rights and as far as the administrative and criminal enforcement of IP rights is concerned, the police fulfil an important function in terms of initiating and leading criminal and administrative IP cases to the courts¹⁹¹. It is observed that during the last decade, the national Baltic police authorities mainly dealt with copyright and neighbouring rights infringements¹⁹². Considering such observations, the main aspects of police functions in the primary investigation process in such cases should be noted.

Primary prosecution in administrative and criminal IP cases is held by the police officers, meaning that they can initiate actions either based on an individual complaint submitted by the right holders or right holders associations, or *ex officio*. Generally, after a case against the IP infringer is initiated, the functions of the police authorities, most importantly, comprise, *inter alia*, evidence collection and the preparation of the procedural documents (a protocol, a document on a seizure of infringing

188 Art. 30(1) of the Estonian Patent Law establishes that an appeal against the decision of the Patent Office can be filed either to the Board of Appeals *or* to an administrative court.

189 The number of cases regarding invalidation of registered trademarks is dominant among IP cases in Lithuania, also Latvia; as follows from *Questionnaire Regarding Implementation of the Enforcement Directive in Lithuania in 2005-2008. Answers by Lithuanian Supreme Court, the Court of Appeal and the Vilnius District Court (unofficial publication)*, also *Latvian Ministry of Justice Information (2008) (unofficial information)*.

190 E.g., in 2007 the Board of Appeals of the Patent Office considered 197 protests and 10 appeals in LT. The number of the enlarged European patents increased 10 %, whereas the number of the registered trademarks 29 %; see more statistical information in *Lithuanian Patent Office Information (2008) (EV)*.

191 See more information about administrative and criminal liability for IP infringement cases in *infra* § 5G.I. *Note*: there were also special IP units established in the national (economic, tax, or finance) police departments in the Baltic countries.

192 As referred to in the Letter by the European Committee at the Government of the Republic of Lithuania No 10-488 as of 19 April 2002 (OV), the effective police activities in fighting against infringements of IP rights helped Lithuania to strengthen the protection of IP rights and to fulfil its international obligations, by making an example that the commonly-named finance police initiated only 81 administrative cases against the infringers of IP rights during 1998-1999, whereas there were 147 administrative cases already initiated in 2000.

goods, etc.) of the case to be submitted to the court¹⁹³. The collection of evidence requires special knowledge and specific training for the police officers, as the process of collecting evidence mainly involves the collection of specific technical information. In the context of this process, it should be noted that the police authorities usually involve specialists and experts, who provide written statements, which comprise part of the main crucial evidence in IP rights infringement cases. The formed court practice regarding a specialist's statements in IP infringement cases are considered positive, especially due to the fact that specialists are mainly the representatives (legal and/or technical experts) of IP right holders' enforcement associations, but not direct employees of IP right holder companies¹⁹⁴. This is also due to the fact that procedural errors in the primary prosecution process might negatively affect the result of the case, *i.e.* the case could be terminated, or an appropriate assessment of damages for the calculation of which the number of illegal products and their exact specification is required¹⁹⁵, could be omitted, which is sometimes evident in the national IP enforcement practice.

The functions and the work of the police authorities, and the importance of the participation of specialists in this first step in the primary investigation, have been a regular focus in the various reports concerning certain improvements in the field of the enforcement of IP rights in the Baltic countries¹⁹⁶. One can agree on this focus, because police competence, and proper training and appropriate equipment for the police authorities, which have lived through multiple re-organizations, are substantial factors directly influencing the effective application of the enforcement provisions and, at the end of the legal process, the procedural and substantial success of IP cases.

In this regard it should be emphasized that in Lithuania there were certain attempts from the police authorities, which should be applauded, to investigate administrative and criminal cases while investigating other offences in the range of police competence. Moreover, the state tax inspections can be also involved in the investi-

193 See *Vileita*, Commentary of the Lithuanian Law of Copyright and Article 214(10) of the Administrative Code, pp. 197-200.

194 Throughout the national court practice this has been raised as a particular issue, however, the national courts considered specialists who were actually employees of the right holders' enforcement associations as the appropriate persons able to provide all accurate information about the rights which were allegedly infringed. *E.g.*, in Lithuania since 1998-2000, when the police authorities started actively initiating administrative and criminal cases, a provision of *specialist's statements* in the copyright infringement cases unburdened the process of proving the infringement and undoubtedly made the process quicker. Moreover, the IP right holders were to calculate the damages that occurred on the basis of such statements as well. The Lithuanian court practice shows that those specialist's statements are considered as one of the substantial pieces of evidence in IP civil cases, as observed in Decision 21 June 2006, Lithuanian Supreme Court, Civil Case No. 3K-3-422/2006, *Autodesk, Inc. vs. UAB "Arginta"*; see also the further discussion on measures for preserving evidence in *infra* § 5D.I.

195 See further discussion on the assessment of damages in the civil IP cases in *infra* § 5F.I.

196 Improvements of the work of the national police authorities have always been a significant issue mentioned in, for instance, *USTR Special 301 Reports* for all three Baltic countries.

gation of infringements of IP rights, as long as their competence allows¹⁹⁷, as such infringements can be related to an avoidance to pay or non-payment of taxes. It is believed that this combination can make the activities against infringements of IP rights more efficient. Moreover, while enforcing *civil searches*, which can be started by IP right holders on the basis of the implemented provisions, the attendance of police authorities can be also invoked (in cases when the alleged infringer interferes or hinders the collection of evidence)¹⁹⁸.

2. Customs authorities: ensuring effective measures at the borders

Since the EC Regulation 1383/2003 was adopted¹⁹⁹, the national customs authorities are to be considered as one more significant institutional structure for the effective application of the enforcement-related provisions, namely, the protection of IP rights at the borders. Considering the specificity of the geographical situation of the Baltic countries, as previously discussed²⁰⁰, as well as the high rate of IP piracy reported at the borders of the Baltic countries²⁰¹, it can be agreed that an effective functioning of the system of seizure of illegal goods and deterring infringements of IP rights at the borders is crucial for an effective enforcement of IP rights.

As follows from the legislatively-embodied competence and functions of the national customs authorities, one of the most important functions is an *ex officio* action by the customs authorities, *i.e.* measures taken before an application for action by the customs authorities is lodged. By virtue of Article 4 of the EC Regulation 1383/2003, the customs authorities “may suspend the release of the goods or detain them for a period of three working days <...>”. Alternatively, the right holders can initiate the application of the customs measures in advance by submitting an application. By authority of the Article 11(1) of the EC Regulation 1383/2003, the deadlines provided for right holders or their representatives to submit an application for action in case suspected illegal products are detained at the borders are very tight. Therefore, the competence and preparation of the officers of the customs authorities, in addition to specific equipment and information to detect those illegal goods play a crucial role²⁰². As follows from the provisions of the EC Regulation 1383/2003, the

197 As follows from their competence, *e.g.*, in Lithuania, the state tax inspections have, *inter alia*, a right to make raids during which the financial documents of the companies are checked and they can also organize a confiscation, storage, realization, etc. of exhibits in IP infringement cases. It is regulated under the Order of the Head of State Tax Inspection at the Ministry of Finance of the Republic of Lithuania, No. VA-205, 23 December 2004, Arts. 10.33., 10.21 (OV). See also further discussion on the application of measures for preserving evidence in IP infringement cases under Arts. 6, 7 of the Enforcement Directive in infra § 5D.I.

198 See also discussion about *civil (ex parte) searches* practice in Lithuania in infra § 5D.I.3.

199 See *supra* Ft. 163 herein.

200 See the description on the geopolitical situation of the Baltic countries provided in *supra* § 3A.

201 *Refs.* to the *USTR Special 301 Reports*; see also information in infra § 4A.II.

202 In this regard it should be mentioned that constant updated training is held for the national Baltic customs officers, enabling them to improve their competence and qualification in such cases. Moreover, by virtue of the requirements as set in Art. 5(5) of the EC Regulation

right holders must also provide very detailed and specific information to the customs authorities. The statistics show that this legislative possibility especially in connection with actions based on the requests of IP right holders is growing in practice, and more cases may be expected in the future following the customs seizures of IP infringing products at the Baltic countries' borders²⁰³.

IV. The national judicial systems in view of IP rights enforcement

1. Competence to hear IP rights infringement cases and jurisdiction
 - a) General structure of the court systems

Needless to say, one of the main challenges for an effective implementation of the IP legislation concerns the establishment and proper functioning of independent civil, administrative, and criminal courts²⁰⁴. Judges undoubtedly play one of the most important roles in making the implemented legal provisions effective, especially in the period when the state faces the transformation of its legal system, when the new legislation is to affirm the social and economic changes in the countries²⁰⁵.

In Article 111(1) of the Lithuanian Constitution, it is established that the courts shall be the Supreme Court of Lithuania (*Lietuvos Aukščiausiasis Teismas*, lt.), the Court of Appeal of Lithuania (*Lietuvos Apeliacinis Teismas*, lt.), regional courts (*apygardų teismai*, lt.), and local courts (*apylinkių teismai*, lt.). This four-level court system comprises the system of general jurisdiction which is to create preconditions for courts of higher instances to correct any mistakes of the fact (*i.e.* the establishment and assessment of legally significant facts) or of the law (*i.e.* of the application of law) and not to allow that injustice is executed in any civil, criminal, or other case. It is also to ensure the uniformity (regularity, consistency) of the practice of courts of general jurisdiction, so that the jurisprudence of the courts of general jurisdiction is predictable and the constitution principles of a state under the rule of law, justice, and equality of people before the court are not disregarded. Any deviation from the previous court precedents which had been binding on the courts by then must in all cases be properly (clearly and rationally) argued in the corresponding decisions of the courts of general jurisdiction, *i.e.* no creation or reasoning of a new court precedent may be determined by accidental legal factors. Constitutionally, no court of general jurisdiction of lower instance is subordinate, neither administratively nor organizationally, to any court of a higher instance. The courts of lower in-

1383/2003, the precise information provided by the right holders regarding counterfeits and legal products and the provision of their samples are very helpful in terms of successful application of the border measures.

203 See *refs.* to statistical data, also to the recent cases in *infra* § 5G.II.

204 See *Heath, Dietz et al.*, Enforcement of IPRs in Eastern Europe, p. 879.

205 Many scholars and practitioners emphasize this importance while exploring the actual application of the implemented and transposed legal provisions; see more in *Heiss (Hrsg.)*, *Zivilrechtsreform im Baltikum*. pp. 141-144.