

IV. Publication of judicial decisions in view of Article 15 of the Directive

The provision regarding publication of judicial decisions, as set out in Article 15 of the Enforcement Directive⁸⁸⁴, has been implemented in all national IP laws in Lithuania. The publicity measures are also established in Latvian and Estonian CCPs.

By implementing Article 15 of the Directive, Lithuania has opted for publication of judicial decisions, in full or in part, on the infringements of IP rights only. Other forms of disseminating the information about the infringement, including prominent advertising, are not provided in the implementing laws. Article 85 of the Lithuanian Copyright Law provides that a decision on the infringement of the rights can be announced in full or in part in the mass media or in any other way, *i.e.* the forms of publication of judicial decisions are not limited⁸⁸⁵. The conditions to apply publicity measures, which are established in the national IP laws and should be followed by the courts in concrete IP infringement cases, are to be mentioned as follows.

First, a plaintiff's request to apply such measure should be initially submitted. The court cannot order to publish its decision on its own motion.

Second, the dissemination of information is performed at infringer's expense. The infringer can be ordered to pay in advance into the account, indicated by the court, an amount of money necessary to disseminate the information concerning the court decision or the court decision itself.

Third, the whole court decision or a part of it, or the information concerning the court decision can be disseminated. The plaintiff can choose any from those three options, and the court, considering the circumstances of the case, decides on the manner of dissemination of the court decision and the extent of the dissemination. If the requesting party asks for dissemination of information about the court decision, the text of such information should be presented, and it can be corrected by the court. It is presumed that the publication of the court decision can cover the names of the parties, motivation and resolution parts or certain parts of them. As follows from the formulation of the national provision on publication of decisions, a short description about the circumstances of the case can be presented as well⁸⁸⁶. The Lithuanian judicial practice, though, demonstrates that only a so-called resolution part of a court decision is used to be published⁸⁸⁷.

Fourth, only the court decision in force can be published, unless the court decides otherwise. Following the rules of the CCPs of the Baltic countries, court decision

884 See previous discussion on Art. 15 of the Directive in section (a)(vi) of *supra* sub-chapter IV.A.2.

885 Similarly in Latvia, under Art. 250(17)(2) of the CCP, and based on the request of the applicant, the court is entitled to order the court judgement to be fully or partially published in newspapers and other media. The similar provision is laid down in Art. 445(5) of the Estonian CCP.

886 See in Mizaras, *Novelties on Regulation of Intellectual Property Rights Protection: Material Remedies without Compensatory Effect*, p. 72.

887 As follows from the information provided in *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)*.

can be appealed to either appellate or cassation courts⁸⁸⁸. Therefore, inconclusive court decision or information about it can be disseminated in specific circumstances when there is a need, for instance, to stop further possible infringing activities or to avoid negative consequences.

Moreover, the court should indicate the form of publishing of the court decision, the length of the publication, place considering the interests of the parties to the case and the principle of proportionality. Following the corresponding court practice of other countries such as Germany or Austria, it is observed that the requesting party also requires to present evidence that publication of the judicial decision is based on the reasonable interest which is the question of fact and is to be estimated by the court. Although it is argued that publicity measures need to be acceptable for both parties by considering the interests of both of them⁸⁸⁹, the main aim of it is to inform the public about the infringing activities and to prevent against further infringements of IP rights. It is assumed that such measure can have a deterrent effect, especially in the Baltic societies where the awareness of IP rights and their protection has to be strengthened⁸⁹⁰.

V. Concluding remarks

It can be observed that the Baltic countries implemented the mandatory provisions on damages, legal costs, corrective measures as well as publication measures as set out in the Enforcement Directive. The optional solutions such as alternative measures (Article 12 of the Directive) have been also transposed in the Lithuanian Copyright Law, which is not the case for Latvia and Estonia. The main observations regarding the listed implementing provisions are provided as follows.

First, while examining the implementing provisions on damages and, especially, the court practice on the subject-matter, it is observed that the practice on adjudicating actual damages, also loss of profits or infringer's gained profits is very modest in the Baltic countries. It can be observed (on the limited basis, though) that in Latvia and Estonia actual damages, including loss of profit calculated on the basis of royalty fees, has been applied. Differently, in Lithuania the court practice before the im-

888 For instance, a term to submit an appeal to the district courts or the Court of Appeals is 14 calendar days, and to submit a cassation appeal to the Supreme Court is 30 calendar days in Lithuania. See also the court system (first instance, appellate instance and cassation instance courts) of the Baltic countries in *supra* § 3C.IV.1.a).

889 See in *Mizaras*, Novelities on Regulation of Intellectual Property Rights Protection: Material Remedies without Compensatory Effect, p. 73.

890 On this point Decision of 29 January 2003, Lithuanian Supreme Court, Civil Case No. 3K-3-132/2003, *Microsoft Corp., Symantec Corp., Autodesk, Inc., BĮ UAB "VTeX" vs. UAB "Fima"* should be mentioned. Awareness about IP infringements in the locally well-known company "Fima" and successful case against them made an input for formation of so-called "IP mentality and thinking" which still developing in Lithuania, as previously discussed in *supra* § 4A.II.