Comparative Analysis of Jurisdiction of the Civil Courts in Industrial Property Disputes in the Republic of North Macedonia and in the Republic of Türkiye

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Abstract: The Republic of North Macedonia and the Republic of Türkiye as members of the World Trade Organization, and signees of the Agreement on Trade Aspects of Intellectual Property Rights (TRIPS), have been obliged to stipulate efficient and effective legal measures and legal instruments for preventing violations to intellectual property rights and legal instruments that deter from further violations. The procedures should be impartial and fair, not complicated and long, i.e., not to last unreasonably long and without unreasonable delays and lateness. The specialization and expertise of the courts/judges are of course very important factors for providing efficient and effective legal protection of the violated industrial property rights, especially taking into consideration that industrial property disputes are known as complex and complicated disputes, where broad foreknowledge and solid knowledge of the issue are necessary. This paper will include a comparative analysis of the judicial system and the jurisdiction of the courts in litigation procedures in industrial property disputes in the Republic of North Macedonia and the Republic of Türkiye, including their peculiarities, advantages, and disadvantages.

Key Words: Industrial property, Disputes, Specialized courts

1. INTRODUCTION

To justify the investment in science and innovation, the work that is created must be protected from unauthorized use. Research and development are creating new products, new inventions, and achievements, and hence, the economic progress of every country depends on the state of its technology, as well as the protection offered to them. According to that, countries in contemporary society are facing a very important obligation: how to provide efficient and adequate protection of industrial property rights, to provid measures and procedures for their protection, and how they would not impede the smooth flow of international trade. The specialization and the expertise of courts/judges is of course very important factor for providing efficient and effective legal protection of the violated industrial property rights, especially when taking into consideration that industrial property disputes can be complex and complicated, where wide foreknowledge and solid knowledge of the industrial property issue are required.

Taking into consideration the importance of industrial property protection, every country is realizing the protection of the acquired industrial property rights from any unauthorized use, disposal, limitation, imitation, association, disturbance of rights, etc. by taking multiple measures which are in cohesion with and complement the civil-legal protection.

The Republic of Türkiye, considered from March 1995, whereas the Republic of North Macedonia from April 2003, have been members of the World Trade Organization, and thus they have an obligation as WTO member states, to respect the standards set for regulation of the industrial property rights, regulated according to the Agreement on Trade Aspects of Intellectual Property Rights (TRIPS)1.

The system for legal protection of industrial property rights includes civil protection besides criminal protection and administrative legal protection. In the RNM a separate part of the Law on Industrial Property2 encompasses the provisions for court protection of violated rights. The Law on Litigation Procedure3 and the Law for Securiing

[1] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994), Agreement on the trade aspects for intellectual property rights in Marrakesh from 15 April 1994.

[2] Law on Industrial Property („Official Gazette of RM" no. 21/2009, 24/2011, 12/2014, 41/2014, 152/2015, 53/2016, 83/2018, 31/2020).

[3] Law on Litigation Procedure („Official Gazette of RM" no. 79/2005, 110/2008, 83/2009, 116/2010 and 124/2015).

Claims are implemented as lex generalis, whereas the provisions of the Law on Industrial Property are implemented as lex specialis.

The approach is similar in terms of defining the system for court protection (civil, criminal and administrative) of the industrial property rights in the Republic of Türkiye also. The Turkish legislator, taking into consideration the specificity and the need for specialization in the industrial property area, has stipulated the formation of special courts in this area. Such specialized courts have been formed in Istanbul, Ankara, and Izmir so far.

In the remaining provinces, the industrial property litigation disputes are resolved by the first instance court of general jurisdiction, precisely appointed by a decision by the Council of judges and prosecutors (Suluk et al. 2017). The jurisdiction of the industrial property specialized courts is stipulated by the Law on Industrial Property4, which is lex specialis in the industrial property area.

2. Advantages and Potential Disadvantages of Specialized Intellectual Property Courts

The need for establishing specialized intellectual property courts is set at a crossroads between finding a compromise between the advantages and disadvantages of forming such courts analyzed from the national judicial systems aspect. Internationally, there is no obligation for the countries to form specialized intellectual property courts, but there is an increased tendency for specialized and centralized treatments of some intellectual property disputes. Here, we would like to highlight that disputes arising from industrial property, the primary focus of this paper, are part of the wider concept of intellectual property disputes. The analysis of the advantages and disadvantages of forming intellectual property courts encompasses an integrated analysis of the advantages and disadvantages of the industrial property courts also. Every signatory country of the TRIPS Agreement has publicly recognized the importance of the effective protection and implementation of intellectual property rights. The TRIPS Agreement itself has not expressly bound its signatories to establish separate intellectual property courts, however, many signatory countries have decided to form specialized courts in this area of their own accord. Most of the signatory countries have formed some type of court which is specialized in intellectual property rights issues, which are generally named differently (Zuallcobley et al, 2012).

The specialized courts for intellectual property disputes function as independent court bodies nationally or regionally to resolve certain disputes related to intellectual property rights, not excluding the possibility to act on other types of disputes as well. Different specialized courts treating the intellectual property issue, although characterized by a specialization trend, are in no way uniform. Some have jurisdiction only for certain intellectual property disputes, like patent disputes, whereas others are limited to particular legal issues, like the validity of these rights, or may only review civil disputes. Mostly, intellectual property disputes are related to the implementation of these rights, i.e. disputes are related to piracy and counterfeiting activities, which are especially emphasized in the area of copyrights and trademarks, but the reality is that intellectual property disputes are much more complex than that (de Werra, 2019).

It is a general opinion that specialized intellectual property courts improve the quality of justice. In that sense, the expertise offered by these courts is seen as the main advantage. This expertise means judges will make practical decisions with high-quality explanations as a result of their experience in intellectual property isues (Sherwood, 1999). In that way, a comprehensive understanding and familiarity with the material problem of the case are provided which leads to providing greater consistency in the process of decision-making and a more predictable outcome from the procedure for the parties involved. The consistency in decision-making is an exceptional advantage of the specialized courts which at the same time contributes to greater confidence in the system and the judiciary. The specialized intellectual property courts are more capable of adjusting to new intellectual property matters and laws. Intellectual property laws are subject to constant evolution because they tend to follow technological changes and tendencies. Another significant advantage of specialized courts is the quicker and more effective decision-making process. The specialization theoretically decreases the delay because judges encounter this type of cases more often and the legal matters which arise from them (Ariyanuntaka, n.d.). Also, the specialization leads to a better understanding of the intellectual property issues by the judges. Even though each case is specific on its own, the specialized judges would be more efficient in resolving intellectual property cases through their consistent implementation of the substan-tive law. In that way, there is a decreased risk of judicial errors, which contributes to the effectiveness of

[4] Law on Industrial Property no. 6769 of 22.12.2016.

justice enforcement (EUIPO, 2018). Additionally, specialized courts decrease the caseload of the already overburdened courts. Specialized intellectual property courts can more efficiently and precisely deal with challenges imposed by complex intellectual property cases. The efficiency and faster trial of cases result in procedure cost-effectiveness and thus parties' cost-effectiveness. In particular, court proceedings can be shortened because experts required for establishing the facts from general courts might be unnecessary (Internatıonal Bar Association, 2007). The existence of specialized intellectual property courts can be a crucial fact in attracting foreign direct investments.

The formation of intellectual property specialized courts can be characterized by the existence of potential drawbacks. In the first place, the high costs of maintaining these courts are mentioned here. Including costs for continuous training of judges, court staff, and public prosecutors which can be high. The lack of significant scope of cases is the main indicator of the lack of the need for the functioning of specialized intellectual property courts. A significant drawback of the specialized courts is the possibility of having informality in handling the cases. This is a consequence of the specialization, which forms a narrower circle of persons involved which can create closeness between those conducting the procedure, i. e. judges with representatives in the procedure and the parties, and that can cause inappropriate reduction of formality. Anyway, establishing a specialized court carries the risk that a certain area of law can be taken in a direction further from the development of general legal principles and the risk of overlapping with other areas of law. In the end, the geographic availability appears as a drawback of the specialized courts, because it sometimes requires distant travel by the judges or the parties which increase the costs (Internatıonal Bar Association, 2007).

Taking into consideration the advantages and disadvantages, every national legal system is sovereign in decision-making about forming specialized intellectual property courts. When deciding to establish a specialized intellectual property court, the policymakers should carefully evaluate its conditions and requirements. The choice of the optimum solution regarding the organization and procedural issues for establishing specialized courts requires a thorough analysis of various factors, including analysis of structural and procedural issues. This means analysis of the potential court jurisdiction and its (un)limitation to certain intellectual property disputes. The next step is determining the area of action according to the nature of potential disputes, i.e. whether it is a civil, criminal, or administrative court. Organizationally analyzed, the fact of whether specialized courts will be formed as separate courts or specialized departments within general courts should be taken into consideration; whether it will be handled in the first instance or it will exist on an appellate level or maybe on both levels. The process of forming specialized intellectual property courts must be different by creating specific rules implemented in intellectual property disputes. Especially the procedural issues like the scope of exclusive jurisdiction of the specialized courts, the composition of the court, and the criteria for the selection of judges. It is necessary to do a careful review of the location of these courts geographically, i.e. the location where they should be established, to provide an appropriate approach to justice (Gurgula et al. 2022).

There are various types of specialized intellectual property courts, named differently, although the basic functions of these courts are similar. The diversity of legal systems and regimes worldwide in terms of this issue indicates the fact that there is not a single method for establishing an efficient court system for intellectual property that promotes innovations and social well-being (de Werra, 2019). It is clear that creating an effective functioning of a specialized intellectual property judiciary is a decision led by a policy that aims towards encouraging innovations and investments and encouraging greater awareness of intellectual property rights.

3. Jurisdiction of First Intance Civil Courts in Industrial Property Disputes in The Republic Of North Macedonia

According to art. 41 paragraph 5 of the TRIPS Agreement, countries are given an option, not obligatory, to establish specialized courts that will work with intellectual property cases or cases will be resolved within specialized departments or in front of specialized judges. In that sense, countries can decide which bodies or organs will be competent for intellectual property disputes (de Werra, 2016).

In comparative law, there are different solutions in terms of the jurisdiction of the courts for industrial property disputes. So, there are specialized courts whose jurisdiction is solely for intellectual property

disputes[5], specialized appellate courts only for intellectual property, special courts' departments with general jurisdiction that solely act in intellectual property disputes[6], there are decisions where it is stipulated that certain judges from the general jurisdiction courts can act in such disputes, specialized tribunals which are part of administrative agencies and have jurisdiction to decide on such disputes, up to decisions where commercial courts are authorized to act in intellectual property disputes etc. (Harms & Owen, 2012).[7]

In the past, in the judicial system of the Republic of Macedonia, there were separate commercial (trade) courts that functioned as separate court institutions, and from 1954 up to the adoption of the Law on Courts in 1995, when those court institutions were canceled. According to art. 13 paragraph 1 line 3 of the Law on Commercial Disputes (Off. Gazette of FPRY no. 31/54) it was within the jurisdiction of the higher courts to decide in the first instance, regardless of the subject matter of the dispute, the commercial disputes related to the protection or use of patents, trade marks, industrial designs, the right to use a firm, as well as disputes of unfair competition and copyright. However, by adopting the Law on Courts[8], and abandoning the specialized commercial disputes, the legislator in the Republic of Macedonia accepted another solution, which was appointing the basic courts with extended jurisdiction as authorized to act on these first-instance disputes. In the interest of larger specialty of courts, expertise and establishing a practice in acting in intellectual property disputes, as more specific cases requiring wider knowledge of the regulation referring to the industrial property rights and copyright and related rights, from a total of 27 basic courts up to 2019, 12 basic courts had extended jurisdiction on the territory of the Republic of North Macedonia[9] and those were solely authorized to act on these types of disputes. With the amendments to the law of 2019, their number has increased and reached 15 basic courts with extended jurisdiction.

The complexity of the industrial property matter, as a basic assumption for an effective and efficient dispute resolution, implies well-trained and knowledgeable judges in the industrial property matter. There are opinions in theory that specialized courts reach more efficient and more effective decisions without further delays necessary for studying the industrial property matter and resolution of legal matters. Other benefits of the existence of specialized intellectual property courts are stipulating a special procedure for running intellectual property disputes specifically adjusted to the specifics and features of this type of procedure, the greater legal certainty, and the possibility to predict the outcome of the dispute in advance, taking into considering the established practice in the court action, which can reflect in improving the protection of intellectual property rights, increasing the investments in them and greater economic growth and development in the long-term (Harms & Owen, 2012). Anyway, whether the decision to form a separate specialized intellectual property disputes court is expedient will depend on the number of intellectual property disputes of this subject matter, whether the conducting of disputes will be stipulated before a specialized court and will it affect the parties' approach, thus by appointing one court the work will be centralized or the approach to judicial protection will become more difficult, etc.

Regarding the total number of cases for industrial property protection conducted by the basic courts in the Republic of N. Macedonia, there are no up-to-date separate records for this type of dispute, although many times, international reports where the progress of the country is assessed, indicate the

[5] There are specialized courts for intellectual property disputes in: Chile, Brazil, Peru, Portugal, Russia, Switzerland, Great Britain etc. In the beginning of 2012 in Lisbon, a specialized court for intellectual property disputes was formed. João Veiga Gomes, *Arbitration in the Portuguese Industrial property Code*, January 2013, page 57.

[6] Such decision is accepted in: Austria, China, Germany, Greece, France, Italy etc.

[7] So according to art.34 b of the Law on Litigation Procedure of Croatia (NN 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14,70/19) commercial courts are authorized to act in first instance on disputes related to the protection and implementation of the industrial property, copyright, and related industrial property rights.

[8] Law on Courts („Official Gazette of RM" no 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018 and „Official Gazette of RNM" no. 96/2019).

[9] Basic courts with extended jurisdiction: Basic court in Bitola, Basic court in Prilep, Basic court in Ohrid, Basic court in Struga, Basic court in Tetovo, Basic court in Gostivar, , Basic court in Kicevo, Basic court in Kumanovo, Basic court in Kochani, Basic court in Veles, Basic court in Strumica, Basic court in Kavadarci, Basic court in Gevgelija, Basic court in Shtip and Basic court in Skopje. The initial number of courts with extended jurisdiction was 12 courts, but the legal modifications in 2019 increased the number to 15 courts.

need for running such records. According to the Decision of the Government of the Republic of Macedonia, made on the 89th session held on 09.10.2012, the courts in the Republic of Macedonia are obliged to record the intellectual property rights dispute, to provide statistical monitoring and processing of data for conducting the intellectual property rights. According to the Court Rules of Procedure[10], there is no separate register for this type of dispute and courts do not have a separate record. When analyzing the 2020 Report from the Basic civil court Skopje, as a court with the largest number of cases, because industrial property dispute cases are not recorded as separate cases, we assume that they are part of the number of commercial disputes and obligation disputes. To consistently comply with the obligations to record such court disputes, a modification of the Court Rules of Procedure is necessary so that a separate register for intellectual property disputes will be introduced.

Since there is no separate register for these disputes, and in terms of the status of the number of protected patents, trademarks, and industrial designs, as potential rights that can be violated and be subject to court dispute, an analysis will be made about the number of protected industrial property rights according to the latest published Work Reports by the State Industrial Property Office (for 2020, 2019, 2018 and 2017).

Table 1: Number of protected industrial property rights in RNM in 2020, 2019, 2018 and 2017.

Year	Patents	Trademarks	Industrial design
2020	1077	1157	280
2019	972	1096	273
2018	1277	1511	227
2017	938	1777	288

Source: Work Reports by the State Industrial Property Office for 2020, 2019, 2018 and 2017 year.

In terms of the expertise issue and the number of judges handling intellectual property rights protection disputes in the basic courts with an extended jurisdiction, the authors of the paper submitted a request for public information to the Judicial Council of the Republic of N. Macedonia regarding the total number of judges in the basic courts with extended jurisdiction and the number of judges Masters and Doctors of Science in these courts.
The data are given in the following table.

Table 2: Number of judges in RNM in 2019 and 2021 .

Year	Number of judges	Number of judges in courts with extended jurisdiction	Number of judges Master of Science	Number of judges Master of Science in courts with extended jurisdiction	Number of judges Doctor of Science	Number of judges Doctor of Science in courts with extended jurisdiction
2019	506	322	21	12	3	1
2021	483	310	21	12	3	1

Source: Judicial council of the Republic of North Macedonia, Announcement no.11-163/2022 from 07.02.2022

In terms of asking for information about the number of judges having a Master's Degree courts with extended jurisdiction in 2019 and 2021 in the area of intellectual property, a reply was given that the Judicial Council of the Republic of N. Macedonia does not have such information. From the received information it can be observed that many judges can act in intellectual property protection disputes (including judges from other departments also) but generally the number of judges who have acquired a higher formal education is small.

According to article 36 paragraph 5 of the LLP "the disputes for copyright or related rights, as well as disputes referring to the protection or application of industrial property rights, or the right to use a firm or a name, the unfair competition disputes or monopolistic behavior, in the first instance are tried by a council, irrespective of the value of the subject of the dispute"[11,] which at first glance indicates the specificity and the seriousness of the legal matter when resolving these issues. When a council tries in the first instance, the council is composed of a judge as the president of the council and two judges-jurors. But the question is how much professional knowledge the judges jurors have for the subject matter to contribute to making a legal and correct decision.

The procedure for industrial property rights protection according to LIP is stipulated as expedited procedure[12]. But, besides this provision,

10 Official Gazette of RM no.66/2013 and 114/2014.

11 There is an identical decision by the Law on Litigation Procedure of Slovenia.

12 Art. 296 par.1 of LIP.

the law does not stipulate the terms which will indicate that the procedure should be held in the shorter term, but the courts have an obligation to only respect this provision. But, besides that, mostly due to the complexity of the disputes, their specifics, and seriousness, in practice, often, these disputes last unreasonably long, which is of course contrary to the obligations taken by the TRIPS Agreement.

4. Jurisdiction of First Intance Civil Courts in Industrial Property Disputes in The Republic Of Türkiye

The Republic of Türkiye, led by the discretionary possibility for establishing specialized courts given by the TRIPS Agreement as well as by the need of its judicial system, has established specialized intellectual property courts, called courts for intellectual and industrial property rights. These courts are divided into civil courts for intellectual and industrial property rights and criminal courts for intellectual and industrial property rights. The necessity for such an approach is based by the Turkish legislator on the specificity of intellectual property disputes and the need for a technical and specialistic basis when resolving these disputes. Such an approach to treating intellectual property disputes was taken in 2001 by establishing civil and criminal courts for intellectual and industrial property rights in Istanbul, Ankara, and Izmir (Suluk & Kenaroğlu, 2012).

The determination of jurisdiction of the courts acting in civil disputes in the Republic of Türkiye, is regulated by the Code of Civil Procedure (CCP)[13]. According to article 1 of this code, the jurisdiction of the courts can be determined only by law and the rules regulating the jurisdiction of the courts have the status of public order rules. In article 2 of the code, the jurisdiction of the first instance courts is regulated, according to which if not otherwise regulated by the Turkish CCP or another law, a court with general jurisdiction is the first instance civil court. Hence, it is evident that in terms of defining the jurisdiction of the courts CCP has a role of lex generalis and leaves the possibility to other separate laws lex specialis to regulate the matters related to the jurisdiction of the courts. In this sense, taking into consideration that industrial property rights are regulated by the Law on Industrial Property, this law includes provisions in terms of the jurisdiction of the courts which resolve disputes related to industrial property rights.

The Law on Industrial Property, in article 156 paragraph 1, stipulates that the civil courts for intellectual and industrial property rights and the criminal courts for intellectual and industrial property rights are courts of jurisdiction for lawsuits. With this provision, the Law on Industrial Property has for the first time systematically and technically regulated the issue of courts' jurisdiction in terms of potential civil industrial property disputes, implementing a harmonized practice, clarity, and ease of implementing the same (Özer, 2017). The continuation on paragraph 1 determines that courts for intellectual and industrial property rights are formed in places deemed necessary by the Ministry of Justice of Republic of Türkiye after receiving a positive opinion from the Council of judges and prosecutors. The limitations of the local jurisdiction of these courts are determined by the Council of judges and prosecutors, upon the recommendation from the Ministry of Justice, irrespective of provincial and district boundaries. Such a decision is a result of a court reform implemented by the Law on amending the Code of Civil Procedure and other laws no. 7251[14]. Currently, there are specialized courts for intellectual and industrial property rights in 3 provinces: Istanbul, Ankara, and Izmir. The distinction of these courts is that they function in the first instance and the decision making, i.e. the administration of justice is realized by a single judge (T.C. Adalet Bakanlığı, 2019). Judges acting on industrial property disputes have appropriate legal education and when doing their job in terms of technical matters can ask for an opinion from experts in that area (Suluk & Kenaroğlu, 2012).

The establishment of courts only in these provinces does not imply that these courts cover the territory of the whole Republic. That is why the legislator gives special treatment to the issue of the jurisdiction of courts acting on first instance as civil courts for industrial property disputes. According to article 156 paragraph 1, in places where there is not a courts for intellectual and industrial property rights established, the cases and work within the jurisdiction of this court are handled by the first instance civil court of general jurisdiction (Pekdinçer et al. 2017). Also, further on paragraph 1 the legislator stipulates that the first instance civil court of general jurisdiction acting on industrial property lawsuits and matters, as well as the local jurisdiction of these courts are determined by the Council of

[13] Code of Civil Procedure no. 6100 of 12.01.2011.

[14] Law on amending the Code of Civil Procedure and other laws no. 7251 of 22.07.2020.

judges and prosecutors upon the recommendation by the Ministry of Justice, irrespective of the provincial and local limitations. The Council of judges and prosecutors, acting according to the obligations given in article 156 of the Law on Industrial Property by its decision has elaborated the issue of court jurisdiction in detail in the places where there is not a courts for intellectual and industrial property rights established. According to this decision, there is a distinction in determining the respective civil court of general jurisdiction depending on whether the particular place has one, two, or more civil courts of general jurisdiction.

A legal dilemma is imposed in the Turkish judicial practice regarding the jurisdiction when resolving industrial property disputes. This legal dilemma is imposed by the parallel existence of first instance commercial courts, civil courts for intellectual and industrial property rights, and civil courts of general jurisdiction. The legal dilemma comes from the fact that article 4 of the Turkish Commercial Code (TCC)[15] stipulates that lawsuits in the intellectual property area are like commercial lawsuits. Whereas article 5 of TCC stipulates that unless otherwise stipulated, the commercial court of the first instance is the court of jurisdiction for all commercial lawsuits, irrespective of the value or the amount of the lawsuit. Taking into consideration that article 5 of the TCC leaves the possibility for different legal regulations, it means that the provision of the Law on Industrial Property i.e. article 156 can be applied. It means that courts for intellectual and industrial property rights substitute the first instance commercial courts. But, the legal dilemma remains in cases when there is no court for intellectual and industrial property rights in some provinces, and at the same time, there is a commercial court of the first instance and civil courts of general jurisdiction (Sarı, 2019). In the Turkish legal doctrine there are different views on this issue. According to one view, in places where there is no court for intellectual and industrial property rights, lawsuits within the jurisdiction of this court should be elaborated in the first instance civil court of general jurisdiction (Kuru, 2015). According to the other view, if there is no court for intellectual and industrial property rights then the first instance commercial court should act on the lawsuit. If there is no first instance commercial court, then the first instance civil court of general jurisdiction should act on the lawsuit (Bozkurt, 2012). Due to the fact that the lawsuit that initiates the industrial property dispute has a commercial character, according to us, it is necessary that the Turkish legislator should specify in the provision where they will replace the first instance civil courts of general jurisdiction with first instance commercial courts.

The civil court for intellectual and industrial property rights in Ankara has an additional separate function which arises from the fact that the headquarter of the Turkish Patent and Trademark Office (TURKPATENT) is in Ankara. According to article 156 paragraph 2, the civil court for intellectual and industrial property rights in Ankara is the court of jurisdiction and the court in charge of lawsuits that should be filed against all decisions made by the TURKPATENT according to the provisions of the Law on Industrial Property, as well as lawsuits that need to be filed against TURKPATENT by third parties damaged by its decisions. Such a legal decision gives the court in Ankara administrative court authorizations. The part of the provision specifying the only cases when the court of Ankara is the court of jurisdiction which is only when the decisions by TURKPATENT are contested, made in accordance with the Law on Industrial Property, is particularly important (Pekdinçer et al. 2017). Every decision made by the Office based on another law can not be charged in the civil court for intellectual and industrial property rights in Ankara.

The Turkish legislator in article 158 paragraphs 3, 4 and 5, has, typically for the jurisdiction of the civil courts acting on industrial property disputes in the first instance, defined it from an aspect of the parties in the proceeding, i.e. the plaintiff and the defendant. In this sense, when proceeding with a civil lawsuit submitted by the owner of the right to industrial property against third parties, the court of jurisdiction is the one in the place of residence of the plaintiff (the owner of the right to industrial property) or the court in the place of residence where the unlawful act had occurred or where the effects of such actions were observed. If the plaintiff has no residence in Türkiye, the court of jurisdiction is the one where the workplace of the registered representative is found on the date of the lawsuit, and if the representative's registration is not active i.e. erased then the court of jurisdiction is the one in the place of the headquarter of TURKPATENT, meaning that the court of jurisdiction is the civil court for intellectual and industrial property rights in Ankara (Özer, 2017). In cases when it is the opposite when the owner of the industrial property right is being sued, and the plaintiff is a third party, the court of jurisdiction is the one in the place of

[15] Turkish Commercial Code no. 6102 of 13.01.2011.

residence of the defendant (the owner of the industrial property right). When the applicant for industrial property right or the owner of industrial property right has no place of residence in Türkiye, the rule established in the case when these people appear as plaintiffs will apply.

Before we analyze the activity of the courts of intellectual and industrial property rights, we believe that we should give an overview of the overall activity in the industrial property area in the Republic of Türkiye. This can be perceived by the activity of TURKPATENT in terms of registered industrial property rights. The number of registered patents, trademarks, and designs within the 2018-2021 period is taken as relevant.

Table 3: Number of registered patents, trademarks, and designs within 2018-2021 in Türkiye

Year	Patents	Trademarks	Designs
2021	12566	129423	50038
2020	13017	98782	45065
2019	13720	83409	39899
2018	13882	105996	40451

Source: TURKPATENT, Official Statistics https://www.turkpatent.gov.tr/istatistikler

In terms of the number of patents during the comparison period, a decreasing tendency was observed in the number of registered patents, whereas this situation is in reverse in terms of trademarks and registered designs, excluding the negative oscillation in 2019. The activity in the industrial property area in the Republic of Türkiye can be also observed from a provincial aspect. That is why during the same research period an overview is given of the three most active provinces in terms of every industrial property rights separately.

Table 4: The first three provinces with the largest number of registered patents, trademarks, and designs within 2018-2021 in Türkiye

Year	Patents	Trademarks	Designs
2021	1.Istanbul 2.Ankara 3. Bursa	1. Istanbul 2. Ankara 3. Izmir	1. Istanbul 2. Bursa 3. Kayseri
2020	1. Istanbul 2. Ankara 3. Bursa	1. Istanbul 2. Ankara 3. Izmir	1. Istanbul 2. Bursa 3. Kayseri
2019	1. Istanbul 2. Ankara 3. Bursa	1. Istanbul 2. Ankara 3. Izmir	1. Istanbul 2. Bursa 3. Kayseri
2018	1. Istanbul 2. Ankara 3. Bursa	1. Istanbul 2. Ankara 3. Izmir	1. Istanbul 2. Kayseri 3. Bursa

Source: TURKPATENT, Official statistics https://www.turkpatent.gov.tr/istatistikler

From the analysis of the activity in the area of industrial property by provinces, the fact why the Turkish legislator took the approach to form special civil courts for intellectual and industrial property rights in Istanbul, Ankara, and Izmir is justified. The next step in the analysis is the activity and the efficiency of these courts within the 2018-2021 period.

Table 5: Number of cases in civil courts for intellectual and industrial property rights within the 2018-2021 period

Year	Number of new cases (from the previous year + submitted during the current year + remanded for reconsideration)	Resolved cases	Percentage of resolved and new cases	Transferred for next year	The average duration of the proceeding (days)
2021	11142	5822	52,3	5320	357
2020	9619	3838	39,9	5781	550
2019	10500	4650	44,3	5850	497
2018	10056	3726	37,1	6330	500

Source: Adli Sicil ve İstatistik Genel Müdürlüğü, Adli İstatistikler 2021, Ankara: Adalet Bakanlığı, page 198.

Of the number of new cases to decide upon in these courts, it can be seen that there is a trend for increasing the number of cases except for 2020, which is named the Covid-19 year when the number of cases decreased. But, from the aspect of effectiveness, these courts are characterized by

increased efficiency in the duration of the research period, expressed by an increase in the percentage of resolved cases and a decrease in the average duration of the proceedings. Especially in 2021, such a positive trend was observed.

Finally, the activity of the civil courts for intellectual and industrial property rights was analyzed in terms of the type of lawsuits they handle. It gives an overview of the workload of these courts from the aspect of individual types of industrial property rights.

Table 6: Number of submitted lawsuits and solved cases by the civil courts for intellectual and industrial property rights according to the type of lawsuit within the 2018-2021 period.

Year	Trademark		Design		Patent	
	Number of submitted lawsuits	Number of solved cases	Number of submitted lawsuits	Number of solved cases	Number of submitted lawsuits	Number of solved cases
2021	3977	4686	698	636	197	247
2020	3194	3375	311	354	104	116
2019	3564	3709	424	500	165	198
2018	3770	2926	408	298	195	129

Source: Adli Sicil ve İstatistik Genel Müdürlüğü, Adli İstatistikler 2021,2020,2019,2018 Ankara: Adalet Bakanlığı, page 199.

From the statistical data, it can be observed that the largest number of lawsuits in a civil procedure are related to trademark rights. This is a completely expected fact considering that the trademark right is one of the most popular industrial property rights and that it is mostly exposed to counterfeiting and unauthorized use. The remaining rights such as patent and design require higher intellectual effort in their creation and thus the process of their violation is characterized by a lower intensity. Additionally, considering the lower number of registered patents and designs compared to the trademarks, the outcome of a lower number of disputes related to these industrial property rights is expected.

5. CONCLUSION

When comparatively analyzing Türkiye and the Republic of North Macedonia, what distinguishes these two countries is the activity in the industrial property area. A significantly increased activity is noted in the Republic of Türkiye, as a result of the increased industrial and economic progress, whereas in the R. of North Macedonia there is far less activity in terms of the number of registered industrial property rights, which is of course a result of the lower economic progress, the lower population, and less active trade subjects.

The Republic of North Macedonia and the Republic of Türkiye have taken the approach to build a court specialization in the area of industrial and intellectual property as a whole. What is common between these countries is the expressed effort to find the most favorable solution in the existing court system for meeting the criteria of specificity, economy, and effectiveness when dealing with industrial property disputes. The differences come from the different approaches to territorial-administrative regulation which indirectly influences the setting of the court system. Hence, although the general outlines of the court system are similar in both countries, some differences impose different approaches to creating specialized civil courts in the area of industrial property. Hence, our recommendations will be different for the Republic of North Macedonia and the Republic of Türkiye.

In the Republic of North Macedonia, it is interesting that for such types of disputes there is hardly any larger court specialization, leaving a total of 15 courts out of 27 courts on the territory of North Macedonia to be courts of jurisdiction in the first instance. Because it is a very specific professional matter, high training of judges, as e prerequisite for quality and efficient trial, is not possible in a situation where there is such a wide dispersion of the territorial jurisdiction of the courts of the first instance, especially taking into consideration that such courts do not take a large percentage of cases held before first instance civil courts and because it is a territorially relatively small country. In comparative law, this has been resolved by introducing specialized courts or by concentrating the territory on the first instance courts of jurisdiction. By decreasing the number of first instance courts of jurisdiction a similar effect would be indirectly achieved for the specialization of courts, which would take a larger number of intellectual property cases so their training would

be more expedient, simpler, and more effective[16]. One of the possible solutions is establising commercial courts of first and second instance (intellectual property disputes would be under their jurisdiction) following the example of the administrative judiciary or concentrating on the jurisdiction for such type of disputes only to a small number of basic courts with extended jurisdiction which will, of course, rely on an analysis performed for the number of such cases in front of basic courts with extended jurisdiction.

The Turkish legislator, considering the scope of lawsuits in the already existing three specialized courts, should consider the possible establishment of another specialized court for intellectual and industrial property rights which would contribute to greater effectiveness and relieving of civil courts of general jurisdiction of this issue.

By increasing the specialization of the courts in both countries, the profile of industrial property rights would be increased and in that way, it would signalize that in both countries these rights are considered particularly important rights for protection. Indirectly, this would increase awareness about industrial property rights and would send clear messages to those who knowingly violate them, that the protection of these rights is efficient and effective and that there is a high level of legal certainty.

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[16] According to the Intellectual Property Development Strategy in Serbia, it would be ideally if in Serbia, not more than three courts with general jurisdiction were courts of jurisdiction and three commercial courts of first instance decided on intellectual property disputes in first instance (Strategy for intellectual property rights development in period of 2011 till 2015, Government of Republic Serbia, p. 30.) The recommendations of Koevski & Spasevski (2018) are in that direction. Regarding the establishment of commercial courts in first and second instance following the example of the administrative judiciary which has already been established and if they would be headquartered in Skopje, authorized for the whole territory of the Republic of Macedonia (like an option, first instance commercial judiciary would be organized with separate headquarters for the four appellate areas) and their jurisdiction would, of course, include intellectual property disputes (industrial property disputes and copyright and related rights disputes).

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