

HARMONIZATION OF THE LEGAL REGULATIONS FOR THE INTELLECTUAL PROPERTY OF THE REPUBLIC OF NORTH MACEDONIA WITH THE EUROPEAN UNION ACQUIS

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Abstract

Intellectual property (IP), as a form of property that includes the products of the human mind, is an integral part of the economic criteria that the European Commission examines when screening local legislation. The decision of the European Council in 2020 to open accession negotiations with the Republic of North Macedonia, meant that the analytical examination of the *acquis* (screening) would begin, which happened in 2022. The finding made in the report is that no progress was made on intellectual property law. It also emphasizes the imperative need for progress to be achieved in the coming years in order for North Macedonia to meet the European Union's requirements which would lead to the harmonization of internal legislation with that of the European Union (EU). Aware of the unsatisfactory condition of legal regulation and activity in the field of intellectual property rights, the Government of North Macedonia, one year before the start of the screening process, approved the National Strategy for Intellectual Property for the next six-year period (2022-2026). This Strategy not only provides an overview of the real situation, but also defines the goals to be achieved, as well as the means and methods for achieving the respective goals. The author, through analysis and synthesis in this empirical study, provides a clear overview of the current state of legislation and the practice of implementing intellectual property rights in the light of the latest European Commission Report on North Macedonia published in November 2023.

Keywords: intellectual property, screening process, EU, North Macedonia, progress, National Strategy.

Introduction

Intellectual property refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period.¹ World Intellectual Property Organization (WIPO), as a global forum for intellectual property policy, services, information and cooperation, considers that: "Creators and innovators worldwide use IP to translate their ideas into assets. These properties create economic and social benefits that improve the lives of people everywhere".² Established in 1967 as a self-funding agency of the United Nations, today WIPO has 193 member states. Its mission is to lead the development of a balanced and effective international Intellectual property system that enables innovation and creativity for the benefit of all. Its mandate, governing bodies and procedures are set out in the WIPO Convention.³

While there are several differences between the various forms of intellectual property, one factor that they share in common is that they establish property protection over intangible things such as ideas, inventions, signs, and information. While there is a close relationship

¹ https://www.wto.org/english/tratop_e/trips_e/intell_e.htm [accessed: 22.12.2023].

² <https://www.wipo.int/portal/en/index.html> [accessed: 20.12.2023].

³ *Convention Establishing the World Intellectual Property Organization* (Signed at Stockholm on July 14, 1967 and as amended on September 28, 1979).

<https://doi.org/10.62792/ut.jus.v12.i21-22.p2786>

between intangible property and the tangible objects in which they are embodied, intellectual property rights are distinct and separate from property rights in tangible goods.⁴

Intellectual property is a broad categorical description of the set of intangible assets owned and legally protected by an individual or company from outside use or application without consent. An intangible asset is a non-physical asset that an individual or company owns. The concept of intellectual property is related to the fact that certain products of the human intellect should be afforded the same protective rights that apply to physical property, which are called tangible items. Most developed economies have legal regulations to protect intellectual property at the same levels as they protect material property.⁵

Perhaps not surprisingly, given the wide range of subject matter with which it is concerned, intellectual property law is not a single homogenous body of law; rather, the term is usually used to describe a number of areas of law, typically including copyright law, patent law, and trade mark law, each of which has its own characteristics. The adjective ‘intellectual’ is regarded as descriptive of the character of some of the material that this area of law regulates – namely, the products of the human mind or ‘intellect’. The designation ‘property’ is said to describe the form of regulation – that is, primarily the grant of individual exclusive rights that operate like private property rights over tangibles.⁶

By synthesizing the regulatory content of the two most important legal documents from the field of intellectual property, the Paris Convention for the Protection of Industrial Property (1883),⁷ and the Berne Convention for the Protection of Literary and Artistic Works (1886),⁸ it results that intellectual property rights are customarily divided into two main areas:

- Copyright and rights related to copyright: the rights of authors of literary and artistic works, and the rights of performers, producers of phonograms and broadcasting organizations.
- Industrial property: patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

According to the World Trade Organization (WTO) the social purpose is to protect the results of investment in the development of new technology, thus giving the incentive and means to finance research and development activities. A functioning intellectual property regime should also facilitate the transfer of technology in the form of foreign direct investment, joint ventures and licensing. The protection is usually given for a finite term. It should also be noted that the exclusive rights given are generally subject to a number of limitations and exceptions, aimed at fine-tuning the balance that has to be found between the legitimate interests of right holders and of users.⁹

Legal regulation

Much of the debate around the parameters of intellectual property protection and the extent of how flexible the law should be, at both national and international levels, relates to policies and views about what the law is supposed to achieve. Also relevant to the debate is whether the law reflects its underlying justifications and whether those justifications come to fruition or whether other outcomes are occurring. Put differently, are intellectual property laws and their

⁴ Lionel Bently, Brad Sherman, *Intellectual Property Law* (4th edition), Oxford: Oxford University Press, 2014, 3.

⁵ <https://www.investopedia.com/terms/i/intellectualproperty.asp> [accessed: 20.12.2023].

⁶ Lionel Bently, Brad Sherman, op. cit., 1.

⁷ *Paris Convention for the Protection of Industrial Property* of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and as amended on September 28, 1979.

⁸ *Berne Convention for the Protection of Literary and Artistic Works* of September 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, revised at Rome on June 2, 1928, at Brussels on June 26, 1948, at Stockholm on July 14, 1967, and at Paris on July 24, 1971, and amended on September 28, 1979.

⁹ https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm [accessed: 20.12.2023].

application achieving their objectives and purposes? The relevance of intellectual property as a set of discrete rules is arguably both expanding and shrinking. It is practically trite to point out that there are complexities in how intellectual property interacts with changing technologies and other areas of law in many fields.¹⁰

The importance it has in business life and the objectives that are intended to be achieved, has imposed the need for legal regulation of intellectual property at high levels. Thus, in addition to the Paris and Bern Conventions, the promotion and guarantee of the protection of intellectual property can be found in the Universal Declaration of Human Rights:¹¹ "Everyone has the right to own property alone as well as in association with others [...]".¹² According the archival commentary of the Declaration, the drafters distinguished three types of property: personal property, including that which is essential for living (such as household furniture, utensils and articles of personal use); real property (land); and profit-making enterprises (the modes and means of production). And yet the right to property, whether land or a work of art, remains one of the most contested issues, nationally and internationally.¹³

Establishing quality legal solutions is important, but as a first step, in order to produce results, it is necessary to be accompanied by comprehensive access to public policies, measures and tools for effective implementation and awareness-raising. Over the last decade North Macedonia has undertaken measures for achieving a level of protection of the intellectual property rights similar to the level that exists in the European Union. North Macedonia is a member of the WIPO and the European Patent Organization (EPO), in addition to being a signatory of all the most important international treaties in the field. When it comes to the protection of intellectual property rights, the legal framework in North Macedonia offers roughly the same level of protection as the legal framework in EU Member States. Taking into account the prediction that both internationally and at the EU level the regulation of this area is under development to simplify the rules and strengthen stability, it is important for North Macedonia to keep up with the new challenges and continue with the new solutions.¹⁴

In the example of comparative legislations, the legislator has followed the trend of raising the protection of intellectual property at the constitutional level. In this way, Article 47(2) of the Constitution of North Macedonia¹⁵ provides that: "The rights derived from scientific, artistic or other types of intellectual creativity are guaranteed".¹⁶ This is due to the fact that, from a business point of view, intellectual property represents intangible assets, the successful exploitation of which can be a useful basis for business. Thus, certain aspects or qualities of a product can be protected through one or more forms of intellectual property, which are mutually complementary.

By law, intellectual property is regulated in two ways: with the Law on Industrial Property¹⁷ and the Law on Copyright and Related Rights.¹⁸ The works related to the acquiring and safeguarding of the industrial property rights is performed by the State Office of Industrial Property.¹⁹ The Office is an administrative organization with a status of an independent state

¹⁰ Susy Frankel (editor), *The Object and Purpose of Intellectual Property*, Cheltenham: Edward Elgar Publishing Limited, 2019, 1-2.

¹¹ *Universal Declaration of Human Rights (UDHR)*, United Nations General Assembly in Paris, 10 December 1948.

¹² Article 17 of the universal Declaration of Human Rights.

¹³ Trudy Huskamp Peterson, *The Universal Declaration of Human Rights: An Archival Commentary*, International Council on Archives – Human Rights Working Group, 2018, 43.

¹⁴ Faton Shabani, Beisa Selimi, Industrial Property: An Overview of Protection in the Republic of North Macedonia, *JUSTICIA - International Journal of Legal Sciences*, No.11, Vol.19-20, 2023, 104.

¹⁵ *Constitution of the Republic of North Macedonia*, Official Gazette of the Republic of North Macedonia, no. 02/91. *Amendments to the Constitution*, Official Gazette of the Republic of North Macedonia, no. 01/92, 31/98, 03/84, 05/107, 09/03, 11/49, 06/19.

¹⁶ Article 47(2) of the Constitution.

¹⁷ *Law on Industrial Property*, Official Gazette of the Republic of North Macedonia, no. 21/09. *The Law on Amendments and Supplements to the Law on Industrial Property*, Official Gazette of the Republic of North Macedonia, no. 24/11, 12/14, 41/14, 152/15, 53/16, 31/20.

¹⁸ *Law on Copyright and Related Rights*, Official Gazette of the Republic of North Macedonia, no. 115/10. *Correction of the Law on Copyright and Related Rights*, Official Gazette of the Republic of North Macedonia, no. 140/10. *The Law on Amendments and Supplements to the Copyright and Related Rights*, Official Gazette of the Republic of North Macedonia, no. 51/11, 147/13, 154/15, 27/16.

¹⁹ <https://www.ippo.gov.mk> [accessed on 19.12.2023].

administrative body with responsibilities laid down with this or other laws. The Office has the capacity of a legal person.²⁰

Review of the European Commission’s first annual report after starting the screening process

Every year, the European Commission adopts conclusions on enlargement and the stabilisation and association process, which take stock of progress made in each of the EU candidates and partners on their European path.²¹ The last report of 2023²² is of particular importance because it marks the screening process to ascertain the harmonization of local legislation with the EU laws and standards and the obligations the country entails. Intellectual property law in Chapter 7 is part of Cluster 2 "Internal Market".

Chart 1 reflects the comparison of the progress assessment by the European Commission for the countries of the EU enlargement process based on the last Report of the Commission regarding Cluster 2. From the chart, it can be seen that in comparison to other countries in the enlargement process in 2023, North Macedonia only for the freedom of capital movement received a rating of 3 (good progress), a rating of 2 (some progress) for financial services and consumer and health protection, while a rating of 1 (limited progress) was received for free movements of goods, intellectual property, and right of establishment and freedom to provide services. Three areas remain with the weakest rating of 0 (no progress): freedom of movement for workers, company law, and competition policy.

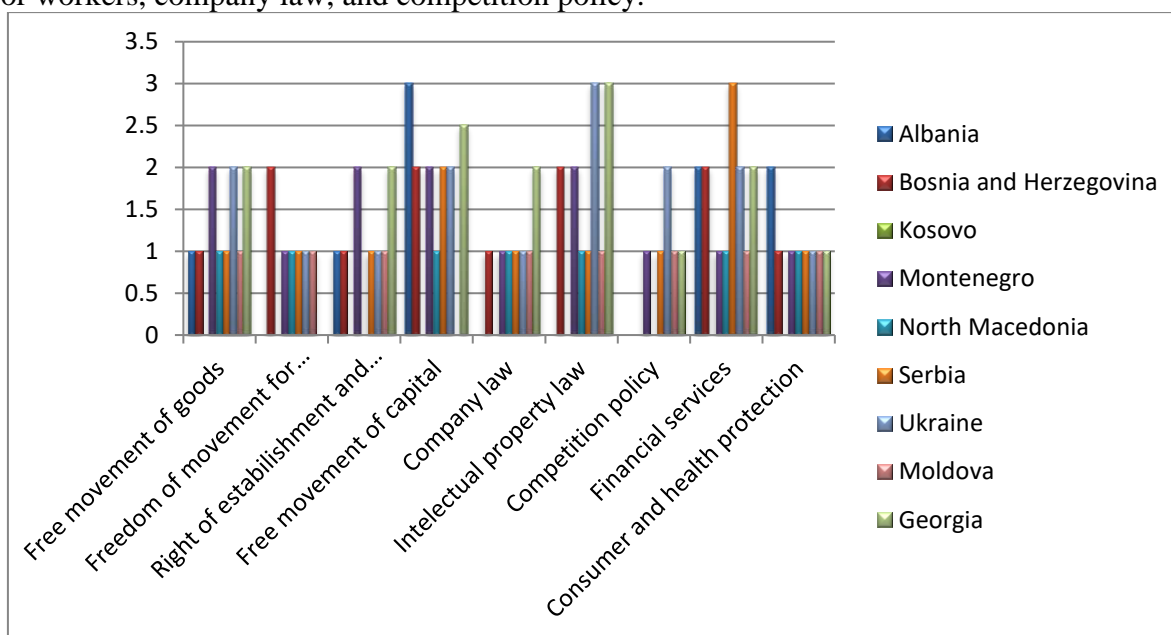


Chart 1 – North Macedonia progress compared to other countries in the enlargement process in 2023 (Cluster 2: Internal Market)

Source: European Commission country reports from 2023

Leveling progress

| |
|------------------|
| No progress |
| Limited progress |
| Some progress |

²⁰ Article 9 of the Law on Industrial Property.

²¹ <https://www.consilium.europa.eu/en/policies/enlargement/republic-north-macedonia/> [accessed: 19.12.2023].

²² *Commission North Macedonia 2023 Report*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2023) 690 final.

| | |
|--|--------------------|
| | Good progress |
| | Very good progress |

From the Chart 2, it can be seen that the limited progress puts North Macedonia near the bottom together with Serbia in terms of the current state in the field of intellectual property compared to other countries that are in the enlargement process.

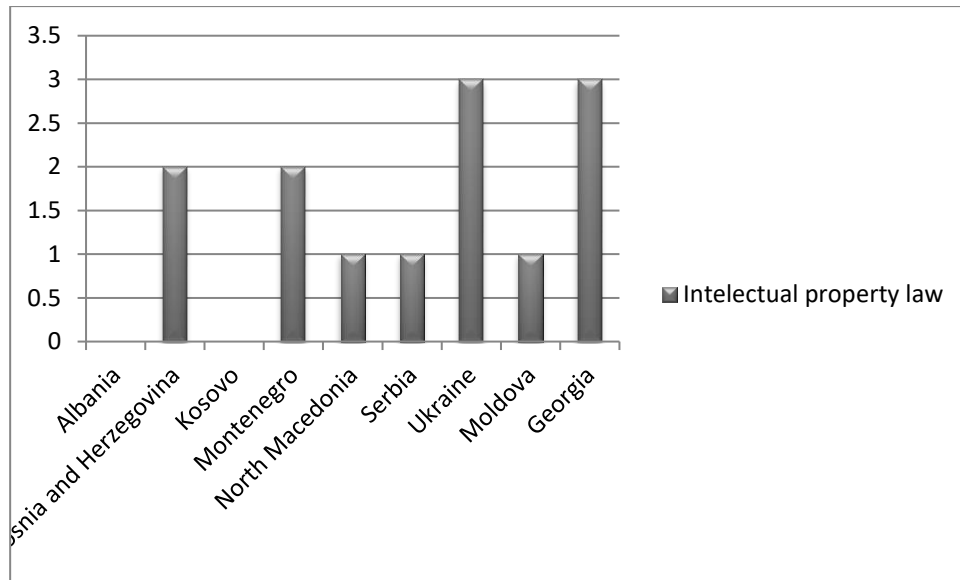


Chart 2 – The state of North Macedonia regarding intellectual property law (compared to other countries in the enlargement process in 2023)

Source: European Commission country reports from 2023

Leveling progress

| | |
|--|--------------------|
| | No progress |
| | Limited progress |
| | Some progress |
| | Good progress |
| | Very good progress |

The EU has harmonized rules for the legal protection of intellectual property rights, copyright and related rights. Rules for the legal protection of intellectual property rights cover for instance, patents and trade marks, designs, biotechnological inventions and pharmaceuticals. Rules for the legal protection of copyright and related rights cover, for instance, books, films, software and broadcasting. The report estimates that North Macedonia remains moderately prepared in the area of intellectual property law. No progress was made over the reporting period. Further efforts are needed to align the legislation with the EU *acquis* in this area. Even last year's recommendations were not implemented, they remain valid. In the coming year, North Macedonia should in particular:²³

²³ Commission North Macedonia 2023 Report, 83.

- further improve the legal framework on copyright and related rights, notably by aligning with the Directive on collective rights management²⁴ and the Directive on orphan works;²⁵
- further improve the legal framework on industrial property rights, by aligning with the Directive on the enforcement of intellectual property rights²⁶ and with the Directive on trade secrets;²⁷
- implement the 2022-2026 intellectual property strategy and make operational the online information platform for law enforcement institutions to exchange data on intellectual property rights.

In the area of copyright and related rights, the adoption of the amendments to the Law on copyright to further align it with the EU *acquis*, including on the collective rights management system, orphan works and certain permitted uses of certain works and other subject matter protected by copyright and related rights, for the benefit of persons who are blind, visually impaired or otherwise print-disabled remains delayed. North Macedonia is not yet aligned with the Directive on online transmissions of broadcasting organisations and retransmissions of television and radio programmes,²⁸ Directive on copyright and related rights in the Digital Single Market.²⁹ The relevant intellectual property rights unit in the Ministry of Culture remains significantly understaffed.³⁰

Regarding industrial property rights, the State Office for Industrial Property (SOIP) continued its cooperation with the EU and international bodies, in particular with the EU Intellectual Property Office (EUIPO). The SOIP also started to fully use EUIPO's harmonised database of products and services for the registration of trade marks. North Macedonia needs to further align its legislation with the EU *acquis* in this area, in particular on patents, trade secrets, and the Directive on intellectual property rights enforcement.

On enforcement, the hardware infrastructure of the information platform for exchanging IPR-related data, still needs to be made operational, in order to provide full insight into the institutional handling of intellectual property rights infringements. The coordination body for the protection of intellectual property needs to step up its activity to address the key challenges related to intellectual property rights. Substantial work is needed on the overall enforcement of intellectual property rights.

The report provides statistical data according to which from January until the end of August 2023, there were 18 cases of suspected infringement of intellectual property rights involving 22 380 pieces of 43 trademarks of seized goods. Violation of intellectual property rights was confirmed in 7 cases (for 9 588 pieces) involving 12 international trade marks.³¹

²⁴ Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, OJ L 84, 20.3.2014.

²⁵ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, OJ L 299, 27.10.2012.

²⁶ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 30.4.2004.

²⁷ Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, OJ L 157, 15.6.2016.

²⁸ Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, OJ L 130, 17.5.2019.

²⁹ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17.5.2019.

³⁰ Commission North Macedonia 2023 Report, 83.

³¹ Ibid.

National Strategy for Intellectual Property for 2022-2026

This strategy³² has been prepared with the support of the project financed by the EU "Support of the State Office for Industrial Property". Although the previous national strategy was limited to industrial property, this document covers the entire area of intellectual property, including copyright and related rights, which was the case with the first national strategy in this area in the North Macedonia. The scope of the Strategy does not only refer to the acquisition of intellectual property rights and their legal protection/enforcement, but also includes relevant aspects of the creation of intellectual property works and their commercialization and business use.

The past work on strategic governance of the intellectual property system in North Macedonia has been analyzed. While significant results have been achieved, the following issues were identified: discontinuity in strategic planning, recurring problems, strategic topics, and the proposed measures to address them, lack of ownership and insufficient commitment of institutions and poor visibility of past strategies.³³ All this is done through the content of the Strategy divided into four chapters and subchapters in the form of clusters and objectives.

The Strategy is not intended to surpass or replace any of the Government's existing strategies and policies or parts thereof. On the contrary, it aims at identifying the substance of intellectual property throughout the matrix of Government's policies and programs and supporting their successful realization while achieving a synergistic effect. The Strategy puts innovation and creativity, as two key sources of intellectual property, within the entirety of public policies. Strategic intention is supporting national strategic efforts in the field of economy, science and technology, culture, and overall development by providing an efficient and stimulating national system for effective creation, protection, and exploitation of intellectual property and exercise of intellectual property rights. Consequently, the subject of this Strategy is the Intellectual Property System of North Macedonia that consists of:³⁴

- Network of stakeholders of the system including the competent administrative bodies (such as SOIP, Ministry of Culture, Ministry of Agriculture, Forestry and Water Management, State Market Inspectorate, Customs administration), judicial authorities, academic community, holders of intellectual property rights and their associations, collective management associations, business operators and their associations, and intellectual property professionals.
- Applicable legislative framework including national laws and bylaws regulating intellectual property rights in narrower and wider sense as well as relevant international legislation binding North Macedonia.
- Programs, plans and projects of the Government and/or administrative or judicial bodies related to respective aspects of the national intellectual property system.
- Supervisory and coordinative mechanism/body for the strategic management of the national Intellectual Property System.

The overall objective is that by the end of the implementation period (2026) Intellectual Property System guarantees the level of protection of intellectual property rights in the North Macedonia equal to that existing in the EU, while providing optimal conditions for advanced use of intellectual property as a power tool for economic growth, scientific, technological, cultural, and overall societal progress. Specific objectives (goals) for the respective strategic themes are:³⁵

³² *National Strategy for Intellectual Property 2022-2026*, Government of the Republic of North Macedonia, Skopje, December 2021.

³³ *Ibid.*, vi.

³⁴ *Ibid.*, vi-vii.

³⁵ *Ibid.*, vii.

- intellectual property component in the key public policies in the North Macedonia recognized and enhanced;
- creation and exploitation of intellectual property in the North Macedonia boosted,
- institutional framework for acquisition of intellectual property rights modernized and efficient,
- enhanced recognition and effective and coordinated enforcement of intellectual property rights,
- national intellectual property legislation modernized and compliant with the EU *acquis* and the international intellectual property legal order,
- international cooperation and participation in the international Intellectual Property System improved.

Conclusion

Today, intellectual property has become one of the most important pillars of technological progress, and with this also of the economy in general. Based on this, it is expected that the report of the European Commission will take an obvious place during the negotiation process on the level of preparation to become part of the EU. The overall assessment of the Report is that the country is moderately prepared in terms of harmonization of intellectual property legislation. With this, it is also emphasized that no progress is observed and the observation that the unfulfilled requests from the previous year remain valid even further. An instrument from which concrete results are expected in the next five years is the National Strategy for Intellectual Property 2022-2026, the complete implementation of which the Report expressly requires.

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