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**INDUSTRIAL PROPERTY RIGHTS IN THE LIGHT OF THE LEGAL REGULATION OF THE REPUBLIC OF NORTH MACEDONIA AND THE FEDERAL REPUBLIC OF GERMANY**

**Abstract**

Industrial property rights and copyrights are two branches of the so called intellectual property rights. These rights in contemporary times have turned into a sought-after investment that generates strong and predictable cash flows. This imposed the achievement of consensus by the countries at the end of the 19th century, first with the Paris Convention for the protection of industrial property (1883) and then with the Berne Convention for the Protection of Literary and Artistic Works (1886). The fact of the very large number of ratifications of the above-mentioned acts of an international character and membership in institutions such as the World Intellectual Property Organization (WIPO) is a clear indicator of the trends of a unification of rules for the national standardization of issues from industrial property. The legal regulation of industrial property, nowadays, constitutes a legal normality of national legislations. As long as the possession of separate laws for concrete rights from industrial property, it is considered to be the highest level of their legal regulation within a country. The protection of industrial property rights in the Republic of North Macedonia and the Federal Republic of Germany has been established at the constitutional level. As each legislation belongs to one of the different systems mentioned above, this is one of the reasons that prompted the authors of this paper to research precisely the comparative aspect of these two legislations in force. The authors intend to achieve this goal through the use of a selected number of research-scientific methods, first of all: analysis, synthesis, normative, comparative, historical, inductive and deductive methods.

***Keywords:*** *national legislations, WIPO, comparative, law, North Macedonia, Germany.*

1. **Introduction**

WIPO provides that intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.[[3]](#footnote-3) As such, they are grouped into two larger entities: industrial property and copyright.

The word "property" figuratively represents the legal relationship in which the certain person is authorized to acquire the certain good also on the basis of exclusive property rights, while the word "intellectual" has to do with the intangible subject of protection (e.g. invention, trademark, copyright, interpretation). In this case, it should be noted that the word "property" as part of the name "intellectual property" has a figurative meaning. This is because it does not think about the property relationship in the sense of tangible rights, but rather about the legal relationship of the acquisition of immaterial goods.[[4]](#footnote-4) IP is about the results of human creativity. Its subject matter is shaped by new ideas generated by human beings. New ideas can be implemented in as many ways as the human mind can conceive. Applying them to human needs and desires can be of considerable benefit to humanity. New ideas can be embodied in familiar things such as books, music and art, in technical machinery and processes, in design for household objects and commercial enterprises, and in all other sources of information. The list is endless, as is the potential for discovering new means of expression.[[5]](#footnote-5)

The consistency of the idea of protecting intellectual property rights dates back to the 19th century, initially with the Paris Convention for the protection of industrial property (1883) and then with the Berne Convention for the Protection of Literary and Artistic Works (1886). The Paris Convention, as the most important international document for industrial property, foresees that the protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.[[6]](#footnote-6) On the other hand, the Berne Convention, provides that provides that works protected by copyright include: (1) Literary and artistic works; (2) Possible requirement of fixation; (3) Derivative works; (4) Official texts; (5) Collections; (6) Obligation to protect; beneficiaries of protection; (7) Works of applied art and industrial designs; (8) News.[[7]](#footnote-7)

1. **Purpose**

The right to industrial property, remains one of the most contested issues, nationally and internationally. The variety of reasons and notions that justify IP, as a classification of legal rights, makes the concept very vague and ambivalent.[[8]](#footnote-8) The social purpose is to provide protection for the results of investment in the development of new technology, thus giving the incentive and means to finance research and development activities. A functioning IP regime should also facilitate the transfer of technology in the form of foreign direct investment, joint ventures and licensing.[[9]](#footnote-9) However, the rather successful positioning of different reasoning rhetoric has helped to ensure a remarkable expansion in the field of IP, so that it is now seriously debated to include in addition to traditional rights (patent, copyright, trademark, design industrial and geographical designation), also of trade secrets, protection of plant variety, database, computer programs and topographies of semiconductors. This expansion is manifested in the collection of quite different works under the same right in some areas and the separation of approaches in others, so that we have not only property laws, but also the operation of rules based on violations and criminal sanctions with IP that has features of both private law and public law.[[10]](#footnote-10)

Industrial property rights give their holder exclusive rights to do certain actions and to prohibit (prevent) others from doing those same actions. Such exclusive rights allow holders, for example, to charge higher prices for their intellectual products than they would otherwise be able to and to restrict others from exploiting the same.[[11]](#footnote-11) To the extent that industrial property rights confer a monopoly, it has generally always been thought necessary to justify this privilege. It is an almost universal view that if creators could not protect their works from exploitation by others, there would be little motivation to spend resources, time and money creating intellectual works.[[12]](#footnote-12)

1. **Constitutional Treatment**

Because of its importance, industrial property enjoys special and substantial protection at high levels. Based on the fact that the inventive, creative or artistic realization of any idea, which is a product of the human intellect, belongs to its creator, under certain conditions, it represents his intellectual property. Although intangible in the physical sense, intellectual property as such has all the characteristics of property, i.e. it can be disposed (bought, sold, licensed, exchanged, given away, inherited), like tangible property. Seeing the importance of industrial property rights and the benefits they bring to individuals, organizations and the general interest, today's constitutions are characterized by the norm of guaranteeing the protection of creations and creators/users of these goods. Constitutions in this way only in principle guarantees the protection of intellectual rights, while the further concretization of this provision is left to the relevant law.

Such protection finds broad support in the protection of property in general in Article 17 of the Universal Declaration of Human Rights:[[13]](#footnote-13) "Everyone has the right to own property alone as well as in association with others [...]". 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).[[14]](#footnote-14)

The above-mentioned trend has led the local legislator of the Republic of North Macedonia to raise it to the constitutional level, providing that: "The rights derived from scientific, artistic or other types of intellectual creativity are guaranteed".[[15]](#footnote-15) The Constitution only in principle guarantees the protection of intellectual rights, while the further concretization of this provision is left to the relevant laws and other regulations.

The Constitution[[16]](#footnote-16) of the Federal Republic of Germany does not issue in guaranteeing the protection of industrial property, but suffices only in guaranteeing property in general. Considering that Germany is a federation in terms of the form of the system, in its Constitution in Article 73(1) it is provided that: "The Federation shall have exclusive legislative power with respect to industrial property rights, copyrights and publishing”. For this reason, the Constitution in Article 96(1) provides that: “The Federation may establish a federal court for matters concerning industrial property rights”.

1. **Legal Regulation**

In North Macedonia, industrial property was regulated by a special law for the first time in 1993, to continue with the law in 2002 and the last one in force is the Law on Industrial Property of 2009.[[17]](#footnote-17) This Law regulates the acquisition, exercising and protection of industrial property rights. According to Article 2(1) of this Law industrial property rights shall be: patent, industrial design, trademark, appellation of origin and geographical indications. The works related to the aquiring and safeguarding of the industrial property rights shall be performed by the State Office of Industrial Property.[[18]](#footnote-18) The Office shall be an administrative organization with a status of an independent state administrative body with responsibilities laid down with this or other laws. The Office has the capacity of a legal person.[[19]](#footnote-19)

Unlike the system of North Macedonia, the German Republic for industrial property contains separate laws for each right in this sphere, in which case the trademark and geographical indication are regulated by a single law. The debate has been caused by the lack of legal rules for industrial property rights in the guise of the German Civil Code,[[20]](#footnote-20) universally known by the abbreviation BGB. The reasoning given is that the Patents Act was adopted as early as 1877, i.e. before the BGB (1900), therefore any inclusion of the matters regulated by the act in question in the BGB would constitute a duplication of regulation. The German Patent and Trade Mark Office[[21]](#footnote-21) is an independent higher federal authority within the remit of the Federal Ministry of Justice and Consumer Protection. Its seat is in Munich, and offices in Berlin and Jena.[[22]](#footnote-22)

The difference in terms of the definition of the subjects is obvious. The Macedonian legislation provides a more detailed definition of who is considered the subject of these rights: "Subjects of industrial property rights are physical and legal persons of the country and foreign. Foreign physical and legal persons, in accordance with the law, in terms of the protection of industrial property rights in North Macedonia, enjoy the same rights as local legal and physical persons, if this derives from international agreements and conventions, or by applying the principle of reciprocity. The existence of reciprocity is proven by the person who is called to it",[[23]](#footnote-23) while in the German legislation such a definition about the subjects is missing, however, which subject will be given the character of the subject of these rights can be found within the legal provisions of the relevant laws, such as the case of the Patent Act: “The inventor or his legal successor has the patent right. If several people have made an invention together, they jointly have the right to a patent. If several persons have made the invention independently of each other, the right belongs to the person who registered the invention for the first time at the German Patent and Trademark Office",[[24]](#footnote-24) or the case of Act on the Protection of Trade Marks and other Signs: “Proprietors of trade marks that have been filed or registered may be the following: natural persons, legal persons, or partnerships in so far as they are equipped with the capacity to acquire rights and enter into liabilities”,[[25]](#footnote-25) or the Design Act: “The right in the registered design belongs to the designer or the designer’s successor in title. Where several persons have jointly created a design, the right in the registered design belongs to them jointly. Where a design is created by an employee in the execution of his or her duties or following the instructions given by the employee’s employer, the right in the registered design belongs to the employer, unless otherwise provided by contract”.[[26]](#footnote-26)

Another difference that turns out to be essential is the question of the term of protection of the recognized and protected industrial property rights in the legislations of the two countries.

* In both countries, the term of the patent shall be twenty years, commencing on the date following the filing of the application in respect of the invention.[[27]](#footnote-27) An application for supplementary protection for the patent can be filed pursuant to the provisions set out in the relevant laws and regulations. Such a solution is taken from Article 20 of the European Patent Convention.[[28]](#footnote-28)
* The same solution is found in both legislations regarding the duration of the trademark. The duration of protection of a registered trade mark shall be ten years, calculated from the date of filing the application. The registration of the trade mark shall be renewed for a further ten years, at the request of the proprietor of the trade mark or any person authorised to do so by law or by contract, provided that the renewal fee has been paid.[[29]](#footnote-29) Such a solution of both legislations is slightly different from the one offered by the Madrid Agreement Concerning the International Registration of Marks according to which Registration of a mark at the International Bureau is effected for twenty years, with the possibility of any registration to be renewed for a period of twenty years from the expiration of the preceding period.[[30]](#footnote-30) In terms of renewing the validity of the trademark, the difference lies in the term in which the owner of the trademark must submit a request and thereby fulfill the financial obligations for renewing of the validity. In North Macedonia, the holder of the right during the last year of the ten-year validity or no later than nine months after the expiration of the validity to submit to the Office a request for the extension of the validity of the trademark, while in the German Republic the request for renewal shall be submitted in the six-month period prior to the expiry of the duration of protection. Failing this, the request may be submitted within a further period of six months following the expiry of the duration of protection.[[31]](#footnote-31) If the holder fails to make the request for renewal in the preceding six months, the request may be submitted within a further period of six months following the expiry of the duration of protection.[[32]](#footnote-32) This possibility of an additional period to request the continuation of the validity through renewal, found in the German law, is absent in the Macedonian law.
* According to the Macedonian legislation, the design is granted for a period of 5 years with the possibility of renewal from 5 years but not more than 25 years,[[33]](#footnote-33) while according to German legislation the term of protection of a registered design is 25 years, calculated from the date of filing of the application,[[34]](#footnote-34) providing that: “the renewal of protection is effected by payment of a renewal fee for the 6th to 10th, 11th to 15th, 16th to 20th and the 21st to 25th year of the term of protection in each case”.[[35]](#footnote-35)
* Law on Industrial Protection provides that: “The protection of geographical name shall be valid indefinitely. The right of using the protected geographical name shall be valid for five years from the date of adopting the decision. The validity of the right of use may be renewed indefinite number of times for a period of five years provided that the right holder in the course of the fifth year validity submits a request to the Office for renewal of the right to use the protected geographical name”.[[36]](#footnote-36) In contrast, the Act on the Protection of Trade Marks and other Signs does not specify the duration of geographical names, but it only emphasizes the duration of trademarks. German jurisprudence and legal theory interprets this by applying the trademark duration provision by analogy to geographical names.

Violations of rights from industrial property that are of the most serious criminal nature, in Macedonian legislation are foreseen and regulated in the Criminal Code, specifying the cases and the sanctions that follow. By contrast, in German legislation such violations and the consequences resulting from such violations are included in the relevant laws that regulate industrial property rights.

As for the competent and responsible institution for the acquisition and protection of industrial property rights, the difference is substantial. The law on industrial property only defines the Office as competent, with the data of its leadership and enumerates the competences that this Office has.[[37]](#footnote-37) In this case, the law does not require that the persons elected to the leadership of the Office (director and deputy director) have the necessary qualifications to be elected. This is what the Patents Act does: “(2) They [President and further members of the German Patent and Trade Mark Office] must be qualified under the terms of the German Judiciary Act to hold judicial office (legally qualified members) or have expertise in a field of technology (technically qualified members). (3) The members shall be appointed for life. As a rule, only a person who has passed a state or academic final examination in a technical or natural science subject at a university, technical or agricultural institution of higher education, or at a mining academy in Germany and who thereafter has worked in the field of natural sciences or technology for at least five years and who has the requisite legal knowledge may be employed as a technically qualified member. In accordance with the law of the European Communities, final examinations in another Member State of the European Union or in another Contracting Party to the Agreement on the European Economic Area shall be equivalent to a final examination in Germany. (4) In case of a need which is expected to be limited as to time, the President of the German Patent and Trade Mark Office may commission persons who have the educational and additional background required for membership (subsection (2) and (3)) to perform the duties of a member of the German Patent and Trade Mark Office (assistant members). The commission can be effected for a specified time or for as long as necessary and may not be revoked during that period. In other respects, the provisions governing members shall also apply to the assistant members”.[[38]](#footnote-38)

1. **Conclusion**

Although the industrial property right is based on the Paris Convention for the Protection of Industrial Propertyin its main points, however, through the various legislations, taking into account the peculiarities of the legal systems, it has undergone changes and differences, sometimes insignificant and sometimes significant and essential. The same turns out to happen between the two legislations selected for treatment in this paper: the Macedonian and the German. While the constitution of North Macedonia expressly guarantees the protection of intellectual property rights, such a thing is absent in the constitution of the German Republic. By legally regulating each industrial property right with separate laws, the German legislation turns out to be more detailed, compared to the Macedonian legislation which contains a general law for all the rights in question. Considering the unitary character, in North Macedonia the applicationsfor the protection of industrial property rights can be filed in a single center - the State Office of Industrial Property. On the other hand, in Germany as a federation the patent application can also be filed through a patent information center where this agency has been designated to receive patent applications on the basis of a notice published by the Federal Ministry of Justice and Consumer Protection in the Federal Law Gazette. German legislation increasingly considers patent a separate branch of intellectual property, placing it on the same level as industrial property right and copyright. Such determination has already found wide support in legal theory.

**References**

*Act on the Protection of Trade Marks and other Signs* of 25 October 1994 (Federal Law Gazette [BGBl.] I p. 3082), as last amended by Article 5 of the Act of 10 August 2021 (Federal Law Gazette I p. 3490).

*Berne Convention for the Protection of Literary and Artistic Works*, signed at Berne on September 09, 1886 and as amended on September 28, 1979.

Bouchoux, Deborah E. *Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets* (4th edition), New York: Delmar Cengage Learning, 2013.

*Civil Code* in the version promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), last amended by Article 4 para. 5 of the Act of 1 October 2013 (Federal Law Gazette I p. 3719.

Colston, Catherine, Jonathan Galloway. *Modern Intellectual Property Law* (3rd edition), London: Routledge, 2010.

*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.

*Design Act* in the version published on 24 February 2014 (Federal Law Gazette I, p. 122), as last amended by Article 26 of the Act of 23 June 2021 (Federal Law Gazette I p. 1858).

Dutfield, Graham, Uma Suthersanen. *Global Intellectual Property Law*, Cheltenham: Edward Elgar Publishing, 2008.

*Grundgesetz (Basic Law)*, 23 May 1949.

*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.

*Madrid Agreement Concerning the International Registration of Marks* (1891 amended in 1979).

*Paris Convention for the Protection of Industrial Property* (signed at Paris on March 20, 1883 and as amended on September 28, 1979).

*Patent Act* as published on 16 December 1980 (Federal Law Gazette 1981 I p. 1), as last amended by Article 4 of the Act of 8 October 2017 (Federal Law Gazette I p. 3546).

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

Shabani, Faton Z. *E drejta afariste*, Tetovë: Universiteti i Tetovës, 2021.

*The European Patent Convention (EPC)* (1973, revised in 1991 and 2000).

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

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2. Albert Hazari, Msc. University of Tetova, Faculty of Law. [↑](#footnote-ref-2)
3. <https://www.wipo.int/about-ip/en/> [Accessed on 07.11.2022]. [↑](#footnote-ref-3)
4. Faton Z. Shabani, *E drejta afariste*, Tetovë: Universiteti i Tetovës, 2021, p.860. [↑](#footnote-ref-4)
5. Catherine Colston, Jonathan Galloway, *Modern Intellectual Property Law* (3rd edition), London: Routledge, 2010, p.2. [↑](#footnote-ref-5)
6. Article 1(2) of the *Paris Convention for the Protection of Industrial Property* (signed at Paris on March 20, 1883 and as amended on September 28, 1979). [↑](#footnote-ref-6)
7. Article 2 of the *Berne Convention for the Protection of Literary and Artistic Works*, signed at Berne on September 09, 1886 and as amended on September 28, 1979. [↑](#footnote-ref-7)
8. Graham Dutfield, Uma Suthersanen, *Global Intellectual Property Law*, Cheltenham: Edward Elgar Publishing, 2008, p.48. [↑](#footnote-ref-8)
9. <https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm> [Accessed on 12.11.2022]. [↑](#footnote-ref-9)
10. Graham Dutfield, Uma Suthersanen, op. cit., p.48. [↑](#footnote-ref-10)
11. Deborah E. Bouchoux, *Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets* (4th edition), New York: Delmar Cengage Learning, 2013, p.335. [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. *Universal Declaration of Human Rights (UDHR)*, United Nations General Assembly in Paris, 10 December 1948. [↑](#footnote-ref-13)
14. Trudy Huskamp Peterson, *The Universal Declaration of Human Rights: An Archival Commentary*, International Council on Archives – Human Rights Working Group, 2018. [↑](#footnote-ref-14)
15. Article 47(2) of the *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. [↑](#footnote-ref-15)
16. *Grundgesetz (Basic Law)*, 23 May 1949. [↑](#footnote-ref-16)
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. [↑](#footnote-ref-17)
18. <https://www.ippo.gov.mk> [Accessed on 9.11.2022]. [↑](#footnote-ref-18)
19. Article 9 of the Law on Industrial Property. [↑](#footnote-ref-19)
20. *Civil Code* in the version promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), last amended by Article 4 para. 5 of the Act of 1 October 2013 (Federal Law Gazette I p. 3719). [↑](#footnote-ref-20)
21. <https://www.dpma.de/> [Accessed on 9.11.2022]. [↑](#footnote-ref-21)
22. Article 26 of *Patent Act* as published on 16 December 1980 (Federal Law Gazette 1981 I p. 1), as last amended by Article 4 of the Act of 8 October 2017 (Federal Law Gazette I p. 3546). [↑](#footnote-ref-22)
23. Article 5 of the Law on Industrial Property. [↑](#footnote-ref-23)
24. Article 6 of the Patent Act. [↑](#footnote-ref-24)
25. Article 7 of *Act on the Protection of Trade Marks and other Signs* of 25 October 1994 (Federal Law Gazette [BGBl.] I p. 3082), as last amended by Article 5 of the Act of 10 August 2021 (Federal Law Gazette I p. 3490). [↑](#footnote-ref-25)
26. Section 7 of the *Design Act* in the version published on 24 February 2014 (Federal Law Gazette I, p. 122), as last amended by Article 26 of the Act of 23 June 2021 (Federal Law Gazette I p. 1858). [↑](#footnote-ref-26)
27. Article 74 of the Law on Industrial Property; Articles 16-16(a) of the Patent Act. [↑](#footnote-ref-27)
28. *The European Patent Convention (EPC)* (1973, revised in 1991 and 2000). [↑](#footnote-ref-28)
29. Article 211(1)-(2) of the Law on Industrial Property; Article 47(1)-(2) of the Act on the Protection of Trade Marks and other Signs. [↑](#footnote-ref-29)
30. Articles 6-7 of the *Madrid Agreement Concerning the International Registration of Marks* (1891 amended in 1979). [↑](#footnote-ref-30)
31. Article 211(1)-(2) of the Law on Industrial Property; Article 47(6) of the Act on the Protection of Trade Marks and other Signs. [↑](#footnote-ref-31)
32. Article 47(6) of the Act on the Protection of Trade Marks and other Signs. [↑](#footnote-ref-32)
33. Article 172 of the Law on Industrial Protection. [↑](#footnote-ref-33)
34. Article 27(2) of the Design Act. [↑](#footnote-ref-34)
35. Article 28(1) of the Design Act. [↑](#footnote-ref-35)
36. Article 246(1)-(3) of the Law on Industrial Protection. [↑](#footnote-ref-36)
37. Articles 9-11 of the Law on Industrial Protection. [↑](#footnote-ref-37)
38. Article 26 of *Patent Act*. [↑](#footnote-ref-38)