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New Legal Regulation of Intellectual Property Protection and Enforcement

By signing EU-Georgia Association Agreement,[1] *(AA) new stage has started with regard to ensuring protection of intellectual property and harmonization of its implementation mechanisms with European Law.*

One of the most important steps with this regard is the legislative amendments in the Civil Procedure Code of Georgia (GCPC) so that to ensure adequate and effective protection and enforcement of intellectual property rights.

Specifically: Chapter 7 was added to the GCPC "Specificities in proceedings in relation to the breach of exclusive right on the site of intellectual property".

Before the legislative amendments it was possible for the plaintiff to request the use of the measure to secure the claim, although it was included under the category of other measures and it was quite hard to substantiate the reasons for using a different kind of provision. The purpose of above-mentioned legislative amendments is to solve this and other problems, which will be further elaborated on in the following paper.

Key words: *Intellectual property law, protection of intellectual property, hamonization, Association Agreement, directive, civil procedure code, (GCPC), enforcement, provision, to secure the claim, to secure the evidence/evidence provision, articles* 363^{25}*-*363^{29}.

1. Introduction

Defining events on the development of the mankind are connected with inventions, scientific and artistic innovations. Nowadays, it is particularly striking that new technologies have a substantial effect on the agenda of the civilization. Historically, keeping up with the fast pace of creative and innovative progress was supported by the precise reformation of the intellectual property law.[2] Each step towards the development of this field of law is of utmost importance for the overall progress at the present time as well.

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[1] The Association Agreement, agreement between Georgia on the one hand, and on the other hand-EU and Nuclear nergy ssociation of Europe and its Member States, <https://matsne.gov.ge/ka/document/view/249-6959?publication=0> [30.06.2019].

[2] "Intellectual Property" was formed as an internationally recognized term in 1967, after adoption of the Convention for the Establishment of the Intellectual Property Organization, a terminological definition of intellectual property. See, *Sajaia L.,* The Author's personal non-property rights, Thesis, TSU, Tbilisi, 2014, 17 <http://press.tsu.ge/data/image_db_innova/disertaciebi_samartali/lika_sajaia.pdf> [23.07.2019] (in Georgian). *Harms. L. T. C.*, A Casebook on the Enforcement of Intellectual Property Rights., 4th ed., WIPO, 2018, 10 <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_791_2018.pdf> [21.07.2019].

The question elaborated on in the following paper is very important, insofar as it concerns the novelty in the *GCPC*, on intellectual property disputes, regarding the definition of claim and evidence provision measures.

The rights are realized only when the legislation has a strong protective lever to ensure the enforcement of norms. ubi jus, ibi remedium,[3] i.e. there is no right in case there is no mechanism to ensure its effective enforcement – this is the leitmotif of this article.

GCPC chapter XXIII[4] regulates the claim provision with regard to civil disputes, and chapter XIV[5] regulates the evidence provision. Thus, the regulating norms to secure the claim and the evidence provision measures covered the disputes with regard to intellectual property, as well as other civil proceeding in relation to material and immaterial property.[6]

Two reasons form the basis of the legislative amendments discussed in the following paper. The first one is practical. Due to the legal nature of the intellectual property, its regulating mechanisms have to be in full accordance with the specificities of the subject of protection. Otherwise, applying the common and overall mechanism hinders the process of legal proceeding, which was the case in the Georgian reality. The second reason is formal and legal. Upon signing the association agreement – Georgia has undertaken an obligation to incorporate European legislation in the Georgian law. Namely, it concerns the implementation of the directive 2004/48/EC of the European Parliament and of the European Council on enforcement of intellectual property rights.

The term used in the civil procedure code "Law making specificities in relation to the breach of exclusive right on the site of intellectual property" may cause certain confusion, which is a pity to have it as a drawback, insofar as, as academician Ivane Javakhishvili believed, the term must denote the scientific concept with utmost accuracy and completeness.[7]

The multilayered legal nature of intellectual property caused multiplicity of the terms denoting the concept of an object and its scientific meaning. Although, a modern western doctrine (in contrast to the Russian doctrine that uses the term – *Интеллектуальные Права*) definitely corresponds the term – intellectual property and intellectual property rights. This is very important, insofar as it clearly describes the immanent features of the legal nature of the object.[8]

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3 "*When the law permits, it at the same time allows it to be protected". Kapanadze N., Kvachadze M.,* Latin-Georgian Legal Dictionary, Tbilisi, 2008, 86 (in Georgian). See, *Nadareishvili G.,* Civil Law of Rome, 3rd ed., Tbilisi, 2009, 165 (in Georgian). See, Law Dictionary, <https://dictionary.thelaw.com/ubi-jus-ibi-remedium/> [23.07.2019]. See. *Thomas T. A.,* Ubi Jus, Ibi Remedium: The Fundamental Right to a Remedy, The University of Akron, 2004, <https://ideaexchange.uakron.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1208&context=ua_law_publications> [23.07.2019].

4 Articles:191-199[1], Civil Procedure Code of Georgia, Parliamentary Gazette, 47-48, 31/12/1997.

5 Ibid, articles: 109-119.

6 *Jorbenadze S.,* Life and work of Ivane Javakhishvili, Tbilisi, 1984, 379 (in Georgian). See, *Taliashvili T.,* Foundations of Legal Protection of Geographic Indication of the Goods, Doctoral Dissertation, TSU, Tbilisi, 2003, 23 <http://dspace.nplg.gov.ge/handle/1234/305872> [03.07.2019] (in Georgian).

7 Prof. *T. Zarandia* points out that "there is no such unified concept as property, instead, there are completely different concepts and definitions famous for the most of continental Europe codifications that depended on historical and political circumstances within which the codification took place". See. *Zarandia T.,* Property Law, 2nd revised ed., Tbilisi, 2019, 206 (in Georgian).

8 *Taliashvili T.,* Foundations of Legal Protection of Geographic Indication of the Goods, Doctoral dissertation, TSU, Tbilisi, 2003, 8, <http://dspace.nplg.gov.ge/handle/1234/305872> [03.07.2019] (in Georgian).

It has to be pointed out that this specific term "Intellectual property" is included in the Constitution of Georgia. Taking into consideration that the legal regulation of intellectual property is not codified, and regulating invention, authorship rights or other objects are reflected in specific laws, application of the unified term for the field – intellectual property – is not common in the field of positive law. It is appropriate that the civil procedure code adopt the term – "Intellectual Property Law: (Constitution of Georgia, article 20 confirms the above: intellectual property rights are protected)[9] recognized by the Constitution of Georgia.

In terms of the structure the article is composed of the Introduction, 2 chapters, Conclusion and bibliography. The article elaborates on the following important questions: Harmonization of intellectual property protection and enforcement mechanisms; New procedural norms of intellectual property protection and enforcement.

2. Harmonization of Intellectual Property Protection and Enforcement Mechanisms

In the domain of intellectual property law, it is extremely important that the intergovernmental positions regarding issues on protection of institutions, are in accordance with each other.[10] National legal levers developed by one state to ensure settling the above-mentioned problem is not sufficient,[11] since the breach of rights of immaterial goods has the specificity that cannot be found in relation to "material objects". Besides, material property, intellectual rights is characterized by the so-called "territorial principle". [12 ; 13 ; 14] The solution can be found in international and intergovernmental agreements.

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9 Constitution of Georgia, Departments of the Parliament of Georgia, №31-33, 24/08/1995.

10 *Taliashvili T.,* Some Aspects of Patent Law, Journal of Law, №5-6, 1998, 37-43 (in Georgian).

11 *Taliashvili, T,.* Foundations of Legal Protection of Geographic Indication of the Goods, Doctoral dissertation, TSU, Tbilisi, 2003, 80-81 <http://dspace.nplg.gov.ge/handle/1234/305872> [03.07.2019] (in Georgian). *Taliashvili T.,* Der Schutz geografischer Bezeichnungen in Georgien am Maßstab des internationalen und europäischen Rechts, GRUR Int 2003, 324. *Taliashvili T.,* Reinvention of the Concept of Intellectual Property to Post-Soviet Society – Georgian Experience, Public Lecture, Conference on "Intellectual Property in Modern Europe", GWZO, Universität Leipzig, 2012. See. *Taliashvili T.,* Internationale Konferenz: Auslegung der Verfassungsnormen in den Postsowjetischen Gesellschaften, Ostrecht, №52, Berlin, 2006.

12 *Lundstedt L.,* Territoriality in Intellectual Property Law, Stockholm University, 2016, 27, <https://su.diva-portal.org/smash/get/diva2:972658/FULLTEXT01.pdf> [30.08.2019]. See. *Hand G., Zekoll J., Zumbansen P. (eds),* Beyond Territoriality: Transnational Legal Authority in an Age of Globalization, Queen Mary Studies in International Law, Brill Academic Publishing, Leiden, Boston, 2012, 189-228.

13 See. *Peukert A.,* Territoriality and Extraterritoriality in Intellectual Property Law, 2010, 4, <http://www.-jura.unifrankfurt.de/ifrvl/peukert/forschung/TerritorialityandExtraterritorialityinIntellectualPropertyLaw.pdf.16> [30.08.2019]. See, *Bradley C. A.,* Territorial Intellectual Property Rights in an Age of Globalism, 37 VA. J. INT'L L., (1997), 505, 514-15, 520, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1982&context=-faculty_scholarship> [30.08.2019].

14 *Taliashvili T.,* Aspects of Protection of Names of Georgian Origin and Geographic Indications Abroad and Protection of Names of Foreign Origin and Geographic Indications in Georgia, Prof. *Z. Akhvlediani* Collection*, Shengelia R. (ed.),* Tbilisi, 2004, 179-187 (in Georgian).

The European Union is committed to getting closer to the member states of Intellectual Law. The issues of implementation of European directives on the local level, along with the territorial limitations of the legislation, represent the key difficulties in the above-mentioned process.[15]

The objective of the European Union is to significantly reduce differences between national legal systems and to effect harmonization with the European Legislation. "Harmonization is the normative statement when the inconsistencies between two different legal systems reduce, although this process can hardly be regarded as simple or smooth".[16]

Upon signing an Association Agreement the issue of harmonisation of regulatory norms of intellectual property with the European law became the part of the agenda. Despite the fact that "the harmonisation is the soft responsibility",[17] the state has undertaken responsibility to implement European standards and directives in Georgian legislation which primarily is based on the decree[18] adopted by the Parliament of Georgia on "Harmonization of Georgian Legislation with the EU law," which explicitly emphasizes that all laws and normative acts passed by the Georgian parliament should be harmonised with the standards and norms established by the European Union.

Historically, "Georgian lawmakers made efforts that its nation had a harmonized law in place, which was not secluded within its own frames but at the same time were not quite absorbed in supranational boundless space,[19;20] insofar as the "harmonization of the law assumes not only the peaceful coexistence with the external world, bat rather a naturally unified legal space within the country".[21] The process of harmonization seeks to unite two or more different elements or effect the close approximation.[22] The key characteristics of harmonisation is the unification of diversity in one sole object .[23] Harmonization does not assume that all laws are identical.[24] Neither does it mean to copy from the European union legislation or introduce it word for word in the legislation of the third world state.

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15 *Hilty R. M., Moscon V.,* Modernization of the EU Copyright Rules, Position Statement of the Max Planck Institute for Innovation and Competition, Research Paper No. 17-12, Munich, 2017, 14, <https://pure.mpg.de/rest/items/item_2470998_12/component/file_2479390/content> [20.06.2019].

16 *Samkharadze I.,* Harmonization of Legal Systems: EU and Georgia., TSU Journal of Law, № 1, Tbilisi, 2015, 315 (in Georgian).

17 *Surmava L.,* Compatibility of Georgian Legislation with EU Legislation with regard to the State Assistance, Doctoral Dissertation, TSU, Tbilisi, 2012, 10, <http://press.tsu.ge/data/image_db_innova/Disertaciebi/lita_surmava.pdf> [26.07.2019] (in Georgian).

18 Decree adopted by the Parliament of Georgia on "Harmonisation of Georgian Legislation with the EU Law", 02/09/1997, <https://matsne.gov.ge/ka/document/view/38704?publication=0> [31.08.2019].

19 *Zoidze B.,* Reception of European Private Law by Georgia, Tbilisi, 2005, 29 (in Georgian).

20 *Loewenheim U.,* Harmonization and Intellectual Property in Europe, Columbia Journal of European Law 2, no. 3, Spring, Summer, 1996, 481-489.

21 *Zoidze B.,* Reception of European Private Law by Georgia, Tbilisi, 2005, 39 (in Georgian).

22 See. *Fox E. M.,* Harmonization on Law and Procedures in a Globalized World: Why, What and How? Vol. 60 Antitrust Law Journal, 1992, 594. See. *Boodman M.,* The Myth of Harmonization of Laws, The American Journal of Comparative Law, Vol. 39, 1991, 699.

23 *Samkharadze I.,* Harmonization of Legal Systems: EU and Georgia., TSU Journal of Law, №1, 2015, 316 (in Georgian).

24 *Loewenheim U.,* Harmonization and Intellectual Property in Europe, Columbia Journal of European Law 2, no. 3, Spring, Summer, 1996, 488.

Harmonization assumes that the key principles of European Union taken into consideration and their enforcement mechanisms are ensured.[25] It is important to develop the legal mechanisms within the harmonization process that will effectively regulate modern civil relationships.[26] Most significantly, the harmonization of the laws remains the task to be fulfilled by EU member states.

Development and establishment of the enforcement mechanisms of regulating norms of intellectual property represent one of the key tasks for the purposes of harmonization. Although, "sanctions and enforcement mechanisms which have always been the part of the law on Intellectual Property" have not typically been regulated[27] on an international level. One of the most important international agreements "Agreement on *Trade*-Related Aspects of Intellectual *Property* Rights" (TRIPS Agreement)[28;29] has been a major step forward in the field of intellectual property law. Although, it turned out to be sufficient for elimination of the above-mentioned misbalance and consequently, the Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights adopted in 2004.[30] (Directive 2004/48/EC)

The above-mentioned directive represents one of the horizontal directives[31] which regulates all subjects of intellectual property and is "focused on the procedure issues[32] emerged during the legal proceeding." It also stipulates preventive measures with regard to the protection of intellectual rights.

Directive 2004/48/EC offers alternative measures of protection of intellectual rights, such as an evocation of counterfeit goods from the trade network, as well as their removal from commercial net-

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25 *Surmava L.,* Compatibility of Georgian Legislation with EU Legislation with regard to the State Assistance, Doctoral Dissertation, TSU, Tbilisi, 2012, 62, <http://press.tsu.ge/data/image_db_innova/Disertaciebi/lita_surmava.pdf> [26.07.2019] (in Georgian).

26 *Kharitonashvili N.,* Third Parties as the Subjects of Civil Justice, TSU Journal of Law №1, 2017, 275 (in Georgian).

27 *Kur A., Dreier T.,* EU Intellectual Property Law*,* Texts, Cases and Materials, *Gugeshashvili G (transl.),* Tbilisi, 2017, 478 (in Georgian).

28 Agreement on *Trade*-Related Aspects of Intellectual *Property* Rights, 14/06/2000, <https://matsne.gov.ge/ka/document/view/2507839?publication=0> [26.07.2019]; <https://www.wto.org/english/docs_e/legal_e/27-trips.pdf> [26.07.2019].

29 Based on agreement aspect and meaning, *Peter K. Y.,* The Objectives and Principles of the TRIPS Agreement, 2009, <https://www.wilmerhale.com/en/insights/publications/new-eu-directive-on-ip-enforcement-september-16-2004> [26.07.2019].

30 Corrigendum to Directive 2004/48/EC of the European Parliament and of the Council on the Enforcement of Intellectual Property Rights, 29/04/2004, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0048R%2801%29> [26.07.2019]; <https://www.wilmerhale.com/en/insights/publications/new-eu-directive-on-ip-enforcement-september-16-2004> [26.07.2019].

31 "Direct effect may be vertical (that is, the EU legislation can be enforced against the state or an emanation of the state, such as a nationalised industry or privatised utility) or horizontal (that is, it may be enforced against another individual)", <https://uk.practicallaw.thomsonreuters.com/6-107-6114?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1> [12.09.2019]. See, on the effects of horizontal directives, *Lundstedt L.,* Territoriality in Intellectual Property Law, Stockholm University, 2016, 21, 420, <https://su.diva-portal.org/smash/get/diva2:972658/FULLTEXT01.pdf> [30.08.2019].

32 *Cook T.,* Enforcement Directive and Harmonization of Remedies for Intellectual Property Infringement in the EU, Journal of Intellectual Property Rights, Vol. 20, 2015, 264, <http://nopr.niscair.res.in/bitstream/123456789/31958/1/JIPR%2020%284%29%20264-269.pdf> [26.07.2019].

work, and destroying the product made as a result the infringement of rights. The court might apply one of the measures, such as prohibiting the individual from performing the activity that infringes the special right. In the form of alternative court measure the directive also stipulates imposition of compensation to cover the damages (including unearned income).[33] The directive, besides the above-mentioned aspect, covers important provisions such as ensuring the provision of evidence while protecting the rights of intellectual property, as well as compensation of the damages.[34]

To ensure that the objectives of justice are met, in case the rights under the above directive have been infringed, the states must ensure compliance with the relevant standards so that the unacceptable barriers are not created, at the same time the standards must fully correspond with the fundamental principles of enforcement law, such as the transparency of the enforcement process, which is accessible, effective, predictable,consistent and carried out within the reasonable time frame.[35;36;37]

For the purpose of the following paper the next chapter discusses the changes in the Georgian legislation with regard to the protection and enforcement of intellectual property.

3. New Procedural Norms of Intellectual Property Protection and Enforcement

Upon the association agreement entered into force the process of harmonization of European intellectual law within the Georgian legislation was speeded up. In response to obligations undertaken under the Association Agreement with the package of amendments was developed in the civil procedure law, by means of which procedural norms regarding the protection of intellectual property were regulated in a new way. The $7^{th\,5}$ chapters (articles 363^{25}–363^{29}) were added to the civil procedure code, which defined the lawmaking specificity[38] in relation to intellectual property.

The following measures on the disputes of the above-mentioned category were defined for the first time in the civil procedure code: a) measures to *secure evidence*;[39] b) right to information;[40] c) *measures to secure claims*.[41]

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33 Intellectual Property Rights Enforcement Directive, <https://wiki.openrightsgroup.org/wiki/Intellectual_Property_Rights_Enforcement_Directive#Criticisms> [12.09.2019].

34 *Cook T.,* Enforcement Directive and Harmonization of Remedies for Intellectual Property Infringement in the EU, Journal of Intellectual Property Rights, Vol. 20, 2015, 266-267. <http://nopr.niscair.res.in/bitstream/-123456789/31958/1/JIPR%2020%284%29%20264-269.pdf> [26.07.2019].

35 *Dzlierishvili Z.,* Cross-undertaking as to Damages Resulting from a Provisional Remedy, TSU Journal of Law, №1, 2018, 5 (in Georgian). Original text: Beck'sche Kurz-Kommentare Zivilprozessordnung mit Gerichtsverfassungsgesetz und anderen Nebengesetzen., Begründet von. 75 Aufl., 2016, Vorb. 704, 2046.

36 See the related detailed information: *Kurdadze Sh., Kurdadze G., Khunashvili N., Chkonia Z.,* Comments on the Law of Georgia on Enforcement Proceedings, Part 1 (articles 1-48), SDASU, Tbilisi, 2018, 7 (in Georgian). *Uitdehaag J.*, *Kurtauli S.*, Review of the Georgian within the National and International Context, Enforcement System, Tbilisi, 2013, 101 (in Georgian).

37 Section 16, Conclusion by consultative Council of European Judges, (CCJE) Conclusion № 13 Strasbourg 19/11/2010, <https://rm.coe.int/-ccje-13-2010-/168074824c> [27.08.2019].

38 On amendments in the Civil Procedure Code of Georgia, Parliamentary Gazette, 47-48, 31/12/1997.

39 Compare GCPC, article 363^{27}; Association Agreement, article 192.

40 Compare GCPC, article 363^{28}; Association Agreement, article 193.

41 Compare GCPC, article 363^{29}. There is no literal meaning of the term – measure to secure the claim in Association Agreement, although temporary provision measures are included in article 194.

For the Georgian procedure code the measure to secure the claim does not represent the institutional novelty. Although, this is relatively new that norms regulating intellectual property have been defined according to the code since 2018, the regulating sphere, right to information and most importantly the procedure to use measures to secure evidence/claim were specified. Through the amendment in the code non-disclosure and confidentiality of obtained information were defined as an obligation to the court,[42] as for the norms of the authority category, the court may:

a) Ensure sequestration of the movable/immovable property (including bank accounts and other assets) owned by the individual, related to which, based on a well-grounded assumption the individual has violated the exclusive right of a commercial scale; Obtained documents/information shall be handed over to the independent expert[43] appointed by the court so that to identify the subject of sequestration;

b) Request the bank-related, financial and/or commercial documents/information [44] from the assumed violator; Only the court is authorized to be familiarized with the above information, i.e. the unauthorized person may not have access to such information;

c) Prohibit the person who, based on the well-grounded assumption has breached the exclusive right by the action that violates the exclusive right; or instead of the above prohibition, request on person who, based on the well-grounded assumption has breached the exclusive right to present the corresponding warranty;

d) Discuss the issue related to using the provision measures in cases defined by the code, without oral hearing. In the above-mentioned cases the person in relation to whom the above provision measures will be carried out, must be informed about it without delay, within no later than 48 hours from the moment of the above measure.[45]

e) define the possible indemnification provision along with the measures to secure the claim;

Considering the requirements of the lawmaker, the court is also authorized to issue a ruling on using the measures to secure the evidence, based on the motion, in order to preserve the evidences, in case there exists the danger that the evidence might be destroyed.[46] Moreover, if it is impossible to secure the evidence through the above-mentioned measures, the sequestration as a necessary measure may be used, in order to avoid the possible fulfillment of the decision due to the difficulties to fulfil it.[47]

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42 Compare GCPC article 1, point "A", 363^{29} and GCPC 363^{28} article 3, paragraph 3; Associaton Agreement, article 192, paragraph 1.

43 Section 25, Conclusion by consultative Council of European Judges, (CCJE) Conclusion № 13 Strasbourg 19/11/2010, <https://rm.coe.int/-ccje-13-2010-/168074824c> [27.08.2019]. It is underlined that "the search and sequestration of defendant's assets has to be carried out effectively. But at the same time relevant provisions regarding human rights, protection of personal data, urgency for court revision".

44 See authors' comment on the same regulation, *Kur A., Dreier T.,* EU Intellectual Property Law*,* Texts, Cases and Materials, *Gugeshashvili G. (transl.),* Tbilisi, 2017, 485. "If the violation represents a "commercial scale", member states may grant the right to the national courts, based on the request by one party and under appropriate circumstances require to present bank, financial or commercial documentation, which is under the control of the opposing party and represents the confidential information."

45 Compare GCPC article 363^{27}, paragraph 5 and GCPC $363^{28;}$ Associaton Agreement article 192, section 3.

46 Civil Porcedure Code of Georgia, article 363^{27} [14/11/1997].

47 Decision №2b/4597-14 of 29 September 2014 of Tbilisi Court of Appeal. <http://library.court.ge/judgements/77202015-01-30.pdf> [05.09.2019].

It has to be underlined that the court has the discretionary authority to carry out the detailed description of documentation (through taking a sample or without it) as well as sequestration,[48] while using the measures to secure the evidence. It is a significant regulation of this norm that the court can use several measures at the same time when the case is related to the breach of exclusive right on the site of intellectual property, it will only depend on the specificities of the case, and what kind of preventive measures are required to be used according to the author of the motion.

For the purpose of this article, the following question arises: if the procedural law stipulated regulating norms [49] of provision measures, why was it necessary to additionally include similar provisions in part 7 of the procedure code? Does it mean that there is an attempt to regulate one and the same question twice?

To respond the above question we share the following position, according to which until 23 December, 2017 "it was possible for the plaintiff to request the use of the measure to secure the claim, which was included under the category of other measures and it was quite hard to substantiate the reasons for using a different kind of provision".[50] The disputes on intellectual property were considerably prolonged in time, which was sustained by the overload of court authorities. The problem was settled by using the provision measure on 1 day basis, hence the protection and enforcement of intellectual property rights has become effective and fast.

In procedural way, the purpose of the measure to secure the claim means "to create the favourable conditions for the plaintiff so that he/she enjoys the material rights".[51;52] The ability to enforce decisions and eliminate negative results are the elements to be used in the future, so that the decisions are enfocred and the negative results are eliminated.[53] The key purpose of the provision measure is to prevent the party from direct damage.

From the point of view of protection of intellectual property rights and its effective enforcement, it is obvious that the procedural law required on the one hand the procedural measure to secure the evidence and on the other hand "the guarantee to effectively enjoy the right to a fair trial."[54] According to the definition of the reviewing court, the above represent two different procedural elements.[55;56] If in the first case, the security for, the evidence in the case is made for the purpose of determining substantive

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48 Article 363^{27}, Civil Procedure Code of Georgia, Parliamentary Gazette, 47-48, 31/12/1997. Article 192, paragraph 2 of the Association Agreement.

49 GCPC chapter XXIII, article $191\text{-}199^{1}$.

50 Kaikatsishvili and Lawyers, <http://kbarristers.ge/ge/news/index/74> [12.08.2019].

51 *Kurdadze Sh., Khunashvili N.,* Procedure Code of Georgia, 2nd ed., Tbilisi, 2015, 382 (in Georgian).

52 *Nachkebia A.,* Definitions of Civil Legal Norms in the Practice of Supreme Court (2000-2013), Tbilisi, 2014, 466, <http://www.library.court.ge/upload/aleko_nachkhebia_final.pdf> [01.09.2019] (in Georgian).

53 Decision №2-4883-14 of 05 September 2014 of Court of Appeal of Tbilisi. Available in only Court Archive.

54 Decision "Ltd "Georgian Manganese" against the Parliament of Georgia, decision of the Constitutional Court of Georgia of 1 December, 2017 №2/6/746, <https://www.constcourt.ge/ge/legal-acts/judgments/2-6-746-shps-djordjian-manganezi-saqartvelos-parlamentis-winaagmdeg2.page> [03.09.2019].

55 Decision № as-827-1190-06 of May 29, 2007 of the Supreme Court of Georgia. Available in only Court Archive.

56 Note: Evidence provision differs from court tasks in a qualitative way. See. Decision №as-827-1190-06 of 29 May 2007 of the Supreme Court of Georgia.

facts,[57] while the purpose on the last one (security for a claim) is too ensure the enforcement of the court decision.[58;59] Ultimately, both measures are directed at improving the quality of the protection of the subject whose rights have been violated.

The procedural aim of evidence security is to fix the evidence by means of the "rules determined by the law" for further use",[60] during substantial consideration of the civil case, while "the purpose of measures to secure the claim is to defend the plaintiff's lawful interests in the case of the dishonesty of the defendant".[61]

There are cases in the court practice, when either of the parties are unable to present the evidence in support of their request, in such a case, through mediation of the parties, the court can request the evidence from whoever owns it.[62] Precisely this is the common standard for securing the evidence, this is why it is very important to have this institute included in the chapter on intellectual property, insofar as "under certain circumstances, certain significant evidence might get damaged or destroyed if not appropriately secured by the third party, or else it might be required to secure the assets".[63]

So that to confirm the circumstances provided in the claim, it is extremely important for the party to present the evidence to the court, by means of which the party requires to substantiate the lawfulness of the request, in the meantime the evidence should not be endangered in terms of either being damanded or destroyed. Precisely for this reason the lawmaker has defined the procedure to secure the evidence, along with the security for a claim,so that to once again harmonise European directives and obligations under the Association Agreement. Since 23 December, 2017, any dispute related to protecting above objects and enforcement, is regulated by special articles of the civil procedure code, which represents a step forward towards implementation of the association agreement.

Tbilisi city court, with regard to the case of invalidation of the trade registration mark, reviewed the question without oral hearing, concerning the use of measures to secure the evidence; In the substantiation part of the document, the court pointed out that for enforcement purposes, using procedural measures, including measures to secure the evidence has been declared as an obligation of the state according to the European Court of Human Rights. The Strasbourg court on the case JGK *Statyba ltd. and Guselnikovas v. Lithuania*,[64] defined that the order of sequestration, which was temporary and preventive, was directed at ensuring evidence enforcement and eliminating the risks which prevented from satisfying requests of the creditors.[65]

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57 Decision №2/7126-19 of 4 April, 2019 of Tbilisi *City* Court. Available in only Court Archive.

58 *Kazhashvili G.,* Role of the Perpetuation of Evidences and Claim Security in Litigation, TSU Journal of Law, № 1, Tbilisi, 2016, 77 (in Georgian).

59 *Dzlierishvili Z.,* Cross-undertaking as to Damages Resulting from a Provisional Remedy*,* TSU Journal of Law №1, Tbilisi, 2018, 6 (in Georgian).

60 *Liluashvili T.,* Civil Procedure Law, 2nd ed., Tbilisi, 2005, 266 (in Georgian).

61 Decision №as-538-511-2013 of 3 July, 2003 of the Supreme Court of Georgia.

62 *Gagua I.,* The Burden of Proof in the Civil Procedure Law, Doctoral Dissertation, TSU, 2012, 26, <http://press.tsu.ge/data/image_db_innova/Disertaciebi/ilona_gagua.pdf> [09.08.2019] (in Georgian).

63 *Ostermiller S. M., Swenson D. R., Alternative Dispute* Resolution in Georgia, Tbilisi, 2014, 250, <http://ewmi-prolog.org/images/files/2188ADR_Georgia_GEO.pdf> [13.07.2019] (in Georgian).

64 JGK Statyba LTD and Guselnikovas v. Lithuania, [2013] ECHR, <http://en.efhr.eu/2010/02/11/case-jgk-statyba-ltd-guselnikovas-v-lithuania-application-no-333012-2013/> [09.08.2019].

65 Decision of *2 March, 2018 of the Tbilisi* City *Court.* Available in only Court Archive.

Along with the measures to secure the claim and evidence, guarantee, sequestration, prohibition), civil procedure law took into consideration ensuring possible indemnification provisions.[66] If the court considers that applying the measure to secure the claim might harm the person towards whom there is a well-grounded assumption, that he/she has violated exclusive right, it can use the measure to secure the claim and, at the same time request of the person with the exclusive right, to compensate for the expected damage. The court may as well use the provision warranty based on the claim on the counterpart.[67]

Tbilisi court of appeal, chamber of civil cases considers that there is the need for ensuring indemnification provisions and guarantees for the damaged party in case the court has a substantiated doubt. that the provision measure might not be justified, moreover, the damage due to the provision measure caused to the defendant is evident, or there is the possibility of such damage.[68]

It is important to note that according to the second part of article 199 of GCPC, on 4 April, 2018 one more significant legislative amendment was approved, according to which expected compensation for the damage will be secured within the dates defined by the court which should not exceed 30 days.[69]

Articles 363^{25}–363^{29} of Civil Procedure Law, in relation to the disputes on intellectual property, have a potential to become a precise, practical guideline for the judges so that to achieve effective performance of justice.

For the Georgian legislation, in the process of its "Europianisation", the theoretical and practical meaning of the above-mentioned questions becomes more and more important,[70] insofar as "in a large-scale harmonization process it is important that the GCPC is in compliance with international approaches".[71]

Despite the fact that not a long time has passed since the norms became effective, and there is not quite a big number of disputes related to intellectual property so that to assess the legal index, it is possible to predict that provision measures will be effective. Articles 363^{25}–363^{29} of GCPC will be actively used in practice, since they will secure protection of the parties in equal conditions.

4. Conclusion

The paper presented by us provides the basis for the conclusion that the amendments in the civil procedure law of Georgia in relation to the protection of intellectual property and enforcement

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66 See. GCMP, article 363^{29}, section 4.

67 On amendments in the Civil Procedure Code of Georgia <https://info.parliament.ge/file/1/BillReview-Content/151540?> [31.07.2019].

68 Decision №2b/5617-14 of 29 September 2014 of Tbilisi Court of Appeal, <http://www.tbappeal.court.-ge/appealAllFiles/files/appeal_docs/1415211897__-841888428.pdf> [03.09.2019].

69 On amendments in the Civil Procedure Code of Georgia <https://www.matsne.gov.ge/ka/document/view/-4139203?publication=0#DOCUMENT:1> [26.08.2019]. See. *Dzlierishvili Z.,* Cross-undertaking as to Damages Resulting from a Provisional Remedy, TSU Journal of Law №1, 2018, 16 (in Georgian).

70 *Dzamukashvili D.,* Intelletual Property Law, International Agreements and Conventions, Tbilisi, 2002, 111 (in Georgian).

71 *Kharitonashvili N.,* Third Parties as the Subjects of Civil Justice, TSU Journal of Law №1, 2017, 285 (in Georgian).

mechanisms was the rightful decision. These new legal norms in the field of intellectual property ensure that the process of emerged disputes is more effective, fast and flexible.

Despite the fact that this normative decision was introduced in European countries 15 years earlier, we believe that it is never late to adopt good legal achievements.

This article will support the actors in the civil processes to actively apply and introduce the norms discussed in this paper. It is essential to be able to enjoy the intellectual property rights without any obstacles for the overall progress, insofar as today, intellectual property leads every fundamental economic, social or cultural change.

Bibliography:

1. Association Agreement, agreement between Georgia on the one hand, and on the other hand-EU and Nuclear Energy Association of Europe and its Member States, 27/06/2014, <https://matsne.gov.-ge/ka/document/view/2496959?publication=0> [30.06.2019].
2. Agreement on Trade-Related Aspects of Intellectual Property Rights, 14/06/2000 (TRIPS Agreement) 14/06/2000, <https://www.wto.org/english/docs_e/legal_e/27-trips.pdf> [26.07.2019].
3. Constitution of Georgia, Departments of the Parliament of Georgia, №31-33, 24/08/1995.
4. Conclusion by consultative Council of European Judges, (CCJE) Conclusion №13 Strasbourg 19/11/2010, <https://rm.coe.int/-ccje-13-2010-/168074824c> [27.08.2019].
5. Civil Procedure Code of Georgia, Parliamentary Gazette, 47-48, 31/12/1997.
6. Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights; Official Journal of the European Union, June 2, 2004, L 195/17, <https://www.wilmerhale.com/en/insights/publications/new-eu-directive-on-ip-enforcement-sep-tember-16-2004> [26.07.2019].
7. Decree adopted by the Parliament of Georgia on "Harmonisation of Georgian Legislation with the EU law", 02/09/1997.
8. Intellectual Property Rights Enforcement Directive, <https://wiki.openrightsgroup.org/wiki/Intellectu-al_Property_Rights_Enforcement_Directive#Criticisms> [12.09.2019].
9. On amendments in the Civil Procedure Code of Georgia <https://info.parliament.ge/file/1/BillReview-Content/151540?> [31.07.2019].
10. *Beck'sche Kurz*-Kommentare Zivilprozessordnung mit Gerichtsverfassungsgesetz und anderen Nebengesetzen., Begründet von. 75 Aufl., 2016, Vorb. 704, 2046.
11. *Boodman M.,* The Myth of Harmonization of laws, Vol. 39, The American Journal of Comparative Law, 1991, 699.
12. *Bradley C. A.,* Territorial Intellectual Property Rights in an Age of Globalism, 37 VA. J. INT'L L., 1997, 505, 514-15, 520, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1982&context=faculty-_scholarship> [30.08.2019].
13. *Cook T.,* Enforcement Directive and Harmonisation of Remedies for Intellectual Property Infringement in the EU, Journal of Intellectual Property Rights,Vol. 20, 2015, 264, 266-267, <http://nopr.niscair.-res.in/bitstream/123456789/31958/1/JIPR%2020%284%29%20264-269.pdf> [26.07.2019].
14. *Dzamukashvili D.,* Intelletual Property Law, International Agreements and Conventions., 2002, 111 (in Georgian).

15. *Dzlierishvili Z.,* Cross-undertaking as to Damages Resulting from a Provisional Remedy, TSU Journal of Law №1, 2018, 5-6, 16 (in Georgian).
16. *Fox E. M.,* Harmonization on Law and Procedures in a Globalized World: Why, What and How? Vol. 60, Antitrust Law Journal, 1992, 594.
17. *Gagua I.,* The Burden of Proof in the Civil Procedure Law, Doctoral Dissertation, TSU, Tbilisi, 2012, 26 <http://press.tsu.ge/data/image_db_innova/Disertaciebi/ilona_gagua.pdf> [09.08.2019] (in Georgian).
18. *Günther H., Zekoll J., Zumbansen P. (eds.),* Beyond Territoriality: Transnational Legal Authority in an Age of Globalization, Queen Mary Studies in International Law, Brill Academic Publishing, Leiden, Boston, 2012, 189-228.
19. *Harms L. T. C.*, A Casebook on the Enforcement of Intellectual Property Rights, 4th ed., WIPO, 2018, 10, <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_791_2018.pdf> [21.07.2019].
20. *Hilty R. M, Moscon V.*, Modernisation of the EU Copyright Rules, Position Statement of the Max Planck Institute for Innovation and Competition, Research Paper No. 17-12, Munich, 2017, 14, <https://pure.-mpg.de/rest/items/item_2470998_12/component/file_2479390/content> [20.06.2019].
21. *Jorbenadze S.,* Life and Work of Ivane Javakhishvili, Tbilisi, 1984, 379 (in Georgian).
22. *Kapanadze N., Kvachadze M.,* Latin-Georgian Legal Dictionary, *Chanturia L., Tabidze M. (eds.),* Tbilisi, 2008, 86 (in Georgian).
23. *Kazhashvili G.,* Role of the Perpetuation of Evidences and Claim Security in Litigation, TSU Journal of Law, №1, 2016, 77 (in Georgian).
24. *Kharitonashvili N.,* Third Parties as the Subjects of Civil Justice, TSU Journal of Law, №1, 2017, 275, 285 (in Georgina).
25. *Kur A., Dreier T.,* EU Intellectual Property Law*,* Texts, Cases and Materials, *Giguashvili G. (transl.),* Tbilisi, 2017, 478, 485 (in Georgian).
26. *Kurdadze Sh., Khunashvili N.,* Procedure Code of Georgia, 2nd ed., Tbilisi, 2015, 382 (in Georgian).
27. *Kurdadze Sh., Kurdadze G., Khunashvili N., Chkonia Z.,* Comments on the Law of Georgia on Enforcement Proceedings, Part 1 (articles 1-48), SDASU, Tbilisi, 2018, 7 (in Georgian).
28. *Liluashvili T.,* Civil Procedure Law, 2nd ed., Tbilisi, 2005, 266 (in Georgian).
29. *Loewenheim U.,* Harmonization and Intellectual Property in Europe, Columbia Journal of European Law 2, №3, 1996, 481-489.
30. *Lundstedt L.,* Territoriality in Intellectual Property Law, Stockholm University, 2016, 21, 27, 420, <https://su.diva-portal.org/smash/get/diva2:972658/FULLTEXT01.pdf> [30.08.2019].
31. *Nachkebia A.,* Definitions of Civil Legal norms in the practice of Supreme Court (2000-2013), 466, <http://www.library.court.ge/upload/aleko_nachkhebia_final.pdf> [01.09.2019] (in Georgian).
32. *Nadareishvili G.,* Civil Law of Rome, 3rd ed., Tbilisi, 2009, 165 (in Georgian).
33. *Ostermiller S. M., Swenson D. R.,* Alternative Dispute Resolution in Georgia, Tbilisi, 2014, 250, <http://ewmi-prolog.org/images/files/2188ADR_Georgia_GEO.pdf> [13.07.2019] (in Georgian).
34. *Peter K. Yu.,* The Objectives and Principles of the TRIPS Agreement, <http://www.peteryu.com/cor-rea.pdf> [26.07.2019].
35. *Peukert A.,* Territoriality and Extraterritoriality in Intellectual Property Law, 2010, <http://www.jura.uni-frankfurt.de/ifrvl/peukert/forschung/TerritorialityandExtraterritorialityinIntellectual PropertyLaw.pdf.16> [30.08.2019].
36. *Sajaia L.,* The Author's Personal Non-Property Rights, Thesis, TSU, Tbilisi, 2014, 17, <http://press.-tsu.ge/data/image_db_innova/disertaciebi_samartali/lika_sajaia.pdf> [23.07.2019] (in Georgian).

37. *Samkharadze I.,* Harmonization of Legal Systems: EU and Georgia., TSU Journal of Law., № 1, Tbilisi, 2015, 315-316 (in Georgian).
38. *Surmava L.,* Compatibility of Georgian Legislation with EU Legislation with regard to the State Assistance., Doctoral Dissertation, TSU, Tbilisi, 2012, 10, 62, <http://press.tsu.ge/data/image_db_innova/Disertaciebi/lita_surmava.pdf> [26.07.2019] (in Georgian).
39. *Taliashvili T.,* Aspects of Protection of Names of Georgian Origin and Geographic Indications Abroad and Protection of Names of Foreign Origin and Geographic Indications in Georgia, Collection of Articles in honor of Prof. Z. Akhvlediani, *Shengelia R. (ed.),* Tbilisi, 2004, 179-187 (in Georgian).
40. *Taliashvili T.,* Foundations of legal protection of geographic indication of the goods, Doctoral dissertation, TSU, Tbilisi, 2003, 8, 13, 80-81, <http://dspace.nplg.gov.ge/handle/1234/305872> [03.07.2019] (in Georgian).
41. *Taliashvili T.,* Some Aspects of Patent Law, Journal of Law, №5-6, 1998, 37-43 (in Georgian).
42. *Taliashvili T.,* Der Schutz geografischer Bezeichnungen in Georgien am Maßstab des internationalen und europäischen Rechts, GRUR Int, 2003, 324.
43. *Taliashvili T.,* Internationale Konferenz: Auslegung der Verfassungsnormen in den Postsowjetischen Gesellschaften, Ostrecht, №52, Berlin, 2006.
44. *Taliashvili T.,* Reinvention of the Concept of Intellectual Property to Post-Soviet Society – Georgian Experience, Public Lecture, Conference on "Intellectual Property in Modern Europe", GWZO, Universität Leipzig, 2012.
45. *Thomas T. A.,* Ubi Jus, Ibi Remedium: The Fundamental Right to a Remedy, The University of Akron, 2004, <https://ideaexchange.uakron.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1208&context=ua_law_publications> [23.07.2019].
46. *Uitdehaag J.*, *Kurtauli S.,* Review of the Georgian within the National and International Context, Enforcement System, Tbilisi, 2013, 101 (in Georgian).
47. *Zarandia T.,* Property Law, 2nd revised ed., Tbilisi, 2019, 206 (in Georgian).
48. *Zoidze B.,* Reception of European Private Law in Georgia, Tbilisi, 2005, 29, 39 (in Georgian).
49. Decision "Ltd "Georgian Manganese" against the Parliament of Georgia, decision of the Constitutional Court of Georgia of 1 December, 2017 №2/6/746, <https://www.constcourt.ge/ge/legal-acts/judgments/-2-6-746-shps-djordjian-manganezi-saqartvelos-parlamentis-winaagmdeg2.page> [03.09.2019].
50. Decision №as-538-511-2013 of 3 July, 2013 of the Supreme Court of Georgia.
51. Decision №as-827-1190-06 of 29 May, 2007 of the Supreme Court of Georgia.
52. Decision №2b/4597-14 of 29 September 2014 of Tbilisi Court of Appeal <http://www.tbappeal.court.ge/appealAllFiles/files/appeal_docs/1415211897__-841888428.pdf> [03.09.2019].
53. Decision №2-4883-14 of 05 September 2014 of Court of Appeal of Tbilisi.
54. Decision №2b/5617-14 of 29 September 2014 of Tbilisi Court of Appeal.
55. Decision №2/7126-19 of 4 April 2019 of Tbilisi City Court.
56. Ruling of 2 March, 2018 of Tbilisi City Court.
57. *JGK Statyba ltd and guselnikovas v. lithuania*, [2013], ECHR, <http://en.efhr.eu/2010/02/11/case-jgk-statyba-ltd-guselnikovas-v-lithuania-application-no-333012-2013/> [09.08.2019].
58. Kaikatsishvili and Lawyers, <http://kbarristers.ge/ge/news/index/74> [12.08.2019].
59. Law Dictionary, 1, <https://dictionary.thelaw.com/ubi-jus-ibi-remedium/> [23.07.2019].
60. <https://uk.practicallaw.thomsonreuters.com/6-107-6114?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1> [12.09.2019].