

## The Fair Trial Procedure for Intellectual Property in Light of TRIPS Provisions: An Analytical Study of Jordan and The UK

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This study analyses the elements of a fair trial in the context of IP proceedings, comparing between procedural safeguards available in Jordan and the UK (especially England and Wales). Obligations between states at the international and regional level are analysed, along with their implications at the national level in the UK and Jordan, linked to the EU through the Euro-Med Association Agreement with Jordan. The international human rights instruments provide a common framework in accordance with TRIPS provisions interpreted could bridge the gaps that may arise between the British and Jordanian Jurisdictions. The study uses doctrinal comparative and qualitative methods to examine these issues and also the relation between criminal and other methods of enforcement - civil and administrative. Use of criminal procedures may significantly reduce the costs of lengthy civil litigation, and be in the public interest and the interest of all parties. Finally, recommendations are made for Jordan mainly.

**Keywords:** WTO, Common Law System, Civil Law System, TRIPS, Constitutional Reform Act, 2010, Copyright, Designs and Patents Act, 1988, ECtHR, criminal enforcement, procedural safeguards

Human rights of individuals (whether an accused, owner of the intellectual property or a third party) may be compromised in the course of enforcing intellectual property laws. The study deals with critical issues related to criminal/civil/administrative judicial procedures and remedies, with respect mainly to infringements of intellectual property rights (IPRs). These inter-related issues raise questions at national, regional and international levels. While much emphasis has been placed on intellectual property in terms of regulation, protection, and academic research, it seems that the impact of intellectual property enforcement procedures upon human rights and *vice versa* has not been sufficiently examined. The subject of human rights and intellectual property issues has been unevenly treated in the literature there is plentiful material on IP as part of the HR regime on the individual level as it relates to the interests of society, yet certain aspects of the relationship, procedural elements, dialogue need to be addressed. There is considerable treatment of limitations on freedom of expression and IPRs under Article 10 and 8 of the European Convention on Human Rights 1950. In addition, Article 15 International Covenant

on Economic, Social and Cultural Rights 1966 and Article 27 Universal Declaration Human Rights 1948 are relevant. There is very limited literature on the procedural aspect of human rights in the context of IP, especially on criminal matters. However, these issues are of importance to the parties with an interest in the resolution of IP disputes: the accused/defendant, the complainant/plaintiff, and society in general. The study compares two World Trade Organisation (hereinafter WTO) member states [UK and Jordan] which are also connected through the medium of UK's membership of the EU and Jordan's Euro-Med Association Agreement, both of which impose obligations to protect HR and IP. In addition, as a territory once governed under the British mandate Jordan is a country with mixed judicial heritage, containing European and commercial dimensions within a Jordanian context. England & Wales, with a common law judicial heritage and bound in union with Scotland and Northern Ireland, and the EU with many civil law states also display contrasting legal contexts within which to protect Human Rights and IP. The comparative approach taken examines research on the procedural and conceptual aspects of the research on the different levels: national and international law, including EU law. The aim is to

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examine IP and HR in the context of civil and criminal proceedings and the administrative arrangements that accompany them.

The intention is to study diverse and contradictory elements of doctrinal and qualitative rather than quantitative methods of research,<sup>1</sup> in order to create a more comprehensive understanding of intellectual property enforcement and its connection to human rights on all levels. Since intellectual property rights are often considered part of the human rights system, both sets of rights are related at source. This situation is recognized as a significant element of the Euro-Med Association Agreement between the EU and its member states and Jordan.<sup>2</sup> Both fundamental human rights and protection of IPRs are essential components of the agreement.

Furthermore, the research will explore the kinds of obstacles that may hinder law enforcement in respect of the protection of intellectual property rights. The powers and performance of law-enforcement bodies will be assessed. Thus, the study aims at answering a major question. What does an adequate regime of intellectual property enforcement involve, and how can one implement it while preserving the rights of the individual?

Though two principles are equally asserted in theory, the enforcement of one of them may well be in conflict with the other in certain circumstances. Either the rights of the IP holder take precedence, if the legislation privileges the economic aspects at the forefront on the one hand, or the rights of others involved in the process are prioritized, and the rights of the complainant IP holder are undermined. All these issues are to be critically studied in light of judicial precedent and relevant legislation. That is, this study seeks answers to the following questions:

a) Do the general rules of enforcement stated in Article 41 TRIPS apply to the criminal enforcement measures mentioned in Article 61 TRIPS as well to civil measures?

b) Given the seeming lack of clear procedural safeguards in WTO/TRIPS, do international human rights instruments provide for the fair trial procedure for intellectual property offences and infringements in Jordan and the UK?

### **Intellectual Property Rights and Judicial Infrastructure**

The trial process and judicial proceedings in general should be based upon justice and fairness

during the investigation of infringements, the proceedings themselves and the delivery of the sentence.<sup>3</sup> Therefore, the principles of justice and mercy, though sometimes difficult to reconcile, have long been the core of trials and the essence of the duties of courts.<sup>4</sup> The concluding goal of the court ultimately is justice, whatever legal system the court follows, whether in a Common Law System or a Civil Law System. The difference in method and approach towards the goal does not create major differences between court proceedings arriving at a fair and a just sentence. The most significant aspect of the trial process and the working system of the judiciary comprise three elements. The first is the pre-trial procedures, including the policing and investigating stages, while the second is the trial process itself on its various levels, but most importantly the commencing of the process and the procedures during the trial in general. Yet all these procedures should lead to the third and final outcome, as the clearance of the procedural rules helps the court of appeal to examine the court's verdict if necessary.

The court's ruling has to be a clear embodiment of principles of fairness, justice and impartiality towards the truthful aspects of the judiciary and its ultimate goal. The significance of the court's structure and its connection to intellectual property enforcement lies in the nature of miscarriage of justice, which is most often procedural.<sup>5</sup> Examples may be found in judicial review of lower courts' decisions that show misapplication of trial procedural rules, such as the miscalculation of the time limits, lack of recognition of attendance of the accused/legal representation or during the pre-trial [in Jordan, investigation stage is carried out by the attorney general's department]. These issues are procedural aspects of the law, which are apparent more vividly in judicial practices in general and in intellectual property enforcement either during civil proceedings or criminal prosecution procedures. In Jordan, *Alia'/Time Limits* on time limitations in copyright proceedings,<sup>6</sup> and Case (292/1991)<sup>7</sup> represent a clear-cut cases in which the course of justice was undermined due to failure to properly detect procedural mistakes during the trial's civil proceedings/criminal prosecution by either side of justice practices: justice administration authorities or attorneys of the accused or even the victim of the criminal/civil wrongdoings or actions are evident. In (292/1991) which the accused attorney's request to

cross-examine the attorney general who gave the order to conduct the search order of the defendant's house and whom the defendant's statement was recorded to confirm the reasons defendant's refusal to sign the search warrant of his house and later on the report, was rejected by the CFI due to unproductivity of the request.

The transparent procedure of the judicial process on various levels requires a coherent linked package, with each section connected to other contents of the procedural aspects of the legitimacy of the judicial process. All stages of the judicial process are connected to the outcomes of the judiciary's ultimate findings, which is a fair and just verdict.<sup>8</sup>

### **Judiciary Infrastructure: Procedural Aspects of Fair Trial**

The judicial structure of any judicial, legal system depends on accuracy of trial proceedings; judicial review of lower courts decisions by higher level courts also relies on accurate procedures. Such reviews usually include substantive aspects of the law, the applicability of facts to the case and procedural elements of the law and trial. The examination of the substantive factors of the law is somehow quite a straight forward matter for the experienced eye of the judges of higher level courts, less so for general trial courts or (in England), juries. It is the procedural and clear-cut proceedings of the trial that provide insight for true judicial review and provide the ruling bench of the higher court with the tools of observation and examination to test the legitimacy, accuracy, and fulfilment of the rule of law by the lower court in general, that clear-cut procedural rules allows the court of appeal examine the wrongdoings of the lower court on both procedural and substantive levels of law.

Procedural law rules are considered means by the legislator to test legitimacy and examine the application of law. The documentation of sessions, time limitation periods and other procedural safeguards provide higher courts with the testing system of fair trial and of the legitimacy of the judicial process as a whole. Substantive laws provide the sentences, punishments, fines, imprisonment periods, and state what is punishable and what is not. However, they do not provide the inner process of reaching the final outcome of criminal prosecution or civil litigation proceedings.

How do courts reach a verdict? The legitimacy of the procedures, and therefore the validity of the final

judgment, is examined thoroughly via rules of procedural aspects of the law. This is apparent in IP cases in time limitation periods, where the procedural elements safeguard dates for commencing the prosecution of an offence, civil litigations of a wrongdoing and where the dates related to the start and end of the civil litigation of a wrongdoing are essential for swift and fair trial procedures concerning Intellectual property infringements.

In accordance with the provisions of Articles 41(5) and 61 TRIPS the national procedural laws applied on non-IP cases could be applied to IP criminal/civil enforcement judicial proceedings. Thus, although there is little case law on procedural aspects of IP trials, the same principles should apply equally in IP/non-IP cases; this is the useful and practical consequence of Article 41(5) TRIPS.

UK, Types and Recognised Justifications; International Obligations; Idiosyncrasies

The judicial system in the United Kingdom<sup>9</sup> is divided into two main sections: the civil courts and the criminal courts.<sup>10</sup> The Civil Courts are divided into County Courts, and the High Court which contains three divisions: Queen's Bench, Family and Chancery. The Court of Appeal's civil division and later on the Supreme Court is the judicial final stage of trial. It has to be said that there are three types of criminal offences in England and Wales. The most minor are summary offences, which are tried 'summarily' in the magistrates' courts. The most serious offences are tried 'on indictment' by judge and jury in the Crown courts after committal from Magistrates' courts. In between are offences triable either way.<sup>11</sup>

The Criminal Courts are divided into the Magistrates and the Crown Court (also the Divisional Court and the Queen's Bench Division). The final Court of Appeal in the criminal division, as in the civil courts, is the Supreme Court, which has the final say on the judicial aspect of the outcome of trial. The trial procedure could be divided into two sections: one that is based on the facts and circumstances of the case and involves the examining of the facts by the jury (or Magistrate). The other is a point of law, which is dealt with by the judge independently who then directs the jury if the trial takes place in Crown Court. The court dealing with the appeal could administrate the "*Question of Law*" a point of law and matters of fact of the verdict of the lower court, or examining an appeal on a point of law or fact such as

or *Error of Law* which could be based on the lack of reasons in the verdict of the lower court. A point of law appeal has a binding factor on lower courts verdicts in judicial precedent. This regime contrasts with appeals submitted to the Courts of Appeal in Jordan, which study the verdict of the lower court on levels of law and fact jointly yet differs in that a jury is not involved in the trial. As for matters of law alone, it could be examined on the highest and last level of trial as it could be seen in the section examining the Jordanian judiciary.

#### **Role of Judicial Procedural Aspects of Trial**

The House of Lords, according to the provisions of the Constitutional Reform Act 2010, has been replaced by the Supreme Court,<sup>12</sup> as the highest in the UK. The system whereby judges follow the decisions of higher courts is known as the ‘doctrine of precedent’ and it is this practice that has led to the development of the ‘common law’.<sup>13</sup> Which is similar in some extent to the structural judicial system in Jordan aside from the fact that doctrine of precedent is not applicable – at least officially – in Jordan? The role of the judiciary relates to intellectual property enforcement in either criminal or civil aspects. It needs to be mentioned that the Patents County Court followed County Courts, as it has been outlined above. This Court has been recently re-constituted as a specialized list within the Chancery Division.

Are intellectual property infringements considered crimes according to UK Law? Criminal prosecutions for intellectual property offences in England and Wales may be brought as a result of complaints to the police, but are not limited to this situation. As for the allocation of criminal cases between the crown and Magistrates courts, Criminal intellectual property offences could be considered infringements triable either way (summarily or on indictment) in the case of trademarks offences, and triable either way or summary offences for copyright violations according to Copyright, Designs and Patents Act (CDPA), 1988 (Chapter 48) and the Trade Marks Act of 1994. Section 107 (4) of the CDPA 1988 states the range of punishable copyright criminalized infringements of any of the acts mentioned in the previous subsections (1, 2 and 2A) from a “summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both”<sup>14</sup> to conviction “on indictment to a fine or imprisonment for a term not exceeding ten years, or both.” The person involved in committing any of the

actions mentioned in sub-Section (2A) of the same section could be convicted by either a summary offence in the range of three months or a fine or both punishments,<sup>15</sup> or an indictment to a fine or imprisonment term not more than two years, or both.<sup>16</sup> Committing any of the actions mentioned in Section 92 makes one liable of being convicted either of a summary offence punishable by either not more than six months or a fine(or both); or the infringer could be convicted on an indictment to a fine or an imprisonment term not more than ten years, or both.<sup>17</sup> The jurisdiction of courts on IP offences could be distinguished on either summary offence tried at the Magistrates Courts. The offences could be prosecuted and be triable summarily before Magistrates or indictable, that could be proceeded at the Crown Court.<sup>18</sup>

#### ***Jordan’s Judicial Structure as it Relates to IP***

The Jordanian Judiciary System is divided into two main regimes, the first of which is the civil judicial system, which consists of the criminal and civil courts and its various phases, such as courts of first instance, courts of appeal and the Court of Cassation. The second system is administrative and consists of the Court of High Justice as a solitary administrative tribunal.<sup>19</sup> It is considered a first and final stage of trial concerning administrative decisions. Whether the case should be submitted to either the civil or administrative system depends entirely upon the parties involved in the judicial process, whether they are considered public entities or private and whether or not the administration is involved as a party of the litigation as a public body and represents the public interest.

As mentioned above, procedural aspects of the trial are essential for fair trial in an IP framework and are related to the nature of the trial and cases of miscarriage of justice. Procedural aspects of the right to a fair trial could shed light on the shortcomings of the judicial process, and on illegal practices of the parties involved in the judicial application of the law. The provisions of various Acts and laws from a theoretical perspective are similar in concept, yet the approach of courts and the procedural elements related to their enforcement in addition to the legal system of each national jurisdiction can lead to different rulings. The ruling of the European Court of Human Rights (ECtHR) in *MGN Limited v United Kingdom*<sup>20</sup> and the *Alia’/Time limits* before the Jordanian Court of Cassation<sup>21</sup> are prime examples of

procedural elements of fair trial acting as a safeguard of intellectual property and the accused's rights. The first dealt with cost, conditional fees arrangement and success [CFI] and its connection to access to justice, while the latter dealt with time limits and their role as a safeguard against prolonging criminal prosecution in copyright infringement.<sup>22</sup>

#### *The Administrative Judicial System*<sup>23</sup>

The Administrative Judicial System in Jordan consists of a first and final stage of trial combined all together. The Court of High Justice is the sole authority that deals with cases concerning administrative decisions, including those that are related to the Intellectual Property Department at the Ministry of Industry and Trade concerning trademarks and patents.

The Court deals with two main types of intellectual property decisions. The IP holder can apply for a law suit at the court or appeal from a decision of the head of the IP department concerning a trademark or a patent.<sup>24</sup> The two actions the owner can take to the court are first of all the right to oppose or file an application of opposition against the decision of the IP department, and the second is that the trademark owner/holder can file an application to cancel or annul an infringing trademark. It has to be mentioned that decisions concerning search orders in relation to copyright piracy, issued by the national library and the copyright protection office, are not appealed to the Court of High Justice because these decisions are not administrative. This is due to the fact that the library enforcement officers are considered assistants to the Attorney General while they conduct the search orders concerning copyright piracy. And like any decision of a judicial aspect its appeal application shall be submitted to the authorised judiciary panel. In the case of "copyright piracy", the search orders are either issued by the Attorney General, or the search order file and its attachments are sent to the attorney general office for approval by the general director of the national library. In both methods the procedure is considered part of the criminal prosecution process. It is not considered an administrative decision or an administrative procedure, because even though the general director and the officers at the national library are considered civil servants and follow the government pay roll, they are considered assistants to the judicial process and the prosecution of copyright piracy and are considered judicial officers according

to the function they perform.<sup>25</sup> Therefore for search orders concerning copyright infringements, even though the copyright protection enforcement officers are civil servants, they are (in relation to the search orders) under the supervision of the attorney general and his duties and so are considered assistants of the attorney general department. Therefore, from this perspective the search orders are eligible for appeal at the Court of Appeal.

#### *Comparisons*

The role of courts in general and the judicial system in the UK and Jordan, despite the various functions and duties and the different legal structure and the distinct legal systems or families<sup>26</sup> that they follow, are yet united in the ultimate outcome of the judicial and trial process justice and a fair trial for the parties involved and society in the wider general sense. That is, even though the concept and the structure of the judicial systems are drawn from different legal backgrounds, the final findings and goals and aims of any judiciary are similar. It could be said that the subject-matter of this research relates the judicial systems under scrutiny in light of the international legal harmonization efforts concerning intellectual property and the minimum standardised general enforcement measures. Although there is no real special set-up for IP that links both jurisdictions, yet TRIPS could have a role in relating the enforcement procedures, mainly regarding the administrative aspects of IP infringements. The jurisdiction of investigation in the Jordanian judicial system is included among the duties and functions of the Attorney General Office,<sup>27</sup> which is similar to approach taken by the British Judiciary as primary investigation is granted to the Attorney General Department. However, IP criminalized infringements is considered misdemeanors and it does not require obligatory primary investigation held by the Attorney General Office, the Copyright Protection Office in Jordan conducts random search orders for suspected piracy locations, which similar in nature to raids conducted by Intellectual Property Office in the United Kingdom (UKIPO).

The TRIPS Agreement, 1994 established a set of minimum requirements of IP enforcement measures that member states have to apply.<sup>28</sup> The basic principles of the enforcement procedures are according to the provisions of Article 41/2) [Part (3), [Section 1. General Obligations] and Article 42 in

relation to civil and administrative enforcement measures.<sup>29</sup> The provisions of Article 41 TRIPS provides member states with freedom of choice regarding the enforcement procedures on the national level, as long as such measures of IP enforcement are “*equitable and fair*” and follow the general provisions mentioned in the more detailed articles related to civil and administrative procedures and remedies, and the criminal enforcement article.

The provisions of TRIPS, in relation to the judicial system of IP enforcement, are a linking point for disconnected concepts between both judicial systems. This is in addition to the distinct legal background of both the UK and Jordan which leads to various intellectual property enforcement measures in the judiciary’s implementation of intellectual property in daily legal and judicial enforcement practices and judges’ and legal practitioners’ understandings during court sessions. Yet, there are other issues that could constitute resemblances between both systems, such as the historical and legal factors. The similarities between both judicial systems are generally related to the concepts of fair trial and the ultimate outcome of the trial process in a true and just sentence.

The comparable concept between the UK and the Jordanian judiciary administrative system is the role of “The Appointed Person”, which is applied in the judicial department at the Trademarks, Patents and Industrial Design Registrar in the Jordanian Ministry of Industry and Trade in regard to the validity of the trademark intended to be registered. And the applicant’s ability to appeal the decision of either the appointed person or the judicial department to the judiciary, the court of appeal in the case of the appointed person, or the court of high justice regarding the decisions of the judicial department at the trademarks registrar.<sup>30</sup> Beside the other intertwining elements, the administrative enforcement link *via* “The Appointed Person” and the judicial department at the trademarks and patents registrar at the Jordanian Ministry of Industry and Trade is the point of closest resemblance between the UK and Jordan.<sup>31</sup>

What is the main concept drawn from both judicial systems and the provisions of Article 41 TRIPS (in relation to IPRs) and what might be considered a joining point between both systems? Are the measures of enforcement fair and equitable? Another significant linking point, even though it might not be direct, is the Euro-Med AA between the EU and Jordan and the

major role human rights and intellectual property rights have as a point of linkage between both sets of rights and the legal and judicial systems under study. The ability to relate the Jordanian legal and judicial system to the UK could exist *via* the Jordanian international obligations either through joining the WTO, and/or its follow-up agreements and treaties, or the Association Agreement with the EU and the country reports monitoring progress in Jordanian aspects of life (economic, social, legal and judicial) that has had the greater impact on the judiciary. There have been many reforms and amendments upon the judiciary and IP laws and Acts that could lead to more comparisons and corresponding elements in the enforcement measures, and cooperation among the judiciaries concerning judges’ training and the trial process in general and IP enforcement specifically.

### Conclusion

In conclusion, it could be said from a general examination of both judicial systems that there is more that is distinct or divides between the UK and Jordanian systems. However, that being mentioned, the basic general aspects of a fair trial and the concept of true outcomes of the judicial process, either in civil proceedings or criminal prosecution, draws together the disparate elements between both systems into a more correlated understanding of the similar aspects of the systems under scrutiny. The international obligations on both sides relate Human Rights and Intellectual Property to a more comprehensive understanding of the common legal background, such as in the legal international obligations resulting from the Euro-Med AA between EU and Jordan, the membership in the WTO and the WIPO and its agreements and treaties and the TRIPS Agreement.

This study has drawn together seemingly conflicting approaches<sup>32</sup> to the relationship between intellectual property rights and human rights. It has been argued that the two seemingly distinct, areas interact (so that their relationship is not one of mere co-existence), that neither engulfs the other (so that there is no conflation or absorption of one set of rights into the other), that they are not inevitably in collision, but often complement each other to serve convergent goals, especially when the wider public interest is taken into account. It has sought to establish a connection between intellectual property and the right to a fair trial and other factors relating to enforcement procedures, as well as the more

commonly studied spheres of freedom of expression and privacy.

The rights under examination (intellectual property on the one side and the right to fair trial and freedom of expression on the other hand) share a common legal background and are part of a joint structured legal system. Although, this is often seen to be an element of the human rights regime, it is argued that the WTO TRIPS Agreement not only plays an important role in unifying the general rules of intellectual property rights enforcement among member states but also demonstrates that human rights and especially the right to a fair trial, criminal as well as civil, are part of the intellectual property regime.

Procedural safeguards of the judicial process are considered from commencement of proceedings (or prosecution) until the closing statements of the final judgement of the highest court (The Supreme Court for England and Wales the Court of Cassation for Jordan). Procedural laws, rules, acts or regulations are considered the main protection measures for the safety of the judicial process and for ensuring that the judiciary, courts, judges, staff and parties involved in the trial process respect the rule of law and the essential procedures. Procedural Acts, such as, Criminal Procedures Acts and Civil Procedures Acts are the main assurance policy of the true application of the related substantive laws. The Euro-Med Association Agreement between the EU and Jordan and related country reports are significant in providing measures to protect intellectual property to and link it with human rights and the judiciary process – that is, as a parallel linking method for IP enforcement and the protection of procedural judicial related rights.

Article 41(5) of the WTO TRIPS Agreement does not require a special regime for intellectual property, but allows member states to apply their own enforcement procedures, in the form of standard procedures applied to other criminal or civil proceedings, to intellectual property infringements.

Finally, it has been argued that the fair trial provisions of the International Covenant on Cultural and Political Rights and of the European Convention on Human Rights (influential in Jordan *via* the Euro-Med Agreement) can and do apply to the criminal enforcement of intellectual property. Sometimes this can be demonstrated by case law directly relating to intellectual property, in other cases by analogy. Ideally, the text or preambles of the WTO TRIPS Agreement would reflect this clearly.

1. However an apparently vague and unclear approach has been taken in Article 61 concerning criminal enforcement. The Article has its impact on wrongdoings that are significant enough to be characterised as criminal offences (wilful trademark counterfeiting and copyright piracy on a commercial scale) and outlines what remedies should be available, including imprisonment and/or monetary fines. There is as well in appropriate cases seizure, forfeiture and destruction of the infringing goods and materials and any related instruments used in the infringement process.<sup>33</sup> These actions mentioned have a clear direct affect upon the physical and financial status of the parties involved and yet there are no explicit safeguards from a conventional understanding that protects the person charged of any of the criminal activities mentioned. This may be contrasted with the provisions of the Article 42<sup>34</sup> which provides essential and explicit safeguards for the civil and administrative enforcement methods.

2. There are two possible solutions to this. The more drastic would be to reform the provisions of TRIPS dealing with criminal enforcement procedures to deal explicitly with the safeguards of the practices and the application of Article 61. This could be in providing a similar provision to Article 42 of the same agreement as an additional sub-Section to Article 61, or at least mentioning that the provisions of Article 41(2) apply to criminal enforcement. This is all important due to the fact that the physical and financial outcomes of criminal prosecution are more explicit and severe. In addition, the Article's stress on the deterrent effect of the procedures combined with the criminal nature of the infringement and penalties imposed requires a more evident safeguards system against these measures. Instead, the matter has been referred to by a vague connection to the general obligations of the Article contained in the term "fair and equitable" procedures.

3. However, reforming a multi-lateral treaty is a difficult task. A more straightforward means would be for the WTO dispute settlement bodies to interpret Article 61 as being subject to Article 41(2). However, this would depend upon a suitable dispute being referred.

### Recommendations

In the light of the discussion of the courts and procedures available in the two jurisdictions to resolve intellectual property disputes, some recommendations can be made for Jordan as follows:

### Training

There have been many attempts to provide sufficient training to the personnel involved in the enforcement process of intellectual property in Jordan. The training efforts have taken the shape of workshops in cooperation with specialised international organisations such as WIPO, EPO and other organisations. These training workshops and conferences were either held in Jordan or abroad. The problematic issue relating to training workshops is that they have been mainly aimed towards judges and border staff more than any other intellectual property workers. Most of the IP protection workshops are either held in cooperation with the judiciary, or the Ministry of Industry and Trade. Other related enforcement staff are excluded from such events, especially the court's assisting staff. Even though there are training courses for the employees of the copyright protection office at the national library in cooperation with EPO and the EU, still such training does not include the staff of courts, and notably excluding judge's assistants.

### Culture and Mentality

One of the main issues facing the criminal enforcement of intellectual property is the legal culture towards copyright piracy and trademark counterfeiting pertaining to the seriousness of the infringement. This is true on both sides of the legal and judicial process – among the consumers, the related working staff and even the judiciary as a whole. The rulings of courts outside of the jurisdiction of the CFI in Amman are dealing with IP infringements as a minor misdemeanour and the sentence is usually in the minimum range of an imprisonment period or fine, which could be replaced by a monetary fine. It is an indication of the position that the enforcement of IP has in the judiciary that systematic infringements and offenders are usually dealt with as if it was a first time infringement.

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- 3 Pannick D, *JUDGES*, (Oxford, OUP, 1987) 169-170.
- 4 *R v Tokeer Hussein, Munir Hussein* [2010] EWCA 94 at [44] "Today, as ever, the sentence of the court must address and balance the ancient principles of justice and mercy." The court has acknowledged the role of justice and the significance of fairness of the trial which has been dealt in a more detailed fashion in Chapter 4.5 of this thesis.
- 5 'Alia/time limits' Court of Cassation the Civil Chamber Case no. (3687/2006) Alia Artistic Encyclopaedia case- Copyright infringement and Time limits 2/4/2007, hereafter 'Alia/time limits'.
- 6 Court of Cassation the Civil Chamber Case no. (3687/2006) Alia Artistic Encyclopaedia case- Copyright infringement and Time limits 2/4/2007, hereafter 'Alia/time limits'.
- 7 Court of Cassation Criminal Chamber Case no. (292/1991) *Fair Trial, Criminal Search warrants and Right of defense*. Such as publicity and other factors that are considered part of the elements of a fair trial according to the provisions of the related international and national instruments. Pannick D, *JUDGES*, (Oxford, OUP, 1987) 169-170.
- 8 The United Kingdom from a legal and judicial perspective consists from three distinctive jurisdictions each has its judiciary and legal profession except for England and Wales, [http://www.nyulawglobal.org/Globalex/United\\_Kingdom.htm](http://www.nyulawglobal.org/Globalex/United_Kingdom.htm) (accessed on 20 February 2018).
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- 10 Oxford Introduction to the English Legal system, by Holdsworth M Autumn 2006, [www.citized.info](http://www.citized.info) (accessed on 20 February 2018). Also could be seen at Judicial Statistics, Annual Report 2005 (CM6799) (London, The Stationery Office, 2006)
- 11 Ormend D, *Smith and Hogan Criminal Law* (Oxford, OUP, 12th edition 2008) 34-36. Magistrates' Court Act 1980, Section 45(1).
- 12 It has to be mentioned that the latest Constitutional Reform altered the shape of the of the diagram table above, the main principle courts on both Civil and Criminal divisions. The Supreme Court has replaced both the House of Lords, as a judicial institute and a court; and the Judicial Committee of the Privy Council. The Constitutional Reform Act 2005, which in decided in part 3 the establishment of the Supreme Court, roles duties and members of the court etc, <http://www.legislation.gov.uk/ukpga/2005/4/contents> (accessed on 20 February 2018).
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- 14 Section 107-4(a) CDPA 1988.
- 15 Section 107-4(b) CDPA 1988.
- 16 Section 107-4A (a,b) 1988.
- 17 Section 92-6 (a,b) 1994.
- 18 Interpretation Act, 1978 Schedule 1.
- 19 This has not been the case in the previous few months as it the Court of High Justice has not been the solitary administrative level of trial in Jordan as an appeal administrative court has been founded.
- 20 *MGN Limited v The United Kingdom ECtHR 39401/04 (2011) 53 E.HRR 5*.
- 21 *Court of Cassation the Civil Chamber Case no. (3687/2006) Alia Artistic Encyclopaedia case- Copyright infringement*



- and Time limits 2/4/2007 also see Court of Cassation Criminal Chamber Case no. (292/1991) Fair Trial, Criminal Search warrants and Right of defense.*
- 22 *Court of Cassation Criminal Chamber Case no. (885/2004): A Cassation according to an order by the minister of justice; [Trademark Infringement].*  
 23 Article 100 from the Jordanian Constitution (1952) states that “The establishment of the various courts, their categories, their divisions, that such law provides for the establishment of a High Court of Justice.”
- 23 The Court of High Justice was founded according to the provisional Act no. (12) 1989 “The Court of High Justice Act” and was amended in 1992 according to “The Court of High Justice” no. (12) 1992. Before those two dates the Court of Cassation played the role of the court of high justice until 1989. Massadeh A, A draft paper under the title “Judicial Review of upon the administration’s actions in the Jordanian Legal System – A Comparative Study” 15-19; *Al-Balqa Journal for Research and Studies*, 1 (2) (May 1992) 81 and beyond. Yet it has to be stated that the author mentions that provisions of the Civil Courts Structure no. 62, 1952 did implement the provisions of the constitution in establishing a Court of high Justice to review the administration’s actions , but created a legal solution in transferring the jurisdictions of the to be established court to the Court of Cassation. The Court of high justice was established in 1993. Before this date the Court of Cassation used to implement the role of the Court of High Justice. It has to be mentioned that there has been Constitutional Reforms in Jordan in the end of September and the early days of this month. These reforms will affect Articles 100/101 of the Constitution which will require amendments on the administrative section of the judiciary.
- 24 Article 34 of The Trade Marks Rules No. 1, 1952. The Rules Made Under Article 44 of the Trade Marks Law, 1952. Articles 34 -45 deal with objections others may have concerning a registered trademark. Articles 69- 75 deal with the procedures applied to rectify or remove a trade mark from the register. It should be mentioned that English translation [www.wipo.int](http://www.wipo.int) (accessed on 16 February 2018).
- 25 Article 36 of the Copyright Act 1992, according to its latest amendments which states a) The employees of the copyright office at the national library department authorized by the minister are considered judiciary officers during their implementation of the law, *Jordanian Court of High Justice Case No. (2008/228) Striking off a Trademark.*
- 26 Massadeh F, *Criminal of Enforcement of Intellectual Property and its Effect on Human Rights* (Analytical Comparative Examination of TRIPS and Human Rights): A UK and Jordan Case-study, A Ph.D. thesis 2014.
- 27 Article 51 Criminal Procedures Act No. 9, 1961 and its amendments, Article 36 (a/b) of Copyright Act No. 22, 1992 and its amendments which grants the employees of the Copyright Office in the National Library are considered Judiciary Officers concerning conducting search orders *Court of First Instance, Criminal Chamber, case No. (1022/2009) [Copyright infringement-TRIPS Agreement 1994; Chapter 3 [Enforcement of Intellectual Property Rights, as it is stated in Article 41(5) of the Agreement.*
- 28 TRIPS Agreement 1994; Chapter 3 [Enforcement of Intellectual Property Rights, as it is stated in Article 41(5) of the Agreement.
- 29 Article 42, TRIPS, [Section 2: Civil and Administrative Procedures and Remedies]
- 30 It has to be mentioned that single person reviews of trademarks at the judicial department, and the decision of the person is considered an administrative act of a judicial nature.
- 31 Chapman A R, *A Human Rights Perspective on Intellectual Property, Scientific Progress, and Access to the Benefits of Science*, 1-5.
- 32 Gervais D, *Intellectual Property and Human Rights: Learning to Live Together* in P Torremans. (ed.), ‘Intellectual Property And Human Rights Enhanced Edition of Copyright and Human Rights’ (The Hague, Kluwer, 2008), 3.
- 33 Article 61 TRIPS.
- 34 Article 41(5) TRIPS. Section 1, General Obligations.