DEVELOPMENT OF INTERNATIONAL LAW ON INTELLECTUAL PROPERTY AND THE LEGISLATIVE REFORMS IN UKRAINE

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INTRODUCTION

Property protection concerns always seem to be significant. Since the middle of the XX century, significant attention has been given to property in the domain of intellectual practices, including music works, professional sketches, algorithms, ideas and design mechanisms, creations, and so on. For example, intellectual property generated within the information technologies sector needs strong law protection to support a country development as there is a strong connection between the level of IT development in the country and the competitiveness of its economy (AHMADOVA; ASLANOV, 2020). Modernisation contributes to the establishment of state challenges in the context of international procedures. There is an important need to control this field of partnerships, as new inventions are made almost daily. Thus, that anyone can easily make, use, adapt of and protect the rights of intellectual property (IP) (STIGLITZ, 2007).

Presently, the problems relating to the security of intellectual property around the globe have come into focus. These are becoming a challenge related to financial security due to the thorough intellectualisation of advanced society industries and require management strategies towards their solution (VIZCAÍNO-GONZÁLEZ, 2020).

Intellectual property, in the broad context, refers to the intangible assets arising from an intellectual process in the areas of research, literature, business, and the arts. Intellectual property laws approve the privilege to their founders for a finite time period to regulate the use of an intellectual property. The patents, utility designs, manufacturing models, and confidential information for creations, copyrights for the literature and art, and market creation and promotion trademarks are typically included in IP laws (ESMAEILI et al., 2020).

The intellectual property right (IPR) framework also encourages investors from other innovators who want to prevent violating the IP rights of the inventor. In situations where the openness of an IP right is a requirement for securing legal protection or patents, the IPR device serves as a stimulator for information transmission and as a mediator for follow-on innovation.

Emerging states sometimes face certain contextual difficulties in developing an appropriate IPR structure. Firstly, only a small proportion of the community in these states has access to broad resources and opportunities for innovation. The bigger portion lacks access to even the most fundamental resources. Secondly, the private sector has a minor role in the state innovation structure, with public research organisations (PROs) having a more significant role. Thirdly, the state innovation program's efficiency is challenged by organisational flaws and industry failures that undermine the performance of "innovation" and impede the efforts of public policy to shift and commercialising IP (STANKOVIĆ, 2017).

In past years, Ukraine has exponentially increased its incorporation into global intellectual property systems and has become a participant in moreover 10 global agreements and treaties in this region. The procedure of participating in WTO was accomplished and membership in the Intellectual Property Rights Agreement on trade-centred Issues has also been protected. The procedure of acceding to several international treaties and agreements is still in process. Currently, the laws in Ukraine do not completely control the concerns of

security of intellectual property, since the regulations do not allow for this process; the procedure of termination is not successful. There is still no friendly loss estimation process, that is how individuals often do not get sufficient remuneration. Ukraine is actively reforming its laws in order to comply with universal political and legal norms. It is, therefore, necessary to research the current evolutionary vector of intellectual property law, to examine the conditions in state and initiatives for reform, as well as performance to improve intellectual property rights.

The development of international intellectual property law in Ukraine has not achieved its deserved position in the research programs of scientific and academic institutions. Despite that, there have been no specific studies on intellectual property development and protection of rights in Ukraine to date, and the fact that these issues are widely debated in one aspect or another.

However, the scientific articles which are published on intellectual property rights protection have not developed any legislation for the state in the protection of intellectual property rights. Simultaneously, even at this phase, the provisions of national law regulation of intellectual property rights under Ukraine's new civil code have not been properly investigated.

This study aims to define and establish a comprehensive and systematic perception of the existence, types, and methods of intellectual property security collected based on the generalisation, review, and integration of current knowledge-related research. The objective has been focused on the further creation and characterisation of conceptual legislation, the development of analytical guidelines relating to the security of intellectual property, and the reliability of its implementation under the requirements of European's implementation methods.

METHODOLOGICAL MATERIALS AND METHODS

The theoretical base of the study is a structure of interconnected general and special research methodologies, the applications which assure the validity of information, and the solution of the set scope and requirements. The study has been conducted based on structured, comparative-legislative, traditional approaches and purely legal approaches.

The growth of the regulation methods for ensuring the security of intellectual property rights has been examined using the historical method. In the domain of the protection of IP rights, the formal-logical approach has been utilised to examine the arrangement of regulatory actions. The comparative legislative process has been quite significant for the research method.

It has been used to compare the requirements of the laws of Ukraine and other states to recognise which global legal activities have impacted Ukrainian national policies in the area of protection of IP rights. The present circumstances and demands in the area of IP rights security have been demonstrated using ideological and legislative strategies.

INTERNATIONAL PRACTICES IN THE DOMAIN OF INTELLECTUAL PROPERTY RIGHTS

In the last decade, the issue of the safety of intellectual property in the most conspicuous form has arisen on the Internet, especially because of the easy and quick sharing of material on the internet, the lack of compulsory permission for such acts, the transparency and availability of electronic devices to an infinite sphere of users. Therefore, it is necessary to evaluate the strategies formed in international exercise to the security of IP rights violated on the online platform, concerning computer initiatives and public license of open-source software (KOVAL, 2016).

Different regulations are primarily concerned with regulating the method of obtaining IP rights, i.e., by obtaining a patent, certificate. However, the complexities of property rights recognition are determined only in terms of deciding the content of these rights (DROB''JAZKO, 2009). The previous structures and approaches of legislative rules are slower to make variations in the fast-transforming software industry. In the United States, the first legal security for computer programs has been created. The Copyright Act for Computer Programs was passed in 1980. Eight subsequent states, notably (Australia-1984), (UK, Japan,

Germany-1985), (Spain-1987), (Canada, and China-1988), endorsed the concept for ten years, 1990. Technology inventions are protected by copyright on a global scale. These are formally established by the Berne Convention for the Security of Literary and Artistic Works, by the Treaty of Dec 20, 1996, of the World Intellectual Property Organization, by the Directive of the European Community of May 14, 1991, on the legislative Protection of Computer Programs, and the Agreement of the WTO on Trade-Related Aspects of the Rights of Intellectual Property (HAJOVA, 2017).

Therefore, Germany has the Bundespatentgericht (Federal Patent Court), which was established on 1 July 1961. At the same time, due to the creation of the patent court, the decisions of the expert divisions and departments of the German Patent Office concerning the registration or established industrial property rights were responsible only to re-evaluation by the appeal boards. According to the discussed details, it was assumed that no legal protection mechanisms had been in effect for all those decisions (KOMATANI, 2017).

The powers of the Bundespatentgericht (2021) include the resolution of concerns relating to the allocation of legal ownership (patent, trademark, useful model, topography, design, and the right to a particular form of the facility) or the refusal to grant ownership rights. It should be noted that the invalidity procedure is an effective method for the cancellation of a valid German patent or supplementary credential of protection, or of a patent or supplementary protection certificate. The process for the assessment of invalidity is distinct from the approval of the patent and the judicial review, the object of which being to cancel the legitimacy of the formal act on which the patent was granted.

The decision on illegitimacy cases in the first instance belongs to the authority of The Federal Patent Court (Bundespatentgericht, 2021), and in the second instance – to the jurisdiction of the Federal Court of Justice (BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY, 2019).

According to the regulations of the Basic Law for the Republic of Germany, the Courts Constitution Act, and the German Judiciary Act, the judges of The Federal Patent Court (Bundespatentgericht) are impartial and can respond in the systems, provided by the constitution.

The concepts of fundamental and personal freedom of judges are present. Constructive freedom lies in the fact that the judges are not obligated by any orders or recommendations in the course of decision-making. Personal freedom lies in the impossibility, without the acceptance of such a decision by other judges, of firing or dismissing a judge from his post. The justices are subject to disciplinary guidance only under the situation that their principle of freedom is not violated (BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY, 2019; Courts Constitution Act6 2019; German Judiciary Act, 2017).

The Intellectual Property Enterprise Court in the United Kingdom analyses the cases, which are associated with the conflicts on intellectual property, in general: copyrights, patent, trademark registration, registered installations, as well as other rights of intellectual property. If the amount of loss is less than £500, then in the Patents Court or Chancery Section, the case will be reviewed. At the same time, the conflict, which included the losses of over £ 500,000, can be considered in such scenarios if the parties may not reach the mutual settlement in the Intellectual Property Enterprise Court.

The Federal Patent Court in Switzerland has been in operation since January 1st, 2012. It is located in St. Gallen City. Disputes involving patents under civil law have historically been directed to the jurisdiction of the cantonal courts. The Federal Patent Court has unique authority in civil cases, associated with the patent legitimacy and violation of patent rights. It is also necessary to take other patent cases relating to patents through the Federal Patent Court (for example, the disputes concerning the agreements on patent licensing or patent rights). In the highest instance of the Federal Patent Court of the Swiss Confederation, the decision of the Federal Patent Court can be appealed. The Federal Assembly performs the judicial selection. The incompatibility criteria of judges are very significant since it provides for the following:

1. Judges shall not be members of the Federal Assembly, the Federal Council, or the Federal Court.

2. Judges shall not participate in any conduct which aggravates their capacity to perform the duties needed by their office, their freedom, or causes damage to the court's reputation.

3. They cannot operate formally under the flag of a foreign state.

4. The permanent judges cannot deal as professional legislators of the third parties in the court.

5. The permanent judges cannot be the members of the board of executive directors, the Supervisory board, and the advisory board or be auditors of business enterprises (Federal Act on the Federal Patent Court, 2009).

FOUNDATION FOR IMPROVING UKRAINIAN LEGISLATION IN INTELLECTUAL PROPERTY RIGHTS IN CONTEXT OF EUROPEAN EXPERIENCE

The inclusion of Ukraine into Europe and international world systems brings up the question of state and European law convergence. In general, to take part in the WTO, Ukraine should introduce its laws following the Treaty on (TRIPS) 1993, Trade-Related Aspects of IPRs, which is among the key judicial information of this entity (BARIZA, 2017).

As per the collaboration and co-operation treaty between Ukraine and the EU, Ukraine has to assure a protection level, including an efficient way of implementing certain rights, similar to that which exists in the Community. Presently, in the creation of laws in Eastern and Central Europe, the CIS, the concentration on EU law is becoming an important factor. Simultaneously, keeping into consideration the complexities of EU IP rights standardisation, its particulars, and the expectation of many problems with the World IP Organization's relevant legislation, EU standards should come to the fore in Ukraine in both improving laws and measuring the efficacy of rights (KAPICA, 2005).

The analysis of EU intellectual property rights compliance allows for the identification of specific stages in the formulation and creation of legal provision of ties in this field at the EU stage. Initially, the Community patent conventions and the European patent agreements have been prepared and adopted. Latterly, the guidelines have been released to harmonise trademark law, the semiconductor product topography, and competition law's application to licensing agreements and agreements for the transfer of know-how, research, and progress. Afterwards, regulations on copyright harmonisation, the estimation of laws on industrial designs, bio-tech innovations, the establishment of EU rights to trademarks and plant features the initiation of plans for harmonisation of policies on utility design, and the introduction of laws on innovation sharing alliances and the combat toward piracy. In the information society, a detailed infringing rule was adopted; an EU manufacturing model and plans for the implementation of an EU utility model have been discussed. At that same time, the EU focuses its efforts on enhancing the battle toward copyrighted and pirated products, as well as conducting extensive research on the enactment of the EU Copyright (ENNAN, 2007).

Although the contract on market related aspects of IP Rights and other multilateral agreements harmonising national legislation, there are still substantial gaps in policy among the states parties, which on the one side, prohibit IP rights from experiencing an equal degree of security in the Community, and on the other side, allow for the exploitation of intellectual property rights by third parties, emphasises on the prospect of using various ways and procedures of intellectual property rights recognition (KAPICA, 2005).

The interim measures issued in connection with counterfeiting or piracy, which are primarily used to provide evidence and assess the extent of harm. Procedures are used in several states to collect details and eradicate counterfeit products from the industry at the infringer's expenditure, there is a variance between the enforcement of acts to consider the rights of third parties, the removal of infringing products and devices used for infringement, and the imposition of sanctions (EMHART, 2019).

These concerns are expressed in the European Union's legal framework for intellectual property rights.

In the Netherlands, if the individual had not been associated directly in the violation, did not professionally manufacture and sell the items, and acquired them purely for individual need, there is no judgment to destroy or demolish scam or piracy of involved products.

In the UK, the instruments used to produce counterfeit versions can be crushed if the owner noticed or had cause to realize that they had been designed for that purpose.

In Germany, the devices used specifically or nearly explicitly for the creation of pirated versions of copyright items can be seized and demolished if it is owned by a pirate, as the applicable laws do not apply to industrial property artifacts (BOCHAROVA, 2006).

The Europe's Court of justice plays a significant role in the integration and harmonization of legal enforcement of relationships in the domain of intellectual property rights and use. The significance of the judicial decisions of Eu law seems hard to exaggerate in the absence of sufficient harmonisation of national IP laws with the concept of free flow of products and independence of competition declared by the European Union (BIHNIAK, 2019).

Therefore, determining the key approaches that can be used to secure IP rights and emphasizing them as a relevant agreement that assures consistency in the safety of violated IP rights can be termed as one of aims of further incorporation in the domain of IP and participation of European practices is a vital metric for success (BOLTANOVA, 2019).

Presently, the establishment of EU rights to specific things of IP rights, which activates the creation of the EU IP rights as a two-stage body and operates on European Union security records, is the leading path in the development of EU legislation on patent protection (KAPICA, 2005).

TRANSFORMATION OF NATIONAL INTELLECTUAL PROPERTY LAW DEVELOPMENT IN THE LIGHT OF WESTERN STATES STRATEGIES

The investigation for an improved framework of convergence of human relations of various cultural philosophies, clearing nationwide boundaries, facilitated by factors such as national and international law incorporation, determines considerable regeneration of legal regulation systems at the national and multinational levels. Large-scale variations and improvements in Ukraine's legislative structure result from the estimation of such developments that became quite important with the agreement of the Association agreement among Ukraine and the EU, in 2014. The European Union, as a special unification association of European countries, establishes a new legal system. Simultaneously, compliance with legislation is an essential element of making sure the procedures of establishing a common legislative space. It is the main law of cooperation procedures and intends at the similarity of various legal structures of states (OVECHKINA, 2017).

Regulation of Ukraine's state legislation with internationally agreed global criteria and standards is one of the major factors for its acceptance in the international community as an analogous issue. According to Ukraine's motive to join the European Union and the World Trade Organization, the priority areas for reforming domestic legislation in order to integrate it with international law are currently being established at the policy level. Legislation on IP rights is one of these focus areas (MAZURENKO; ENNAN, 2006).

It is important to understand that the issue of intellectual property rights protection is not specific to Ukraine, but also a global issue. In this regard, the World Intellectual Property Organization's (WIPO) continuing work to develop usual forums for the sharing of such experiences around the world, amongst the European countries, to figure out the appropriate way not only to enhance legal mechanisms but also to directly preserve rights of intellectual property. The WIPO work in the domain of protection rights is currently driven by Strategic Goal (VI), which was developed during the adoption of the development agenda (NESTERCOVA-SOBAKAR', 2018). In accordance with strategic Objective VI, maintaining long-term protection for intellectual property is a broad topic in which intellectual property rights protection and regulation must take into consideration the priorities of socioeconomic growth and customer protection. In this context, Recommendation 45 of the development agenda is the foundation for Strategic Goal VI. As discussed, intellectual property rights should be protected and enforced to encourage technological innovation, technology

transfer, and distribution to the shared benefit of producers and consumers of technical information in order to promote socioeconomic stability and a balance of rights and responsibilities (PEUKERT, 2017).

In compliance with the guidelines of the Advising committee on the protection of rights, the emphasis is on:

1. Integration of programs to tackle counterfeiting and piracy with public and private organizations.

2. Education for the community.

3. To provide guidance.

Collaboration to execute regional and national training programs for all key parties; interchange of knowledge on the protection of rights (ORLJUK, 2016).

Therefore, the implementation of the intellectual property structure to truly revolutionary circumstances is not yet fully functional. Regulated products in Ukraine have an incredibly low level of 0.8 percent of the overall number of shipped products in comparison to all industrial products. This condition in the domain of intellectual property rights is expressed in the hurdles to the country's creative socio-economic growth. Second, it adversely impacts the development of the intellectual property market. Third, it produces a negative impression of Ukraine and its credibility in the world (i.e., "intellectual piracy" indicates unlawful business practices on the grounds where its utilisation of licensing or proprietary right and also manufacturing assets is concentrated, without treaty also with the proprietor of those rights by re-production, delivery, operation, shipment).

Thus, Ukraine, which has chosen an innovative way of development, faces the immediate job of offering environments for appropriate and efficient rights of intellectual property protection.

CONCLUSION

The legal extent for intellectual property rights in Ukraine is still inadequate. The instability and dissent of the laws controlling legitimate interactions in this field do not grant owners to completely utilize their privileges. An analytical approach of international states to the development of international law in the arena of IP that can assist Ukraine's intellectual property legislation has been proposed. The legal analysis of accomplishments, as well as the measuring of Ukraine's upcoming moves in the procedure of aligning its regulation with that of the European Union, is particularly important since integration into the European community is Ukraine's key vector of growth. Moreover, this research aims to implement European legislative experience in the area of IP to adapt Ukraine's laws to the applicable European law framework. In light of these specifications, it is proposed that the authorities conduct a mandatory evaluation of international and European state's experience in the execution of programs for the creation of intellectual laws, administration, and protection in the context of adopting related legislations. Furthermore, in order to apply established strategies to laws and rules regulation procedure, it appears rational to establish a framework of constant monitoring of actions taken by European countries in the domain of IP law, as well as on challenges relevant to particular state policy on intellectual property management. Thus, it is important to create a special mechanism of contact with international authorities for the purpose of operational consultations during the creation of new normative acts in the field of intellectual property in Ukraine in order to ensure that they comply with international law.

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Development of international law on intellectual property and the legislative reforms in Ukraine

Desenvolvimento do direito internacional sobre propriedade intelectual e as reformas legislativas na Ucrânia

Desarrollo del derecho internacional sobre propiedad intelectual y reformas legislativas en Ucrania

Resumo

Este artigo fornece uma abordagem empírica dos Estados internacionais para o desenvolvimento do direito internacional sobre propriedade intelectual que pode ajudar ainda mais as reformas legislativas da Ucrânia no domínio da propriedade intelectual. As preocupações e oportunidades significativas para o fortalecimento dos direitos de propriedade intelectual e a aplicação legal no caminho da incorporação europeia foram amplamente discutidas. Os achados da pesquisa ajudam a aplicar métodos estabelecidos à lei e à política governamental específica sobre a implementação da propriedade intelectual.

Palavras-chave: Estados internacionais. Propriedade intelectual. Reformas legislativas. Ucrânia.

Abstract

This article provides an empirical approach of the international states for the development of international law on intellectual property that can further assist for the Ukraine's legislative reforms in the domain of intellectual property. The significant concerns and opportunities for strengthening intellectual property rights and legal enforcement on the way to European incorporation have been discussed extensively. The findings of the research assist to apply established methods to law and particular government policy on intellectual property implementation.

Keywords: International states. Intellectual property. Legislative reforms. Ukraine.

Resumen

Este artículo proporciona un enfoque empírico de los Estados internacionales para el desarrollo del derecho internacional sobre la propiedad intelectual que puede ayudar aún más a las reformas legislativas de Ucrania en el dominio de la propiedad intelectual. Las importantes preocupaciones y oportunidades para reforzar los derechos de propiedad intelectual y la observancia jurídica en el camino hacia la incorporación europea se han debatido ampliamente. Los resultados de la investigación ayudan a aplicar los métodos establecidos a la legislación y a la política gubernamental particular sobre la aplicación de la propiedad intelectual.

Palabras-clave: Estados internacionales. Propiedad intelectual. Reformas legislativas. Ucrania.