

TRANSFORMATION OF THE SYSTEM OF PROTECTION OF INTELLECTUAL PROPERTY RIGHTS: UKRAINIAN AND EUROPEAN EXPERIENCE

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ABSTRACT

Introduction: The article analyzes the legal, historical, and economic aspects of the formation of a unified system of protection of intellectual property rights of Ukraine and the countries of the European Union.

Objectives: Objectives is transformation of the system of protection of intellectual property rights. It was established that the protection of intellectual property rights is one of the priority tasks of the state, the formation of the innovative economy of the country is impossible without the development and improvement of relations in this direction. Problems in the sphere of implementation and protection of intellectual property rights are outlined. The main stages of the formation of the system of protection of intellectual property rights in Ukraine were revealed, the analysis of the main documents that contributed to the transformation and improvement of the system of protection of intellectual property rights in Ukraine. It was found that currently in Ukraine there is a two-level structure of the state system of protection of intellectual property rights.

Method: The methodological basis of this research is a system of methods, the totality of which is determined by the purpose and characteristics of the research. The features of the formation of a unified EU policy in the field of protection of intellectual property rights are analyzed.

Results: It is theoretically justified that the policy in the field of protection of intellectual property rights is divided into two directions - internal and external. The priority directions of the unified European policy in the field of intellectual property for the future have been determined. The global goals of sustainable development require significant investment. The prospects for the development of relations between Ukraine and the European Union are outlined, and the features of the Twinning Project are revealed.

Keywords: legal protection of intellectual property, systematization of legislation, implementation of positive european experience, subjects of intellectual property law, legal relations, Sustainable Development Goals (SDG).

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12 RESPONSIBLE
CONSUMPTION
AND PRODUCTION



1 INTRODUCTION

The formation of an innovative economy in Ukraine is impossible without the development and improvement of relations in the field of intellectual property. Intellectual property represents as multifaceted and complex phenomenon that combines economic, political, legal, social and cultural components. Protection of intellectual property rights is one of the priority tasks of the state, obliging public authorities exercising control in the field of intellectual property (general and special competence) “... to ensure the general rules and obligations of subjects of intellectual property rights in the field of legal relations of intellectual property” (Korotun O.M., 2019; Svitlichny O.P, 2016).

Unfortunately, the current state of development of Ukraine, despite the presence of significant intellectual innovation potential, is characterized by essential problems in the implementation and protection of intellectual property rights, which, as a rule, is due to the lack of a strategy for the development of the intellectual property system that would create conditions for stimulating human intellectual activity, development and protection of objects of intellectual property rights (Kapitanenko N.P., 2021).

There is a high level of piracy and large-scale violations in the field of protection and enforcement of intellectual property rights. This fact is confirmed in the report of the European Commission on the Protection and Enforcement of Intellectual Property Rights - Ukraine is included in the countries of the second priority (along with India, Indonesia, Turkey), China took the first place among the violations of intellectual property rights. Among the main problematic issues are highlighted the legal regulation of the protection of intellectual property, the mechanisms for registering trademarks, the transit of counterfeit and pirated products to the markets of the European

Union (EU) (Ukraine was included in the list of countries - violators of intellectual property; Kapitsy Yu.M., 2015).

Worthy of attention in this context is the scientific opinion of Yu.L. Boshitsky, who refers to the main problematic issues of legal regulation of the sphere of intellectual property: the unwillingness of society to respect the right of intellectual property, neglect of the protection of the results of intellectual work, as well as the lack of effective mechanisms for the protection and defense of the results of intellectual creativity (Boshytskyi Yu.L., 2020). Another quite serious problem is the low level of the general culture of Ukrainian citizens, as well as the low level of intellectual education.

And, despite the fact that over the years of Ukraine's integration into the European community, our state has somewhat strengthened its international authority in many spheres (joined the conventions and agreements governing legal relations in the field of intellectual property rights), native legislation needs to be improved. After all, it is precisely the provision of an appropriate level of protection of intellectual property rights, carried out in the manner prescribed by law, that will determine the strategy and tactics of the socio-economic development of Ukraine (Paladia M.V., Myronenko N.M., Zharova V.O., 2007).

In the science of law, the protection of intellectual property rights has been the subject of consideration by many representatives of the scientific community, including G.A. Androshchuk, A.S. Bezmolitvenny, Yu.L. Boshitsky, I.I. Dakhno, R.V. Zakusilo, Yu.M. Kapitsa, O.V. Kokhanovska, S.V. Mazurenko, O.S. Ovechkina, R.O. Stefanchuk and others, and their contribution to the study of the mechanism of protection of intellectual property rights is significant. At the same time, we think it appropriate to consider the main stages of the formation of intellectual property in Ukraine and the countries of the European Union and suggest possible directions for their solution. Sari, Y., Marini, A., Rahmavati, Y., Fitriyari, E., Vardhani, P., A., Safitr, D., Deviyani, L., Muda, I. explored new technologies for interactive learning media with Wordwall for student interest as an influence on SDGS (Sari, Y., Marini, A., Rahmavati, Y., Fitriyari, E., Vardhani, P., A., Safitr, D., Deviyani, L., Muda, I., 2024).

2 THEORETICAL FRAMEWORK

The formation of the intellectual property rights protection system in Ukraine began at the end of the 19th century, the main mechanisms were the national patent offices (state bodies that implemented the policy for the protection of intellectual property rights). In the period from 1992 to 1999, the policy in this direction was implemented by the State Patent Office and the State Agency of Ukraine for Copyright and Related Rights, which covered two intellectual property institutions (copyright and related rights and industrial property law) with their activities. On their basis, at the end of 1999, the State Committee of Ukraine for Science and Intellectual Property was established. At the same time, according to lawyers, attempts to combine powers were not successful, and led both to a weakening of control, the suspension of some issues of registration of intellectual property rights, and to worsening of the international image of Ukraine (Konopka I.). At the end of 1999, the Department of Intellectual Property was created under the Ministry of Education and Science, in 2010 the State Intellectual Property Service (SIPS) began to operate on its basis, the coordination of which until 2013 was carried out by the Minister of Education, and since 2013 - by the Minister of Economic Development and Trade. In November 2014, the Decree of the Cabinet of Ministers of Ukraine approved the Regulations on the State Intellectual Property Service of Ukraine (Regulations on the State Intellectual Property Service of Ukraine: Decree of the Cabinet of Ministers of Ukraine dated November, 2014) in addition, in 2015, the National Strategy for the Development of Intellectual Property Rights of Ukraine for the period up to 2020 was adopted (National Strategy for the Development of Intellectual Property Rights of Ukraine, 2020).

The first step towards the transformation and improvement of the system of protection of intellectual property rights in Ukraine was the adoption by the Cabinet of Ministers of Ukraine in June 2016 of the Concept of reforming the state system of legal protection of intellectual property in Ukraine (the basic foundations for the formation and implementation of the state policy in the field of protection of intellectual property rights in the country are provided). The primary objectives of this Concept are: the introduction of a two-level



structure (previously there was a three-level structure) - the Ministry of Economic Development and Trade implements state policy in the field of intellectual property, and the national intellectual property authority provides certain public functions (powers of authority) for the implementation of state policy in this area; reorganization of the system of collective management of property copyright and related rights, improvement of national legislation and its harmonization with EU legislation (The Concept of reforming the state system of legal protection of intellectual property in Ukraine: order of the Cabinet of Ministers of Ukraine, 2016).

The next landmark document of 2016 in the direction of improving the international image of Ukraine was the Agreement between the SIPS and the International Bureau of the World Intellectual Property Organization on the performance by the State Enterprise "Ukrainian Institute of Intellectual Property" of the functions of the International Searching Authority and the International Preliminary Examination Authority (National Strategy for the Development of Intellectual Property Rights of Ukraine, 2020). By the way, it is worth paying attention to the fact that only the 20 best patent offices in the world have been granted such status.

In addition, a number of agreements and legal acts have been adopted that regulate activities in the area of protection of intellectual property rights: the laws of Ukraine "On State Support for Cinematography" (2017), "On the Effective Management of Property Rights of Right Holders in the Sphere of Copyright and (or) Related Rights" (2018), "On Amendments to Certain Legislative Acts of Ukraine to Improve the Legal Protection of Geographical Indications" (2019), "On Amendments to the Customs Code of Ukraine on the Protection of Intellectual Property Rights when Moving Goods across the Customs Border of Ukraine" (2019), "On Approval of the Procedure for the Application of Measures to Promote the Protection of Intellectual Property Rights and the Interaction of Customs Authorities with Right Holders, Declarants and Other Interested Parties and Amendments to certain regulatory legal acts of the Ministry of Finance of Ukraine" (2020), "On Amendments to the Procedure for Registration in the Customs Register of Protected Objects of Intellectual Property Rights in Accordance with the Law" (2020) and others.

It should be noted that since May 2017, the State Intellectual Property Service of Ukraine ceases its activities (Decree of the Cabinet of Ministers of Ukraine dated May 11, 2017 No. 320 (Issues of the Ministry of Economic Development and Trade: Decree of the Cabinet of Ministers of Ukraine dated May 11, 2017).) and transfers powers to the Ministry of Economic Development and Trade of Ukraine, in whose structure the Department of Intellectual Property was created.

Thus, in Ukraine there is a two-level structure of the state system for the protection of intellectual property rights: the first level is the Ministry of Economic Development and Trade; the second level is the State Organization "National Office of Intellectual Property" (NOIP), established in 2018 on the basis of Ukrpatent and the SIPS (subordinate to the Ministry of Economic Development and Trade). It was the NOIP that created the first Technology and Innovation Support Center (providing information about various services in the field of intellectual property, providing inventors with access to technical information - patent, scientific and technical databases) (NOIP: The Technology and Innovation Support Center was established in Ukraine).

It is also noteworthy that in September 2017, in order to improve the efficiency of the rights protection system, work began on the creation of a single specialized judicial body - the Supreme Court for Intellectual Property (similar ones exist in Germany - the Federal Patent Court, Japan - the Supreme Court for Intellectual Property and a number of other countries of the world) (Matviychuk V.K., Pylypenko S.A., Ustymenko T.P., 2014). However, as V. Knyazev notes, in 2019 the process of selection and creation of the Supreme Court for Intellectual Property (after the liquidation of the High Qualifications Commission of Judges) was stopped, and, unfortunately, this court was not created. (Chairman of the Supreme Court: it is necessary to create a Supreme Court for Intellectual Property. Ukrinform).

The development of national legislation in the field of protection of intellectual property rights reflects the transformations that taking place in society. This is a logical and understandable response to changes in the economic life of the state, an attempt to create both conditions for the realization of the rights of citizens to creative activity provided for by the

Constitution of Ukraine, and a mechanism for protecting the rights to the results of intellectual activity. To this end, native legislation implements international norms and standards, since the expediency of such harmonization is, of course, an objective requirement of the time.

Global goals in the field of medicine have significant problems in the areas of premature mortality, access to medical care. For a meeting SDG 3 by 2030, significant investments are needed and the fight against environmental factors, inequality. Actions are needed to satisfy and protect the population. (General Assembly Economic and Social Council, 2024) .

The evolution of intellectual property law in Europe dates back to the first decades of the 14th century. For the first time in the world, attention was drawn to the need to protect the rights of authors, inventors, creators and innovators and the economic significance of such protection in France and Germany (Boyar A.O., 2006). There were certain differences among European countries regarding the system of protection of intellectual property rights, which, as a rule, were due to the historical and cultural features of their development: the English system of law is inherent in the countries of the British Commonwealth, the USA (the rights are of an exclusively economic nature and are granted as a privilege); the continental European system of law is typical for the countries of continental Western Europe (the right to movable and immovable property, the absolute nature of right).

Today, the policy of the EU countries for the protection of intellectual property rights has two clearly defined directions - internal (creation of a unified harmonized system for the protection of intellectual property rights within the EU, which, as a result, contributes to: improving the competitiveness of the economy, ensuring the protection of the creative activity of citizens, developing innovative activities, increased investment); external (improving the efficiency of the system of protection of intellectual property rights in third countries, developing international cooperation in this direction).

Activities in the field of protection of intellectual property rights are regulated mainly by two conventions concluded at the end of the 19th century - The Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886), which

“played a fundamental role in the further development of legal institutions. ... The list of countries that have acceded to these Conventions is constantly growing, and the legal norms proclaimed in them have become the basis for the development of national legislations” (Hridochkin A.V., 2018).

The implementation of the formation of a single EU policy in the field of protection of intellectual property rights is carried out by legislative, executive and judicial bodies (the European Parliament, the Council of Ministers of the EU, the European Commission and the European Court of Justice). In addition, there are specialized organizations - the European Patent Organization and the Office for Harmonization of the Internal Market (Skordamaglia V., 2004).

3 METHODOLOGY

The methodological basis of this research is a system of methods, the totality of which is determined by the purpose and characteristics of the research. The dialectical method made it possible to identify tendencies of the evolution of intellectual property rights in Ukraine and the EU countries, as well as to formulate proposals for improving native legislation in this direction. The system method and the method of analysis were used to identify the interrelation between the problems of the development of intellectual property rights and the essence of the country's economic development. Thanks to the comparative legal method, an analysis of the native and international legal framework governing the protection of intellectual property rights was carried out, proposals were made to improve national legislation.

4 RESULTS AND DISCUSSION

It should be noted that the public authorities of Ukraine in the course of their activities actively cooperate with European and other international state governmental and non-governmental institutions - the World Intellectual Property Organization, the International Union for the Protection of New Varieties of Plants, the United Nations Educational, Scientific and Cultural Organization, the United Nations Economic Commission for Europe, the



European Patent Office and specialized offices from different countries, including the European Union (EU) (Gorbacheva K.M., 2020).

“The prospects for the development of relations between Ukraine and the EU on the protection of intellectual property rights were affected by the European Neighborhood Policy developed by the EU, the Eastern Partnership, the Ukraine-EU Action Plan, negotiations on the conclusion of the Association Agreement and the Free Trade Area Agreement, as well as the ongoing dialogue between Ukraine and the EU for the protection of intellectual property rights” (Hridochkin A.V., 2018).

Thanks to the implementation of the EU-funded Twinning Project in Ukraine, Ukraine has the opportunity to implement the positive experience of the European Union, including the development of new draft laws on the protection of intellectual property rights. Twinning is a mechanism for cooperation between the authorities of the EU member states and beneficiary countries, the purpose of which is to exchange experience in a specific area of state regulation regarding the implementation of EU norms and standards, best practices between the state authorities of the EU member states and their beneficiary partners, the development of a unique national experience. (Center for adapting the state service to the standards of the European Union. Twinning.; H. Avigdora, Yu. Kapitsy. K., 2011) . It is noteworthy that Twinning projects are aimed directly at solving a specific problem, they culminate in the achievement of binding results, the responsibility for their implementation lies with the project leaders (high-level state servants from the EU Member State and the beneficiary country).

However, despite the fact that Europe is a pioneer in the development of some of the world's leading innovations, companies are currently unable to fully protect their inventions and use their intellectual property (The EU Commission published a new action plan for the EU intellectual property system. Legal newspaper, Kapitsa Yu.M., 2016). In this regard, the Commission of the European Union has developed an Action Plan for the EU Intellectual Property System (Voloshchenko O.,2020), which defines five main areas:

- improving the protection of the intellectual property system (modernization and digitalization of existing intellectual property mechanisms,

including the improvement of supplementary protection certificates (SPC); addressing the issue of the impact of new technologies (such as AI and blockchain) on the intellectual property system);

- promoting the use of intellectual property by small and medium-sized enterprises (SMEs) (now only 9% of SMEs submit documents for the protection of intellectual property) (consultations for participants in research and innovation programs funded by the EU);
- improving the exchange of intellectual property (measures to facilitate the exchange of critical intellectual property in times of crisis; improvement of copyright; transparency and predictability in the licensing of standard core patents, as they are a key element of the digital transformation of European industry);
- fight against counterfeiting (imports of counterfeit and pirated goods currently account for 6.8% of EU GDP) (protection of intellectual property rights);
- promoting a global equal conditions (strengthening the position of the EU as a standard-setting body in the field of intellectual property, which will consequently strengthen the EU's response to unfair practices by third-country players, such as industrial espionage or attempts to misappropriate intellectual property).

5 CONCLUSION

Summing up, we note that at present the right of intellectual property in Ukraine is at the stage of active reform. The organizational structure of public administration bodies providing activities in this direction has been formed, there is an appropriate legislative framework, which generally meets international standards. At the same time, taking into account the fact that the legal regulation in the direction of the protection of intellectual property rights is not established and is constantly in the process of changes, including those related to the processes of harmonization of the norms of national legislation with the norms of international law, it needs to be improved. This applies both



to specific legislation implementing the provisions of the Association Agreement and relevant European standards, as well as to institutional changes.

Legal regulation in this direction needs to be complete, systematic and justified (settlement of all types and forms of relations arising in the process of inventive search). And this should in no way affect the growth of the number of regulations. In this context, the scientific thought of S.V. Petkov, who believes that effective legal support of any reform, including in the field of protection of intellectual property rights, is impossible without further systematization of legislation, which should be carried out in the form of codification of its norms. Bringing the legislation of Ukraine in line with world standards, creating a solid legal framework that meets the requirements of modernity, should be comprehensive and coordinated and not create additional conflicts in the legal system of the country (Petkov S.V., 2020).

In addition, we consider it expedient to complete institutional reforms in the field of intellectual property as soon as possible and create:

- a single functional body of intellectual property (will combine the functions of Ukrpatent and the National Office of Intellectual Property), whose powers include conducting examinations, maintaining registers, establishing cooperation with the business environment, and improving the skills of experts);
- the only specialized judicial body is the Supreme Court for Intellectual Property.

The protection of intellectual property rights is an important mechanism for attracting foreign investment, transferring technology, respecting the rights of Ukrainian right holders, which as a result will contribute to the further development of the Ukrainian economy.



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