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INNOVATIVE FORMS OF THE CIVIL LAW RELATIONS' IMPLEMENTATION IN THE STRUCTURE OF THE INTELLECTUAL PROPERTY RIGHT PROTECTION

Abstract. *Civil law relations are essentially becoming the base for social development. In this regard, the necessity of more precise regulation of the relations between the legal field subjects causes the need in considering a more precisely defined legal branch. The legal regulation in the international structure is defined by the fact that the legal aspects of civil law relations are more often manifested at the international level. In this regard, the analysis of the international branch of civil law relations exactly presents the relevance of the conducted research. The novelty of the paper is defined by the fact that in the majority of the cases, the base for the development of civil legislation consists of the norms of property and economic law. The basic idea of the paper is in the fact that the base for the civil law relations in the modern postindustrial society is laid by the subjects of informational safety. The authors assign to them the branch of intellectual property protection. The paper shows the base for the implementation of the legal regulation in the national legislation of the developed countries based on the UE and USA legislation. The practical implementation of the research is in the harmonization of the legislation and the formation of the new practical paradigm for the protection of the intellectual property and other civil law relations based on the inviolability of the intellectual property protection.*

Keywords: Civil law relations, regulation, property, protection, rights.

INTRODUCTION

The embodiment of the progressive legal standards should be ensured not only by the national legislation but directly in the law-enforcement and judicial practice. Thus, at the implementation of the global integral reform in the sphere of the intellectual property, special attention should be paid to the consideration of the European approaches regarding the intellectual property protection, including in the part of the reflection of the private law principles in the legislation.

Notably, the problem in this perspective is understudied, although this issue is relevant for the intellectual property reformation process. Special studies in the sphere of the European legislation, including in the aspect of intellectual property protection, were conducted very seldom. Much more attention in the civility studies is paid to the concept and essence of the principles but predominantly in the context of the analysis of the national legal schools and legislation.

The issues regarding the implementation of the legal principles are the subject of both practical and theoretical studies and are reflected in the legal doctrine [1]. Particular attention though insufficient from the perspective of legal enforcement and judicial practice is paid to these issues at the level of the scientific events and measures [2]. Unfortunately, the multiple themes raised at the scientific discussions are usually devoted to the theoretical approaches to the understanding of the legal principles applicably to their implementation as part of the branch studies beyond the civil law (if only from the civil process) [3]. As for the sphere of intellectual property, then the issues of its exposure to the civil law principles (both for civil law and civil legislation) has not been yet raised at the level of the theoretical constructions. At the same time, as for the law implementation, first of all, for the judicial practice in the sphere of consideration of the discussions on the violation of the intellectual property right, the role of principles is extremely important [4].

In general, the theory of law considers the law implementation as a complicated process including the mechanism of the law implementation and the form of the law implementation; the implementation is considered as the embodiment of the legal norm in the activities of the law subject [5]. The main forms of implementation include as follows:

1) use – the form of implementation of the norms, the contents of which is the active behavior of the subjects by their own consent;

2) execution – the form of implementation of the mandatory norms, the contents of which is the commission of actions required by the legal prescriptions, i.e. execution of the imposed obligations;

3) observance – the form of implementation of the protection norms, the contents of which is the restraint of the subject from the violation of the legal norms [6].

In the 19th century, they highlighted the category of interest, speaking about the contents of the subjective law [7]. The subjective law usually combines two aspects: formal, i.e. the opportunity to act for the implementation of a known will, and material, i.e. an opportunity to act for the implementation of the known interest, and both these opportunities are not just factual, but legal, i.e. based on objective law [8]. The modern civil law scientists define that the civil legislation notes that only the interest may be protected that does not contradict to the general bases of the civil legislation [9]. The correlation of the subjective law and private interest is concluded in the fact that private interest reflecting in the consciousness of the legal subject is a sense-generating factor of the will behavior of the subject of civil relations, while subjective civil law is a special legal means for the implementation of private goals, and finally – private interest of the subject [10]. The stated positions, the same as the opinions of other scientists allow firmly speaking about the lack of equality between the concepts of law and interest.

Generally, judicial protection is perceived as one of the fundamental principles of civil law [11]. It is often defined as a basic principle, without the implementation

of which the effectiveness of achievement of the contractual legal goal would be challenging [12]. The declaration of the judicial protection of civil law and interest as a legal base for civil legislation is difficult to overestimate but for the influence of the court on the counteragents violating the obligations, the mechanism of the measures taken by the court to the violator is also important [13]. Such a mechanism forms particular ways of civil rights protection, which may be applied by the court [14]. One of the defining components of the principle of the civil rights protection and the interest protection by the court is in the provision of the guarantees to each person for effective judicial protection [15]. It supports the consideration of judicial protection through its understanding exactly as the principle of law. It means – it provides an opportunity of applying generalization, the perception of the protection through the correlation of the general, special and particular in specific legal relations during the implementation by the person of his/her rights to intellectual property, including – in the process of protection of such rights.

1. MATERIALS AND METHODS

The paper uses the aggregate of the general scientific and special scientific methods. The general scientific dialectical method of cognition was basic in this system and allowed performing the scientific tasks set in the unity of their social contents and legal form. Particularly, the dialectical method of cognition of reality allowed implementing the analysis of the nature of civil law and civil legislation principles, and the principles of private law; defining the role and contents of the legal principle of judicial protection of civil law and interest; and defining the peculiarities of its implementation in the sphere of intellectual property. The systemic-structural method was used to define the peculiarities of implementation of the civil legislation principles in the sphere of intellectual property. The method of the systemic analysis contributed to the in-depth revealing of the contents of the civil law principles in general and the principle of protection of the civil law and interest, and the definition of the peculiarities of their implementation in the sphere of intellectual property.

The application of the historical-legal and comparative-legal methods allowed revealing the contents and peculiarities of documenting the intellectual property protection principles in the TRIPS Agreement, stating the peculiarities of their implementation in the national legislation and law protection practice; defining the ways of the EU legislation development in the part of the intellectual property protection and reflection of the private law principles in the process of implementation of the right to protection. The application of the method of analysis and synthesis contributed to the revealing of the legal nature of the civil law principles, the definition of the contents of the basic forms of the intellectual property right implementation by the authorized subjects, as well as revealing of the contents of the intellectual property right violation.

2. RESULTS AND DISCUSSION

The European specialists note that in the European Union, the harmonization of the legislation undergoes great political and ideological pressure because this process is considered as the main element of the unified market creation. Significant harmonization also happens in other places, which is nourished by the realia of the global market economy.

This study has already mentioned that the intellectual property right protection should be based on the principles of anthropocentrism, on the implementation of the fundamental principles of the human rights protection, which lays in the basis of the private law protection of the rights of the individuals and the legal entities. It is provided that the development of the modern civil law doctrine is based on the anthropocentrism.

Exactly such theoretical legal law principles based on the anthropocentrism, new European paradigm, allow actively developing the corresponding civil law institutions, including the institute of the intellectual property right (in this case – in the part of the civil law intellectual property protection). Moreover, the corresponding legislative opportunities have been created for this purpose as well as special legislation in the sphere of intellectual property. However, in this case, the implementation of the intellectual property protection principles through the prism of anthropocentrism is reasonable to be defined through the epistemic of the European approaches in regard to intellectual property protection.

And in this case it is reasonable to mention the following document once again: Principles, Definitions and Model Rules of European Private Law (2009) as a result of the Draft Common Frame of Reference (DCFR) edited by Christian von Bar and Eric Clive [16] because particularly this document is a benchmark in the legal science to the European legal history and comparative law. It exactly contains the sufficient bibliography of the main legal materials together with the comparative analysis, which ensures the fullest and most available European and legal experience for the research scientists. Particularly this document is considered as the central element in all the future discussions on the harmonization of the EU legislation. It has the initial authority for the interpretation of the future UE provisions on the private law and is an important document for the experts dealing with the EU legal system.

It is of great theoretical value because as it has already been mentioned above, the DCFR model norms consist of the principles. Particularly from these positions, it is reasonable to consider the principle of the human rights protection documented in Article 1.-1:102(2) of the DCFR, which states that the model norms should be interpreted in the context of any applicable means guaranteeing human rights and fundamental freedoms.

Taking these ideas into account, we will apply exactly to the sphere of intellectual property. One may state that it is particularly the European Union, which elabo-

rated a significant experience in the intellectual property protection because in Europe with the purpose of solving the above-mentioned problems, on 29 April 20114, the European Parliament and the Council of the European Union adopted the Directive 2004/48/EU concerning the observation of the intellectual property right [17], which became effective in 20 days after its publication. The need in the elaboration and adoption of this Directive was provoked by several factors reflected in the preamble of the Directive.

First, the Community over the years of its existence formed a particular massive of the norms of the intellectual property substantive law, which are recognized by the compound part of the Community's legal standards (acquis comunautaire), however their effective implementation is directly connected with the use of the unified approaches to the application of the means of defense and protection of the intellectual property by all the member-states of the Community at the level of the national legislation. However the incompliance between the systems of the intellectual property protection means of the member-states harmful for the proper functioning of the Internal Market, make it impossible to ensure the proper level of defence and intellectual property protection in the entire territory of the Community, as well as lead to the weakening the material norms of the intellectual property right and to the loss of the integrity of the Internal Market in this sphere.

Second, at the international level, all the Community member-states, as well as the entire Community concerning the issues within its competence are bonded by the TRIPS Agreement concluded as part of the World settlement of sale. In Europe, the provisions of the TRIPS Agreement are applied by the member-states alongside with the national legislation and the international agreements in this sphere with the corresponding states. At the same time, it is impossible to note that the application of the TRIPS Agreement at the level of the European Union has not caused the expected exclusively possible consequences because the national legislation contained significant differences including in the part of the documented mechanisms of the intellectual property protection. Actually, the TRIPS Agreement was not enough to overcome the existing contradictions at the level of national legislation, first of all, in the procedural issues of the intellectual property protection of the Community member-states. Thus, the EU faced the goal of the harmonization of the legislative approaches as part of the legal protection and especially of the intellectual property protection, which has been namely embodied in the long-term process of work and the adoption of Directive 2004/48/EU.

The goal of the Directive became the approximation of the legislation systems for the provision of the high, equivalent and similar protection level at the EU internal market. I.e., the goal is the approximation of the means and procedures of the national systems of the Community member-states, which are subject to the application in the cases of the violation of the intellectual property rights at their commercial use. Alongside with it, as was stated in the preamble, Directive 2004/48/EU was not

aimed for the establishment of the harmonized rules for judicial cooperation, jurisdiction, and execution of the solutions in the civil end economic issues, the solution of the issues of the law enforcement etc. The Community only developed the regulatory documents governing the procedural issues and able to be applied to intellectual property. However, the significant number of the provisions documented in the Directive is directly concerned with the competence of the court. Also, Directive 2004/48 / EU is not concerned with the application of the competition rules. I.e. one may conclude that the execution of the provisions of the Directive is aimed at the creation of the available minimum harmonized means of the intellectual property protection in the territory of all the Community member-states.

As stated in the preamble of Directive 2004/48/EU, the agreements of applying the precaution measures used particularly for the preservation of the proofs, the calculation of the damage or the agreement on the application of the judicial restraint significantly differ in the community member-states. In some member states, there are no measures, procedures or means – such as the right to the information and deletion for the expense of the violator of the infringing goods placed on the market. It is clear that this situation does not contribute to the free turnover within the EU internal market and does not create a favorable environment for healthy competition. Thus, the harmonization process continues.

The adoption of this Directive was initiated by the European Commission as an important, but the first step on the introduction of the horizontal means of anti-piracy. Directive 2004/48/EU is a unified structural set of sanctions in the European Union regarding the intellectual property right, in the minimum means available for the right owners and state authorities to fight against the violation of the intellectual property. Article 3 of Directive 2004/48/EU defines the general requirements to the measures, procedures, and means for the member-states. Such measures, procedures, and means should be just and impartial, should not be redundantly complicated or burdening or stipulate groundless terms or the need in lingering. The stated measures, procedures, and means should also be effective, proportional and convincing and be applied in such a way to avoid obstacles for the legal trading and stipulate the guarantees against the violation.

In 2005, the European Commission adopted the Application regarding Article 2 of Directive 2004/48/EU of the European Parliament and Council on the provision of the intellectual property rights [18]. It was caused by the need in elaborating to what intellectual property rights one needs to apply the Directive because there was an uncertainty about it. According to the application, such a list was considered as follows: copyright; related rights; sui generis right of the database producers; right of the semiconductor items' reprographies; right to an industrial design; patent rights including rights originated from the certificates of the additional protection; geographical indications; utility model rights; rights to the plant varieties, rights to the firm-names so far they are protected as the exclusive property rights of the national

legislation. It is reasonable to note that the legislation generally considers the intellectual property right objects in the context of protection of such rights.

The implementation events and measures at the level of the European Union aimed at the improvement of the intellectual property protection became the adoption by the EU Council of the Message in the Implementation of the Industrial Property Rights Strategy in Europe in July, 2008 [19] and the Resolution on the Integral Anti-Counterfeit and Anti-Piracy Plan in September 2008 [20]. It resulted in the initiation of the activities of the European Observatory on the issues of counterfeit and piracy.

In March 2010, the EU Council adopted the Resolution on the Provision of the Observance of the Intellectual Property Rights at the Internal Market [21]. The Resolution recognized the problem of the insufficient level of the copyright and related rights protection in the digital environment, which has an adverse effect for the legal marketing of the media-products and development of the European industry of culture.

Also, in 2010, the European Commission based on the reports of the ой member-states and the experts of the European Observatory concerning the issues of the counterfeit and piracy, they prepared the Report on the Application of Directive 2004/48/EU [22]. They denoted a series of challenging issues at the level of law enforcement in the EU states. Particularly, there are the complications of applying the Directive in the conditions of the digital environment because the Directive was not aimed at solving the issues of piracy on the Internet). The protection process is complicated by the diversity of the application of the intermediate restraints against the law violators and judicial restraints against the mediators, including in the part of the provision of the proofs required by the national judicial authorities.

The civil law protection problems have been in the focus for many times. Particularly, the situation with the harmonization of the civil law ways for the rights protection significantly differ from the harmonization of the customs events and measures, for which except for the elaborate annual monitoring of the situation at the general European level and in the member states, the detailed roadmaps are approved covering the improvement of the legislation, the organizational activities of the customs authorities, the partnership with the private sector and the subjects of law, and the international activities. And this is really the fact of generating many problems in the European law-enforcement.

For example, the practice of application of the Directive revealed various approaches to the implementation of the corrective measures and the execution of the judicial solutions, particularly as part of the interpretation of the concepts of 'forfeiture' and 'ultimate deletion', documented by Article 10 of the Directive, the liquidation of the goods and their reuse. An extremely great problem remains the issues of definition of the reimbursement, particularly the definition of the lost benefit, the definition of the revenues obtained by the law violator, moral harm, compensations, the reimbursements at the inadvertent violations, as well as additional reimbursements.