ISSN NO: 2769-996X
Date of Publication: 30-05-2022

Current Problems of Implementation of International Law Regulations of Intellectual Property into National Legislation

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Abstrakt: there are several important international treaties relevant to the protection of intellectual property rights. Of course, one of the most important treaties is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which all WTO members are required to sign. This agreement provides a set of agreed standards for the minimum protection of intellectual property rights around the world, . Along with TRIPS, there are many other international treaties that are relevant to intellectual property protection standards, such as the Paris Convention, the Berne Convention, and the WIPO Copyright Treaty.

At the international level, there are several important international treaties relevant to the protection of intellectual property rights. Of course, one of the most important treaties is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which all WTO members are required to sign. This agreement provides a set of agreed standards for the minimum protection of intellectual property rights around the world, . Along with TRIPS, there are many other international treaties that are relevant to intellectual property protection standards, such as the Paris Convention, the Berne Convention, and the WIPO Copyright Treaty.

A comparative legal analysis of international treaties in the field of intellectual property makes it possible to group the rules that form the regime of legal protection of intellectual property objects in the participating states as follows:

1) substantive legal norms that categorically prescribe the conditions for the legal protection of objects of intellectual property. The relevant provisions should be transformed into the national legislation of the participating States without any derogations and ensure the effect of unification;

2) permissive substantive legal norms that secure discretion for the national legislator to exercise the regulatory function, including expanding or narrowing the amount of legal protection of intellectual property objects in comparison with the minimum level established by an international treaty

3) prohibitive substantive legal norms that limit the jurisdiction of the national legislator to narrow the scope of legal protection of intellectual property objects in comparison with the minimum level established by an international treaty.

And so, only the norms of the first category are provided with mandatory minimum rules (minimal rules), and they also represent and serve the purposes of unifying intellectual property rights, and all the rest are recommended rules (proposed rules), which determine the limits of the discretionary powers of the participating states and are directed on the harmonization of legal regulation in the field of intellectual property.

A. Makovsky correctly notes that practically each of the international treaties regulating relations in the field of intellectual property is a set of legal provisions in which rules are combined and intertwined, formulated as uniform norms of private law, ready for “transplantation” onto the soil of the national law of states - parties to the contract to regulate relations between subjects of private law, with international legal contractual rules of various kinds and varying degrees of certainty, prescribing these states or allowing them to create their own domestic rules in pursuance of these rules or in derogation from them.

Rules on granting national and most favored nation treatment to foreign authors, copyright holders and, in rare cases, licensees belong to the third group. We find it important to say that both of these so-called "reservations" come from the sphere of trade. Their application also in the field of intellectual property has its own characteristics and deserves separate consideration.

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An indication in an international treaty that national legislation must be brought into line with its norms is not, in its essence, a provision that confirms that this treaty does not imply direct action in a state party. Even if an international act is endowed with the status of direct effect, national legislation must comply with it. One does not exclude the other.

There may be no direct general indication in the contract, sometimes there is only an indirect one (for example, by indicating the circle of subjects, as is done in TRIPS); On the whole, one can agree with the second and third main features, with the exception of the "address of the norm to the authorities". This condition is not categorical. As a rule, the addressing of a norm to the authorities means, nevertheless, its addressing to the state as a whole.

Despite the presence of the above norms and positions, there is still no clarity and clear understanding of which international treaties or their individual norms can have the status of direct action in the legal system of the Republic of Uzbekistan and what are the conditions and procedure for their application (in addition to separate indications of this, there is no clear "guidelines for action", thanks to which it would be possible to determine the nature of the international treaty and its rules in this regard).

A new obstacle to the implementation of the norms of international law governing objects of intellectual property in the national legislation Lstvo, is the development of a workable system of measures to ensure the implementation of these standards. Thus, considering the influence of the legal content of the norms of international law governing public relations in the field of intellectual property on the process of their implementation at the domestic level, it should be noted that, by the nature of the normative prescriptions and the possibility of their application within the state, it contains two types of norms - self-executing and the implementation of which completely dependent on the assistance of national law. The main content of enforceable obligations is that the adoption of appropriate national legislation should be recognized as one of the fundamental duties of the state.

Everyone knows quite a bit that the effective incorporation of international law into the national legislative system affects the application of an international treaty, for this reason, domestic legislation should make up a massive part of the total number of measures taken to ensure the proper implementation of the norms of international law. Since the norms of international law are some exemplary "rules" and standards, all countries should align with these norms and try to harmonize them with their individualistic ones, in which case the main goal will be achieved.

The leading role in this is played by the solution of the problem of determining a single list of measures for all states to implement international law at the domestic level, which could be used in any state, rather conditionally. But the insurmountable problem is that the list of these measures in relation to a particular state will not coincide, since the question of classifying certain provisions of international law as self-executing norms or requiring assistance from national legislation in different states will be decided differently.

In the literature, there is no generally accepted single term that would designate the process (phenomenon) of the use of international law by national law. The authors operate with such concepts as "methods or means of giving international legal norms the force of domestic action", "methods of harmonizing these norms", "mechanism for mediating the norms of one legal system to another", "methods of influencing international legal acts on national legal systems" .

Here is a short list of problematic issues that are currently available on the implementation of international treaties. In particular, there is no clear mechanism and procedure for the implementation of legal obligations arising from the concluded international treaties of the Republic of Uzbekistan in the field of intellectual property, i. there are no regulatory norms for the implementation of an international treaty into national legislation, and there is also no unified methodology for monitoring the implementation of international treaties.

International agreements and treaties play an important role in the development of a state, especially in the modern world, they are all aimed at overcoming obstacles for mutual enrichment in all spheres of public life (cultural, scientific, social, economic, and so on).

As noted above, all substantive legal norms of international treaties in the field of intellectual property can be characterized based on three areas of regulation:

- according to the international system of registration of objects of intellectual property;

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- to provide the least conditions for legal protection and protection of Intellectual Property Objects in the Member States;
- to ensure the legal status of foreign subjects - authors, right holders and, in exceptional cases, licensees, and objects of intellectual property belonging to them in the participating states.

Until now, the main problem and obstacle to the widespread unification of the substantive legal norms of international treaties in the field of intellectual property is that the scope of domestic legislation is limited by territory and space, and also, an important factor that has played a role in this matter is the ubiquity of Intellectual Property Objects. .

If we talk about the essence of the provisions and norms of international treaties relating to intellectual property, we can say that they are harmonized guidelines. For some reason, when implementing norms from international law into national law, significant differences remain in national regulation.

Particularly difficult is the international unification of substantive legal provisions in the field of intellectual property. The main difficulty in reaching agreement on many issues between countries is that countries differ in culture, social level, economic situation and technological difference. The above issues include the types of protected objects, the prerequisites for granting legal protection, the validity period exclusive rights, grounds for issuing compulsory licenses, ways of free use of intellectual property.