учесть международный характер отношения и не допустить упрощение подхода при разрешении дела с иностранным элементом. Целесообразность учета французского опыта определяется тем, что императивный характер базовых правил коллизионного регулирования (в частности положений главы 74 Гражданского кодекса Республики Беларусь) и строго формальный подход к их применению сохраняют целостность международного отношения, иначе оно просто приспособится к правовой системе одного государства, где спор был рассмотрен.

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THE INTERLINK OF CODIFICATIONS IN DIFFERENT SPHERES: HUMAN RIGHTS AND INTELLECTUAL PROPERTY

***E. B. Leanovich*[a], *Xie Shuyu*[b]**

[a] *Belarusian State University,*
Niezaliežnasci Avenue, 4, 220030, Minsk, Belarus, e-mail: leanovich@bsu.by
[b] *Belarusian State University,*
Niezaliežnasci Avenue, 4, 220030, Minsk, Belarus, e-mail: willa.xieshuyu@gmail.com
Corresponding author: leanovich@bsu.by

Modern intellectual property law is a complex legal construct, the development of which is reflected in codified acts of international and national law, in particular TRIPS, national codes of intellectual property. A balanced distribution of obligations and interests of all stakeholders in the basic principles and the most controversial legal institutions should be based on universal human rights standards. The article shows the correlation and close relationship of the interlinked processes. The conclusion is formulated about the legitimacy of development of the international legal perception of the exclusive right in accordance with the human rights-based approach (HRBA), which in turn is based on a well-systematized and universally recognized legal framework.

Keywords: *intellectual property; human rights; codification; international private law; compulsory licensing; developing countries; China.*

ВЗАИМОСВЯЗЬ КОДИФИКАЦИЙ В РАЗНЫХ СФЕРАХ: ПРАВА ЧЕЛОВЕКА И ИНТЕЛЛЕКТУАЛЬНАЯ СОБСТВЕННОСТЬ

Е. Б. Леанович[1)], Се Шуюй[2)]
[1)] Белорусский государственный университет,
пр. Независимости, 4, 220030, Минск, Республика Беларусь,
e-mail: leanovich@bsu.by
[2)] Белорусский государственный университет,
пр. Независимости, 4, 220030, Минск, Республика Беларусь,
e-mail: willa.xieshuyu@gmail.com

Современное право интеллектуальной собственности представляет собой сложную правовую конструкцию, развитие которой нашло отражение в кодифицированных актах международного и национального права, в частности ТРИПС, национальных кодексах интеллектуальной собственности. Сбалансированное распределение обязательств и интересов всех заинтересованных сторон в основных принципах и наиболее противоречивых правовых институтах должно основываться на всеобщих стандартах прав человека. В статье показана взаимосвязь и тесные отношения перекликающихся процессов. Сформулирован вывод о закономерности развития международно-правового понимания исключительного права в соответствии с правозащитным подходом, который, в свою очередь, опирается на хорошо систематизированную и всемирно признанную правовую базу.

Ключевые слова: *интеллектуальная собственность; права человека; кодификация; международное частное право; принудительное лицензирование; развивающиеся страны; Китай.*

The human rights-based approach (HRBA) presents in the modern world a conceptual platform framework for all countries. Different political positions and economic interests can be mutually excepted by developed and developing countries. That is of vital importance from the view of contemporary challenges (e. g., Covid, sanctions, etc.). Moreover, the necessity of universally recognized landmarks and orienteers is met by the codified international human rights standards. The corresponding body of international sources on human rights prevent discriminatory practices and unjust distributions of power in all spheres [1].

Discourse on the correlation of numerous acts, as for human rights. and on intellectual property, is in close attention at the universal level of cooperation from the late 90s of the last millennium. World Intellectual Property Organization (WIPO) was the first international organization to draw wide public attention to the discussion of the interlink and interdependence of these two major domains on the agenda of the world community. There has been a lot of debate on this issue, reflected in international publications [2].

Starting with the broadest formulation of the problem, from the possibility of recognizing the universal status of intellectual property right, the consistent development of the discussion led to the recognition of the essential legal differences between the two sets of rights, ascertaining their differences in issues of their private and public nature, territorial coverage, etc.

Nevertheless, the productivity of the comparative and evaluative approach has a pronounced impact. The results of the scientific discussion at such an authoritative level (WIPO and successive extension to other organizations: the World Trade Organization, the World Health Organization, etc.) have led to practical solutions. In this regard, we can highlight: amendments to the Agreement on trade related aspects of intellectual property rights (TRIPS) with regard to the compulsory licensing for pharmacological inventions; adoption of the Marrakesh Treaty, which greatly facilitates the access of visually impaired people to copies of works that are protected by copyright; development of an understanding on the problem of protection of intellectual property rights by developing countries for their genetic resources, etc.

A significant achievement from the codification point of view is the formation on the basis of human rights of the principle of taking into account the interests of all stakeholders. As of now it serves as the basis for assessing the fairness and expediency of both the entire structure of intellectual property and the limits of an exclusive right. Understanding and regulation concerning the «stakeholders interests principle» was enshrined in the WIPO documents. Thus, it is fixed in The World Intellectual Property Declaration of June 26, 2000. Now this standard has become firmly established in the argumentation toolkit during debates between developed and developing countries. It is also taken into account in the process of codification of national legislation on intellectual property.

The correlation of human rights standards eventually provides the understanding of the future development of international protection of intellectual property in countries of different economic interest. The most illustrative approach is presented by the debates on «TRIPS-plus».

There is no clear line of demarcation between the TRIPS era and the TRIPS-plus era. Different scholars have different views. Professor Wu Handong believes that the TRIPS-plus era entered after the TRIPS Agreement [3] However, some scholars believe that international protection of intellectual property rights entered the next stage only after the Doha Declaration was signed [4, p. 143]. Meanwhile, it is clear that the implementation of TRIPS and new legal norms require changes of the intellectual property perception. There are increasing

trends in the normative ruling of intellectual property, including conflicts both within the same jurisdiction, when the interests of right holders and users collide, as well as in the dimension of inter-jurisdictional conflicts. when different understandings are formed from common standards in national legal systems while deepening and clarifying legal regulation.

The universal approach is at risk in the TRIPS-plus era because of the gap between the rich and the poor in developed and developing countries, reflected by problems of technology transfer, digital divide, access to medicines, ecology safety, etc.

Taking into account a certain margin of appreciation that is left in the requirements of TRIPS and other intellectual property treaties, human rights standards, in particular on health care, safe environment, access to knowledge and cultural achievements, freedom of creativity, sustainable development afford an effective legal grounding for the special interests and demands of developing countries. Thus, they can orient themselves at lower standards fixed by international obligations without the necessity to follow the example of the developed countries, which constantly raise the standards of protection and enforcement of intellectual property rights, in particular by increasing the terms of protection, expanding the competence of the authorities to prosecute violations in a public law order. Each state should independently determine the level of compliance of protection with current needs and move to a higher level of protection only if the objectives of the development of economic and social indicators are achieved.

At the same time human rights concern provides flexibility of legal thinking and progressive development of intellectual property regulation. It sets a benchmark for the intellectual property benefits as a common welfare. Developing countries can improve compensation measures and shorten the time for processing compulsory licensing cases by setting up monitoring mechanisms. Developing countries can codify special legal provisions for the protection of genetic resources and systematically protect their genetic resources. Developing countries can classify and protect traditional culture of different nature, either by referring to copyright protection or by establishing a special protection system for special cultural forms.

Thus, it is of high importance to maintain the existing international rules of intellectual property on a multilateralism perception. The international community should follow principles of human rights in resolving conflicts in the domain of intellectual property and should not use the corresponding legal norms as a tool for profit-making by pursuing private interests only. In terms of diplomacy, developing countries can actively seek the help of other countries and international organizations to establish bilateral or multilateral treaties to achieve

cooperation for the technical help in order to establish or improve data bases on technical and patent information.

The study of human rights issues in an important issue of intellectual property rights law and practice at present. The picture of the future international intellectual property landscape is already unfolding, and developing countries must make timely decisions and respond positively. Through effective intellectual property diplomacy and accelerated improvement of legal and policy systems, the intellectual property can become an institutional arrangement that truly drives developing countries to the path of success in solving problems.

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СОВРЕМЕННЫЕ ТЕНДЕНЦИИ КОЛЛИЗИОННОГО РЕГУЛИРОВАНИЯ ИМУЩЕСТВЕННЫХ ОТНОШЕНИЙ СУПРУГОВ В ПРАВЕ ЕВРОПЕЙСКОГО СОЮЗА

А. Ю. Лепешкова[1)], С. М. Ананич[2)]

[1)] Белорусский государственный университет,
пр. Независимости, 4, 220030, Минск, Беларусь, e-mail: lepsa_2001@mail.ru
[2)] Белорусский государственный университет,
пр. Независимости, 4, 220030, Минск, Беларусь, e-mail: ananichsm@bsu.by

Количество браков, заключенных в мире и осложненных иностранным элементом, с течением времени возрастает. В связи с этим, возрастает и необходимость коллизионного регулирования имущественных отношений супругов. Ранее, в Европейском союзе коллизионные нормы, регулирующие режимы имущества супругов, содержались только в национальных законах, однако, с 29 января 2019 года действуют два регламента (регламент Совета (ЕС) 2016/1103 от 24 июня 2016 г. о юрисдикции, применимом праве, признании и исполнении решений по вопросам режимов общей собственности супругов и регламент Совета (ЕС) 2016/1104 от 24 июня 2016 г. о юрисдикции, применимом праве, признании и исполнении решений по вопросам имущественных прав зарегистрированных партнерств), регулирующие вопросы режимов имущества супругов и имущественные последствия зарегистрированных партнерств,