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Сусанна Пашаєва

Інститут права та прав людини
Академії Наук Азербайджану
Баку, Азербайджан

ІННОВАЦІЙНІ ФОРМИ РЕАЛІЗАЦІЇ ЦИВІЛЬНИХ ПРАВОВІДНОСИН В СТРУКТУРІ ЗАХИСТУ ПРАВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ

Анотація. *Цивільні правовідносини за своєю суттю є основою розвитку суспільства. У зв'язку з цим необхідність більш ретельного регулювання відносин між суб'єктами правового поля призводить до необхідності розгляду більш чітко визначеної галузі права. Регулювання права в міжнародній структурі визначається тим, що правові аспекти цивільних правовідносин все частіше проявляються на міжнародному рівні. Тому аналіз міжнародної галузі цивільних правовідносин і становить актуальність проведеного дослідження. Новизна роботи визначається тим, що в більшості випадків основу для розвитку громадянського законодавства складають норми майнового і господарського права. В роботі основною ідеєю є те, що основу цивільних правовідносин в сучасному постіндустріальному суспільстві становлять суб'єкти інформаційної безпеки. Автори до них відносять галузь захисту прав на інтелектуальну власність. У статті показана основа для імплементації законодавчого регулювання в національні законодавства розвинених країн на основі права ЄС і США. Практична реалізація дослідження полягає в гармонізації законодавства та формуванні нової практичної парадигми охорони прав і захисту цивільних правовідносин на основі непорушності захисту інтелектуальної власності.*

Keywords: цивільні правовідносини, регламентація, власність, захист, права.

Susanna Pashaeva

Institute of Law and Human Rights of the
Academy of Sciences of Azerbaijan
Baku, Azerbaijan

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 elaborated 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 in-

ternal 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. They note that the requirements of Article 13 of the Directive concerning the accounting of the violators' income were implemented by the member-states' legislation in a different way. So, some member-states (Slovakia) mind the revenue of the law violators only or as the reimbursement for the illegal income at the calculation of the losses, non-cumulatively though. In the other member-states (FRG, Italy) the transfer of the violator's revenue is applied as an alternative when the violator's revenue exceeds the lost benefit calculated by the subject of the law. In some states (Benelux countries), in case of deliberate violation, the transfer of the income may be condemned as a compliment to the reimbursement of the losses.

As a result of the long-term studies and based on the answers of the experts, the Legal Subcommittee of the European Observatory defined the following main problems of implementing the civil legal proceedings on the issues of the intellectual property violation:

– The reimbursement of losses has no restraining function;

– The complications with the proving the losses (providing the evidence), the lack of the harmonized approaches to the definition of the losses, the lack of the normative volumes of the losses;

– A rather long time of the legal proceedings, the complexity of the legislation and the procedures, the specialized courts are not de facto specialized;

– The imprecise regulation in the legislation of the loss conferment order for the imposition of the moral harm at the violation of the intellectual property rights;

– The lack of experience;

– The issues of the civil legal proceedings regarding intellectual property is not a governmental priority;

– The problems with the consideration of the mediators' responsibility;

– The problems with the infringing goods transit operation;

– The anonymity of the Internet-users. The Internet-piracy (including the mediators gaining the revenues from the advertisement and illegal exchange of the files and the violation of the copyright) is the most understudied sphere. The mistakable is a supposition that the upload of the prohibited contents from the inappropriate sources lays in the sphere of the exceptions in relation to private copying;

– The lack of interest on the part of the police, prosecutor office etc.;

– The criminal ways of protection may only be used as the last means (generally, when there is a threat to the healthcare, for example, counterfeit drugs), the criminal sanctions only exist in theory, the reluctance to apply them;

– The lack of the arbitral procedure on solving the domain disputes. In some states, the registration of the domain names is not governed by the state;

– The reluctance of the courts to ensure complete reimbursement of the judicial expenses if the complainant does not get the complete reimbursement of the declared losses;

– The majority of the population does not consider law violations in the sphere of intellectual property rights protection as illegal activities.

According to the results of Directive 2004/48/EU implementation and considering the revealed problems and further distribution of the piracy and counterfeit in Europe in 2011, the European Commission defined the further plan of actions in the sphere of intellectual property protection in the Message 'The Unified Market for the Intellectual Property Rights' [23], which is being implemented until now.

Among the scope of activities in Europe aimed at the developing of the studied area, one should also mention voluntary national presentations of the intellectual property protection modes, which usually take place at the events and measures of the WIPO and its committees. The example of the latter may be the organization of the anti-counterfeit system. In this sense, interesting is the experience of Spain and Denmark because Spain became the pioneer in the creation of the well-coordinated organizational anti-counterfeit system both at the national level and at the level of the European Union. In Spain, considering the increase in the release of the counterfeit product, in 2000, they created the Interdepartmental Commission for the Fight against the Intellectual Property Rights Violation [24].

The Director General of the Spanish Patent and Trademark Office became a member of this Commission, the main task of which concluded in the coordination of the ministries' activities taking part in the fight against the infringing goods release in Spain, and in the search of the corresponding practical solutions of this problem. This Commission composed exclusively of the state officials was replaced in 2005 by the Interbranch Commission on the Fight against the Violations of the industrial property rights (CAPRI). In 2014, CAPRI was reorganized and got new functions predominantly aimed at establishing the connections with the international organizations fighting against the violations of the industrial property rights, and first of all, it is about the European intellectual property rights violation watchpoint. As the activities of the CAPRI also had to be activated, the methods of its work were supplemented with the creation of the work groups that propose their solutions more often.

In 2003, when Spain presided in the Council of the European Union, it suggested creating the European Monitoring point over the intellectual property rights violation. In 2010, when Spain presided in the Council of the European Union again, the structure and authorities of the European Monitoring point were expended. After its establishment in 2011, OERM took an active part in the activities of five work groups of the Monitoring point. Particularly, based on this system of the work coordination, the OERM took great efforts on the distribution of the information concerning the problem of the counterfeit production and its adverse effect through the preparation of the research, campaigns and the organization of special days.

The actions aimed at the improvement of the rights protection system are also performed by other EU states. Particularly, to increase the effectiveness of intellectual property protection, the Danish Patent and Trademark Office (DKPTO) at the end of 2015, created a special Group for the Rights Protection. The idea to create the Group for the Rights Protection based on the national department was documented in the law adopted on the 24 March 2015 implying the amendments to the laws on the trademarks, the design, patents, and utility models [25]. The Law was adopted with the aspiration to increase the effectiveness of the rights protection of the industrial property. At the same time, the contents of the authorities given to the Group for the Rights Protection supports that the Group will take on the issues of the intellectual property protection in general, not only in the industry.

The Group for the Rights Protection serves an innovative center for the entrepreneurial community, consumers, and representatives of the state authorities. The users may apply with the requests of consulting in their private cases connected with the violation of the industrial property rights violation (disputes connected with the use of the identical and almost identical products, trademarks and samples). The group for the Rights Protection also presents the information and general recommendations on the issues of rights protection. The activities of the Group for the Rights Protection will contribute to the more active use of the unlawful actions of the mechanisms in

the context of regulating the disputes in the sphere of the intellectual property regarding the use of the identical and almost identical products, trademarks and samples. Also, the goal of this work is to increase the number of the complaints against the violators of the intellectual property rights through the preliminary consultations, which will probably lead to the increase in the number of the private consultants (for example, the agents on the intellectual property issues) and police. At the same time, as seen from the example, the activities of the Group for the Rights Protection should contribute to the decrease in the number of court disputes in this category of cases.

The creation of the Group for the Rights Protection allowed uniting all the functions and professional experience as part of one DKPTO division in the sphere of intellectual property protection. It is done with the purpose of forming the optimum base or the agreements, effective and competent work. Notably, the DKPTO currently solves a series of tasks aimed at the increase in rights protection effectiveness. Particularly, the DKPTO performs the functions of the Ministry Network secretariat on the fight against the intellectual property rights violation, takes part in the European Committee on the Monitoring of the Intellectual Property Rights Violation, the development of the policy at the national and international level, as well as on the international forums for the purpose of cooperation.

Notably, for the purposes of the interdepartmental cooperation, there is the Ministry Network on the Fight against the Intellectual Property Right Violation in Denmark. This network was created in 2008 and operates rather effectively. The work of the Ministry Network is supported by the following bodies: State Prosecutor Office on the Investigation of Major Economic and International Crimes; National Police of Denmark; Customs Department of Denmark (SKAT); DKPTO (secretariat of the network); Ministry of Culture; Healthcare and Drugs Department of Denmark; Technical Safety Department of Denmark; the Authority for the Fight against Monopolies and Consumers Rights Protection of Denmark; Veterinary and Food Control Service of Denmark; Department on the Issues of the Entrepreneurial Activities of Denmark; Ministry of Internal Affairs (Commerce Council). As seen from the above-stated, the work of the network is only performed by the state authorities. It allows the participants to quity openly discuss to actively exchange the information. Alongside with it, the network was able to adjust the meaningful dialog with the industrial circles and this cooperation is important and very beneficial. The organizational structure of such a format was agreed by the representatives of the Network and the industrial circles in 2010.

For the purpose of improving the copyright protection, in June 2012, the Minister of Culture of Denmark promulgated eight initiatives aimed at the contributing the development of the creative branches and reduction of the piracy scales on the Internet. These eight initiatives were called ‘the copyright portfolio’. As part of the implementation of such initiatives, two written codes of conduct were developed.

The first code of conduct is concerned with the delivery of judgments on the website blocking based on the copyright violation (first of all, the copyright of the authors, but not limited to it), while the second is aimed at encouraging lawful behavior on the Internet.

CONCLUSION

In the regulation of the legal relations in the sphere of intellectual property and the implementation of the intellectual property rights, the following branch civil law principles are applied:

– The principle of not permitting the dictatorial interference into the personal life – regarding personal non-property rights of intellectual property;

– The principle of not permitting expropriation except for the cases set by the legislation – the implementation of this principle in regard to the intellectual property right object has its own specificity caused by the legal nature of the intellectual property objects, which is reflected both in the national legislation and in the ECHR practice;

– The Freedom-of-Contract Doctrine – the implementation of this principle is applied to the sphere of the intellectual property completely in the process of the intellectual property rights disposal and the implementation of the other deals regarding the objects of the intellectual property rights which complies both with the civility doctrine and with the legal documentation and is supported by the multiple judicial practices;

– The lawful entrepreneurship liberty principle – for the civil relations in the sphere of intellectual property, the implementation of this principle is mediate, caused by the lack of the direct connection between the legal protection, the intellectual property protection, and entrepreneurial activities;

– The principle of the judicial protection of the civil law and interest has a direct impact on the implementation of the intellectual property protection (both personal non-property and property) and has its own peculiarities revealed in the paper;

– The principle of justice, reliability, and reasonability in the sphere of intellectual property, including directly at intellectual property protection.

Considering the wide-spread practice of the law violation in the sphere of intellectual property, it is necessary to document the principle of reliability at the level of special legislation in the sphere of intellectual property.

The specificity of consideration of the court disputes in regard to intellectual property protection is caused by a series of factors, namely:

– The complications arising in the process of the evidence collection and may prove or disapprove the presence of the intellectual property violation;

– The involvement of a state registration authority as the defendant (especially for the industrial property objects);

– The revealing of the source of the intellectual property rights violation;

– The opportunity of applying the parallel protection of the same intellectual property object in a series of cases.

One intellectual property rights object may use patents, trademarks, commercial name and in case of the violation (for example, in case of production of the counterfeit goods) the same rights are violated, which causes the difficulty in the protection. The negative factors for intellectual property protection are also the following:

– The lack of the precise mechanism for the reimbursement of losses and the methods for the calculation of losses;

– The problems with the real estimate of the abilities by the right owners to de facto fulfill the complaints and thus, the reasonability of assertion of claims to the court not only in relation to the law violation termination but also in relation to the recovery of damage or losses and the reimbursement.

At the same time, significant problems arising in the process of the civil law principles implementation in the process of the intellectual property protection are caused not only by the imperfect contents of the legislation or non-observance of the regulatory prescriptions. The factors of exposure are also general law legal consciousness of the population and low level of the legal culture lacking the respect to the intellectual property in general. Thus, an integral component of the reform in the sphere of the intellectual property is the formation of the legal culture and respect to the intellectual property alongside with the private property.

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Susanna Pashaeva
Institute of Law and Human Rights of the Academy of Sciences of Azerbaijan
AZ1073, 115 H. Javid Ave., Azerbaijan, Baku

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