FRONTLINE SOCIAL SCIENCES AND HISTORY JOURNAL
(ISSN – 2752-7018)
VOLUME 04 ISSUE 06 Pages: 39-44
OCLC – 1276789625
Crossref doi Google Scholar WorldCat MENDELEY
FRONTLINE JOURNALS
Publisher: Frontline Journals

Journal Website: https://frontlinejournals.org/journals/index.php/fsshj

Research Article

THE IMPACT OF INTERNATIONAL INTELLECTUAL PROPERTY LAW ON NATIONAL LAW

Submission Date: June 20, 2024, **Accepted Date:** June 25, 2024,
Published Date: June 30, 2024
Crossref doi: https://doi.org/10.37547/social-fsshj-04-06-06

Nabiyev Firuz Khamidovich
Independent researcher of The University of World Economy and Diplomacy, Uzbekistan

Abstract

The article examines the impact of international legal norms in the field of intellectual property on the national legislation. The focus is on analyzing key international treaties, such as the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The mechanisms of adapting national legal systems to the requirements of international standards are explored, including legislative reforms and changes in enforcement practices.

Keywords

International legal norms, intellectual property, national legislation, Paris Convention, Berne Convention, TRIPS Agreement, enforcement practices, legislative reforms, copyright protection, patent law, innovation, economic development.

Introduction

FRONTLINE SOCIAL SCIENCES AND HISTORY JOURNAL
(ISSN – 2752-7018)
VOLUME 04 ISSUE 06 Pages: 39-44
OCLC – 1276789625
Crossref doi Google Scholar WorldCat MENDELEY
FRONTLINE JOURNALS
Publisher: Frontline Journals

The issue of the influence of international law in the field of intellectual property on national legislation is one of the central and most controversial in the theory of international law.

Having analyzed the works of such researchers as V.G. Butkevich, S.V. Chernichenko, P.M. Khizriev [1] we will draw attention to the fact that international and national law in the field of intellectual property, although they are structurally different systems of law, both have a pronounced social character and express the actual needs of society.

K. Bel-Welki notes that "There are several main reasons for the unification and harmonization of law, which include, inter alia:

1) the process of further globalization;

2) differences between national law, which lead to additional costs in cross-border transactions;

3) insufficiency of national law to effectively regulate cross-border relations;

4) the need of law enforcers for more cross-border rules" [2, 85].

R. Sharipov believes that participation in these international agreements helps strengthen the legal framework and stimulates foreign investment. It also emphasizes the need to create effective mechanisms to resolve intellectual property disputes and protect the rights of owners [3, 19].

B. Tursunov argues that the harmonization of national legislation with international standards contributes to the development of an innovative economy and attracting foreign investment. It also emphasizes the need to strengthen the institutional framework for protecting intellectual property rights and raising awareness of them among the public and businesses [4, 71].

Developing this idea of the author, we note the opinion of R.M. Khizriev, who in his work emphasized that "At the same time, in a number of cases, an international legal norm can be a peremptory norm, although in general, unlike the norms of domestic law, international law is characterized by norms of coordinating, not peremptory-binding nature" [5, 23]. We believe that this opinion of the author fully reflects the coordination aspect of the international legal norm in the field of intellectual property.

FRONTLINE SOCIAL SCIENCES AND HISTORY JOURNAL
(ISSN – 2752-7018)
VOLUME 04 ISSUE 06 Pages: 39-44
OCLC – 1276789625
Crossref doi Google Scholar WorldCat MENDELEY
FRONTLINE JOURNALS
Publisher: Frontline Journals

Here we can also agree with the opinion of A.S. Haverdovsky, who noted that "For the fullest realization of the possibilities inherent in legal norms, states may resort to the use of certain types of control, but subject to mutual consent of the subjects of the legal relationship, recorded in an international agreement" [6, 51].

E. Buscaglia argued the following: "The permeability of national borders to international trade and ideas has now increased to such an extent that it has forced national authorities to reconsider the legal basis of intellectual property rights. The Paris and Berne Conventions provided two main doctrines as the legal basis for intellectual property rights. The doctrine known as "territoriality" adheres to this property, rights must be enforced according to the rules of each state. This legal doctrine of "independence" establishes that granting property rights within one state does not other states grant the same rights"[7, 27].

In his scientific study, I. Brovnliet points out that "Between international treaty and domestic law there are two doctrines known as monism and dualism. Monism considers international treaty and domestic law as interrelated parts of a unitary legal system. According to the doctrine of dualism, international treaty and domestic law are two separate and independent legal orders that coexist but differ in their subjects and sources. In order for an international treaty to be invoked and for an international treaty to be used and applied in national courts, a State must perform a specific act of implementation, in which case the rules of the treaty will be applied as part of national law and not as international law"[8, 31].

In turn, A. Crawford explains that "The dualist view 'emphasizes the distinct and independent nature of international and national legal systems' [9, 48]. It views them as "separate legal systems existing side by side" [10, 48]. Thus, under dualism, international law and national law are two separate legal systems. A consequence of this separation is that international law must be "formally incorporated into national law before it enters into force before the enforcement of the courts.

Another consequence of the dualistic view is that "neither legal has the power to create or modify the rules of the other".

A. Crawford explains the dualist view by further stating that: "When international law is applied in

FRONTLINE SOCIAL SCIENCES AND HISTORY JOURNAL
(ISSN – 2752-7018)
VOLUME 04 ISSUE 06 Pages: 39-44
OCLC – 1276789625
Crossref doi Google Scholar WorldCat MENDELEY
FRONTLINE JOURNALS
Publisher: Frontline Journals

whole or in part in a national legal system, it is related to the rules of the domestic law of that legal system. In the event of a conflict of norms between international and national law, the dualist would assume that the court of a State would apply national law" [11].

On the other hand, the monist view "implies that national and international law form one legal order, which should be considered coherent and consistent with each other" [12]

M. Magallona argued that "Public international law and domestic law constitute a 'unified legal system'." A unified legal system implies that "international law can be applied directly within the domestic legal order. In particular, international law is directly enforceable in national courts without any need for incorporation into national law" [13].

However, not all legal systems are purely monistic or dualistic, as some legal systems display elements of both.

In our view, these two doctrines became irrelevant under the post-Uruguay Round order, which sought uniformity of laws as the ideal way to stimulate international trade. This new system established that the granting of intellectual property rights, such as patents, should be on the basis of social norms driven by the need to exchange benefits between society and the innovator. The innovator receives a monopoly return on investment and society benefits from the gradual diffusion of knowledge.

Today, the cooperation of States in the field of intellectual property protection and enforcement is not limited to the preparation and adoption of international treaties. Currently, the creation of various types of model (model, reference) legislation is also a form of international cooperation in this field. It is important to note that such documents can be developed within the framework of the activities of universal international organizations.

A. Smirnov states that "The impact of international legal norms on model legislation for CIS member states on intellectual property, it should be taken into account that such influence is not absolute. This is caused by the "incompleteness of conventional regulation" - a problem arising in the process of using international treaties to unify the norms of private law (including intellectual property)" [14, 78].

FRONTLINE SOCIAL SCIENCES AND HISTORY JOURNAL
(ISSN – 2752-7018)
VOLUME 04 ISSUE 06 Pages: 39-44
OCLC – 1276789625
Crossref doi Google Scholar WorldCat MENDELEY
FRONTLINE JOURNALS
Publisher: Frontline Journals

X. Behrouz characterizes the importance of model legislation by the fact that "one of the most important conditions for ensuring high efficiency and real effectiveness of this type of act is its comprehensive and consistent scientific substantiation, which determines the use of modern lawmaking technologies"[15]. At the same time, A. Bogustov argues that "the problem of model legislation is that in a number of cases, due to its technical and legal characteristics and inconsistency with the socio-economic needs of society development, it is not able to fulfill the role of normative and orienting for the formation and improvement of national legal systems" [16, 102].

Based on the above, it can be concluded that the content of the model legislation on intellectual property does not have a strictly deterministic legal function, because due to its technical-legal peculiarities and inconsistency with the socio-economic needs of society, it is not able to fulfill the role of a legal standard for the creation and improvement of national legislation in the field of intellectual property.

REFERENCES

1. Черниченко С.В. Вопрос о соотношении международного и внутригосударственного права как правовых систем // Правоведение. 2009. № 1. С. 39.; Буткевич В.Г. Теоретические основы взаимодействия международного и внутригосударственного права: Автореф. дис. д-ра юрид. наук. Киев, 1980. С. 29—30.; Хизриев Р.М. Соотношение норм международного и внутригосударственного права: Монография. Махачкала: ИПЦ ДГУ, 2005. С. 23.
2. Boele-Woelki K. Unifying and harmonising substantive law and the role of conflict of laws. Leiden, 2010. P. 85.
3. Шарипов Р.М. «Международные соглашения по охране интеллектуальной собственности: роль и значение для Узбекистана», Национальное издательство «Ўзбекистон» 2019, С. 19
4. Турсунов Б.А. «Гармонизация законодательства Узбекистана с международными стандартами в области интеллектуальной собственности»

FRONTLINE SOCIAL SCIENCES AND HISTORY JOURNAL
(ISSN – 2752-7018)
VOLUME 04 ISSUE 06 Pages: 39-44
OCLC – 1276789625
Crossref doi Google Scholar WorldCat MENDELEY
FRONTLINE JOURNALS
Publisher: Frontline Journals

Юридическое издательство "Адолат, 2021, С. 71

5. Хизриев Р.М. Соотношение норм международного и внутригосударственного права: Монография. Махачкала: ИПЦ ДГУ, 2005. С. 23.

6. Гавердовский А.С. Имплементация норм международного права. Киев, 1980. С. 51-54.

7. Edgardo Buscaglia. Intellectual Property Law: Theory vs. Implementation. Columbia University, 2005, VOLUME XII, ISSUE 1. P 27

8. Brownlie Ian, Principles of Public International Law, 5th edition (Clarendon: Oxford University Press, 1998), p. 31-33.

9. Ames Crawford, Brownlie's principles of public international law (OUP, 8th ed., 2012). supra note 2, at 48.

10. Ferreira G. & Ferreira-Snyman A., The Incorporation of Public International Law into Municipal Law and Regional Law against the Background of the Dichotomy between Monism and Dualism, 17 POTCHEFSTROOM ELEC. L.J. 1470, 1471 (2014)

11. Ames Crawford, Brownlie's principles of public international law (OUP, 8th ed., 2012). supra note 2, at 48.

12. Stephen C. Neff, A Short History of International Law, in Malcolm Evans (ed.), International law 30 (2nd ed., 2006).

13. Magallona M., The supreme court and international law: problems and approaches. 2 (2010); Sep. Op. of J. Vitug in Government of the United States of America v. Purganan, G.R. No. 148571 (Resolution), Dec. 17, 2002

14. Смирнов А. Международное частное право. Вильнюс: ЕГУ, 2010. 78 с.

15. Бехруз Х. Сравнительное правоведение. Одесса: Фенікс; М.: ТрансЛит, 2008. 504 с.

16. Богустов А.А.Проблемы взаимодействия международных договоров и модельного законодательства об интеллектуальной собственности для государств-участников СНГ. Вестник Нижегородского университета им. Н.И. Лобачевского, 2021, № 2, с. 102