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CONCEPTUAL FRAMEWORKS OF PUBLIC ADMINISTRATION IN THE FIELD OF INTELLECTUAL PROPERTY IN THE EUROPEAN UNION AND EUROPEAN COMMUNITIES

The peculiarity of procedures of public administration in the field of intellectual property in the countries of the European Union is considered. The conceptual foundations of the establishment of procedures for public administration in the field of intellectual property in the countries of the European Union are discussed. The pluralism of approaches to the definition of procedures for public administration in the field of intellectual property in the countries of the European Union is considered. The process of improving the procedures of public administration in the field of intellectual property in the countries of the European Union is analyzed. The normative and legal basis of procedures of public administration in the field of intellectual property in the countries of the European Union is presented. An analysis of the acts of the European Court of Justice regarding public administration in the field of intellectual property has been made. The conclusion is made about the relevance of the research on the problems of public administration in the field of intellectual property in the countries of the European Union.

Key words: *public administration; subject public administration; procedures of public administration; intellectual property; sphere of intellectual property.*

Розглянуто своєрідність процедур публічного адміністрування у сфері інтелектуальної власності в країнах Європейського Союзу. Розкрито концептуальні засади становлення процедур публічного адміністрування у сфері інтелектуальної власності в країнах Європейського Союзу. Проаналізовано процес їх удосконалення. Наведено нормативно-правову базу процедур публічного адміністрування у сфері інтелектуальної власності в країнах Європейського Союзу. Проаналізовано акти Суду європейських співтовариств щодо публічного адміністрування у сфері інтелектуальної власності.

Ключові слова: *публічне адміністрування; суб'єкт публічного адміністрування; процедури публічного адміністрування; інтелектуальна власність; сфера інтелектуальної власності.*

Problem formulation. Taking to account that Ukraine proclaimed one of the strategic directions of external economic policy integration to European Union (further is EU), modern acceleration of adaptation of domestic administrative procedures to administrative EU in the field of intellectual property takes on the special significance in connection with implementation of international obligations of Ukraine and tasks of Agreement about partnership and collaboration between Ukraine and EU, Law of Ukraine

"About the National program of adaptation legislations of Ukraine to legislation of EU" and Agreement between Ukraine and EU about a scientific and technological collaboration. On the prospects of development of relations between Ukraine and EU in this sphere the mine-out was notably reflected EU the European policy of neighbourhood, East partnership, Plan of actions "Ukraine is EU", negotiations in relation to the conclusion of Treaty about an association and Agreements about a free trade zone, and also a permanent dialog is initiator European Commission between Ukraine and EU in relation to defence of intellectual ownership rights.

Analysis of recent researches and publications. Every state aims foremost to provide rights for national legal owners that on the whole conflicts with aims and principles of unique market creation. Therefore long time adjusting of public relations in the field of intellectual property remained in capacity of states-members of EU, and collaboration in the field of intellectual property was not included in the row of foreground jobs European Union. The example of our neighbours testifies to his positive influence – countries of Eastern Europe, which purchased membership in EU (Poland, Czech Republic, Slovakia, countries of Baltic, Hungary). For these states an orientation on the right of EU was the important factor of development of national legislation, taking into account circumstance that from many aspects a right of intellectual ownership of EU is LED the proper norms at the level of adjusting of Worldwide organization of intellectual to the proper (further – VOIV), and on occasion – and development of right of intellectual ownership of the USA. The standards of guard of intellectual property of EU presently in Europe are very important and during perfection of the national systems of guard, and during the evaluation of efficiency of realization of rights [*1,* 207].

External influence on standardization of procedures of public administration in the field of intellectual property and facilities of their realization predetermines participating of most of the states-members and EU in the international agreements of VOIV and other agreements. States-members must execute duties in accordance with Agreement of World Organization of Trade (further –- WOT) about the trade aspects of intellectual property rights (further – TAIPR) rights with remarks, that the sphere of intellectual property belongs to general jurisdiction of EU and states-members, and it can be accepted the proper decisions both EU and states-members.

Purpose of the article is to analyse the process of improving the procedures of public administration in the field of intellectual property in the countries of the European Union.

Main material. Conceptual principles of becoming and development of procedures of public administration in the field of intellectual property in the countries of EU took place gradually. Above all things, it is needed it was to overcome divergences of approaches to the problem from the side of countries of Britannic Concord and countries of continental Europe, which, true, carried mainly theoretical character. The countries of Britannic Concord see in an absolute title a positive right, which gets power that physical or legal person which undertakes the economic use of work or invention (as privileges of exceptional type, limited in time, – its "feudal" approach however). This person as usually is an author or inventor, but there is possibility of origin of right directly at the level of guidance by an enterprise which will use work or invention. Under act of analogy with the right of ownership on the personal and immovable chattels the system which is used in continental Europe in same queue emphasizes absolute nature of right: speech goes about a material right which at theoretical level

is incarnated in a right on prohibition the third persons to use work or invention without the consent of proprietor of rights on him [*2,* 294]. The countries of Britannic Concord created almost fully oriented to defence of economic rights at the use of copyrights system, while the European systems do a greater accent on immaterial rights for the author of literary or artistic work. Exactly coming from this interpretation of concept of property in Germany a doctrine gave birth rights on immaterial assets, which make the third category of objects of right of ownership together with the personal and immovable chattels [*3,* 381]. Consequently, it is necessary it was to enter the idea of localization, snap to the certain place.

It touches contiguous rights, certain norms, recently developed under act of norms of copyright also. In that time, a necessity of parallel defence is burdensome enough for the proprietors of industrial ownership, in relation to which acquisition of rights more frequent all requires an official publication and bringing in a state register, which, in same queue, become possible only after difficult and uncheap administrative procedure, rights [*4,* 112].

The international system of public administration procedures in the field of intellectual property is based today on two conventions concluded at the end of the 19th century: the Paris Convention for the Protection of Industrial Property of March 20, 1883 (Paris Convention) and the Berne Convention for the Protection of Literary Works and Works of Art from September 9 1886 (Bern Convention). These two Conventions, initially signed by several industrialized countries, played a fundamental role in the further development of legal institutions.

Further improvement of the procedures for public administration in the field of intellectual property took place after the adoption of the Conventions due to their revisions that took place over the coming years. In general, there is a degree of coexistence between different versions of acts, so that within the two unions of states (Paris and Berne), one and the same state can be guided by the earlier version of the Convention ratified by it, which remains in force for the states which have also ratified it, and in that time, in relations with other states, to be guided by later editions, if they are also ratified by both parties. It should be noted that each subsequent act is more perfect than the previous, in particular, with respect to the general level of legal protection. The latest edition of the acts in force in both Conventions and joined by most European states is the Stockholm Act of July 14, 1967, to the Paris Convention and the Paris Act of 1971 to the Berne Convention.

Quite often these conventions take the form of unions. As in the case of the Paris and Berne Unions, they combine groups of countries that can already be linked by different and consistent editions of one convention. In other cases, and this is typical for recent times, they can take the form of classical bargains [*5,* 136]. The list of normative acts that, together with the Paris and Bern conventions, define internationally the basic procedures for public administration in the field of intellectual property include: Madrid agreement of 1891 on sanctions for false information or such as to mislead consumers as to the place of origin of goods, the Rome Convention of 1961 on the Protection of the Rights of Performers, Producers of Phonograms and Broadcasting Organizations, the Geneva Convention of 1971 on the Protection of Producers of Phonograms from the illicit reproduction of their phonograms (the Convention on phonograms), the 1974 Brussels Convention on the Distribution of Carrier Programs for Satellite Signals (Satellite Convention), the Nairobi Treaty of 1981 on the Protection of the Olympic Symbol, The Geneva agreement in 1989 concerning the International Registra-

tion of Audio-visual Works (Film Treaty Treaty), Geneva Treaty of 1994 on the Right to a Trademark (TLT), the 1996 Geneva Copyright Treaty, the Geneva Treaty of 1996 on Performances and Phonograms, and the Geneva Treaty of Patent Law of 2000 (PLT) The list of conventions that create the international system of public administration for filing applications or registering intellectual property rights include: The Madrid Union of 1891, established by the Madrid Agreement of 1891 on the International Registration of Trademarks and the Madrid Protocol of 1989 on the International Registration of Trademarks, The Lisbon Union for the Protection of Names of Goods of Origin and their International Registration, the Hague Union for the International Registration of Industrial Designs, the International Union for the Protection of Plant Varieties (UROV), the Washington Union (or the PCT Union), the Budapest Union of 1977 on the International Recognition of the Deposit of Microorganisms for Purposes patent procedure. The list of the conventions that establish the international classification system include: The Nice Union in 1957 concerning the international classification of goods and services for the registration of trademarks, Locarno Union in 1968, which establishes an international classification of industrial designs, the Strasbourg Union and the Vienna Union in 1973 concerning the international classification of figurative elements of a trademark.

The above-mentioned international unified agencies created after the adoption of the Paris and the Berne Conventions played a significant historical role until after the Second World War, when WIPO came to replace them. It was the germ of an international organization that operated in the Swiss Federal Administration in Berne and provided management of the Paris and Bern Convention, as well as individual treaties that were concluded under these two conventions. WIPO is a specialized UN agency located in Geneva and, above all, an international forum where world-wide agreements are usually discussed, concluded in the field of intellectual property. The WIPO Secretariat provides management tools for directly interested businesses, such the Madrid Union (or the PCT Union), to mention only the most important ones.

The organization also created the Center for Arbitration and Mediation for Disputes in the Sphere of Intellectual Property; the activity of this center is enjoying everincreasing success. WIPO is a very independent organization in financial terms: contributions from Member States make up only 5–6 % of its annual revenues. WIPO finances its activities through the provision of services for the private sector. This is mainly the deposition of international patent applications, the international registration of trademarks and industrial designs, as well as the payment for arbitration services. Another organization that performs important functions of public administration in the field of intellectual property in EU countries is the WOT, which was established in 1995, replacing the General Agreement on Tariffs and Trade (GATT). All member countries of the European Union, as well as the European Community, are members of the organization. The WOT has gained great significance in the area of intellectual property in connection with the adoption of the TRIPS Agreement.

The annex to the Marrakesh Agreement is the TRIPS Agreement. It can be considered a set of norms regulating the sphere of trade and investing in ideas and creativity. These rules provide for procedures and methods for protecting intellectual property in the trade area. The TRIPS Agreement addresses five important issues: the principles of the trading system and international agreements on intellectual property, the minimum level

of protection of intellectual property rights, measures to enforce these norms, the procedure for resolving disputes in the field of intellectual property, as well as transitional measures during the implementation of systems.

The provisions of the third part of the TRIPS Agreement oblige States to act in such a way that their legislation provides for enforcement of intellectual property rights. The TRIPS Agreement describes in detail the legal regulation, including rules on obtaining evidence and evidence, interim and protective measures, injunctions and injunctions, damages and other sanctions [*6,* 157]. The courts should have the power to order the removal of trade turnover or destruction of pirated products or counterfeiting. Intentional manufacturing counterfeit or pirated goods for commercial use must be considered as a criminal offense, the customs authorities should help prevent importation of pirated goods or fakes.

The six founding countries (Germany, Belgium, France, Italy, Luxembourg and the Netherlands), by concluding in Rome the Treaty of 25 March 1957 on the founding of the European Economic Community [*7,* 211], carefully avoided the provisions that would give the newly created institutions the authority to administer intellectual property. Although the first objective of the Treaty was to establish a "common market" and, as is known, in the functioning of any market, the intellectual property rights play an essential role, the founders of the European Economic Community considered it inappropriate to duplicate the work of the WIPO Canter of International Cooperation already existing in WIPO and, in parallel, Brussels has a new negotiating canter that would carry the risk of redistribution of power between national administrative authorities and supranational institutions, even under new fursnism decision-making rules for the application of which seemed uncertain at the time. This position has been clearly reflected in the text of two articles of the Treaty establishing the EU, which have not undergone any changes during the repeated revision of the Treaty since 1958 (Single European Act, Maastricht Treaty, Amsterdam Treaty and Nice Treaty).

The principle was the question of "measures equivalent to quantitative restrictions on imports or exports." Their definition was given in 1974 by the Court of Justice of the European Communities in one of its decisions, which was then repeatedly affirmed in the following judgments: "any legislative act of a Member State which may directly or indirectly, now or in the future, create an obstacle to the internal trade, should be considered as a measure equivalent to a quantitative restriction" [*8,* 196]. This concept consists of two elements: first of all, it refers to state measures or actions of state institutions: provisions of normative acts, decisions of national courts, administrative measures, documents issued by state authorities or actions of state institutions; the measure should lead to consequences that restrict trade in the territory of the EU.

The patent project, which the ministers of the six member states took very seriously in 1962, eventually defeated the political causes of the failed accession negotiations with the United Kingdom. Too broadly, the common market was at stake and the Court of Justice of the European Communities found this problem. In his decision of April 8, 1971, he first formulated the doctrine of exhaustion of rights in the territory of the Community, a doctrine that eliminated the potential threat to the common market, which contained uncoordinated interpretations of Art. 30. In the matter of patents and signs, this doctrine has been introduced and developed in subsequent judgments of the Court of the European Communities. The court was guided by such considerations: national legislation that allows the holder to resist imports from other member countries of goods that would violate his intellectual property rights in the territory of his own country refers precisely to Art. 28, since this legislation

leads to obstacles to the free movement of goods. However, such legislation is justified by the protection of intellectual property, and therefore it is possible to apply an exception to Art. 30. In addition, in order to take advantage of this exception, it must be proved that the ban on imports by national legislation was a necessary measure to protect the rights that constitute the "specific subject" of intellectual property rights discussed [*9,* 327].

It should be emphasized that the existence of parallel rights is not a necessary condition for the exhaustion of rights, but it is one of the special situations in which it can be determined. The basic and necessary condition is the consent of the owner for the first sale of goods in one of the countries of the Community. This doctrine has shown that from a legal point of view it is impossible to realize the aspiration of the participating countries to keep intellectual property issues within the framework of a particular country or intergovernmental relations, completely excluding the competence of the Community [*10,* 73].

In the economic space, where the common market, which later became the EU internal market, gradually formed, the requirement for enterprises to differentiate significantly from one country to another and to rationalize the procedure for obtaining and challenging parallel rights became very tangible. Initially, they tried to meet this need by concluding conventions between Member States. The draft conventions of 1958–1962 which were mentioned above belong to this category of documents. They lacked a clear legal basis in the Treaty establishing the European Union, justifying the need to promote the objectives of the Treaty establishing the European Union, in particular, "to eliminate the possibility of distorting the conditions of competition arising from the territorial nature of national intellectual property rights systems", "eliminate obstacles on the way of free movement of goods". None of these projects were approved. The idea of resorting to the same legal instrument appeared again in 1968 in relation to the Community patent project. This time the initiative has been successful from the very beginning, and EU member states – by that time they were 9 – signed on December 15, 1975, the Luxembourg Convention on the Issue of European Patents. However, this Convention came into force with a delay; it was revised and supplemented by the Luxembourg Agreement of December 15, 1989 on European patents, signed by the twelve countries that were at that time the Community. In each of its two versions, the convention provided certain powers to the European institutions not provided for in the EU Treaty, which, in order to enter into force, should have been ratified by all member states. The Convention has not entered into force because of the lack of ratification by the signatory States. For a long time, the Convention was defined as a document of "tertiary communitarian law", that is, as a right that does not come directly from either the Treaty on the founding of the European Union or the legislative acts adopted on the basis of the Treaty establishing the European Union. She followed these two categories of law and belongs to the documents, which are called "the Community's legal property".

Thus, the use of such a tool has not become widespread. This fact is due to a number of circumstances: the requirement for unanimous decision-making in the negotiations, where the Commission did not have the right to initiate, and the European Parliament – the political right to control; the protracted nature of the national ratification procedures, which made the Community expansion process ahead of ratification, and the texts became obsolete before they became effective; constitutional constraints; the need for ratification to all member states for entry into force. EU member states are well aware of all these difficulties, but by the end of 80-s of XX century. The desire to maintain le-

gislative autonomy in matters of intellectual property prevailed over all other considerations. To overcome this situation, the Commission decided in the 1970s to apply the Community legal instrument that existed from the outset, but has not yet revealed its full potential. It stated that "The Council, acting on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall, by unanimous decision, adopt directives on the approximation of the regulatory and administrative measures of the Member States which have a direct impact on the establishment and functioning of the common market" [*11*, 254].

In 1973 the Commission indicated its intention to use this legal basis for the preparation of directives on the harmonization of substantive law applied to national trademarks. Negotiations in the Council were delayed, until 1985. The Single European Act was not supplemented by another provision, which provides for a more flexible procedure for approving legislative approximation measures. The Commission, having exercised its right of initiative, changed the legal basis of its proposal, and the Council was able to adopt it on December 21, 1988.

Meanwhile, the Commission presented, based on this new legal framework, other proposals that related to other intellectual property rights. Since then, the practice of adopting directives on the harmonization of national substantive law in matters of protection certificates has not raised any disputes anymore. However, the Community l suicide v. Council (1995), in which Spain demanded the invalidation of the regulation awmaking right was finally recognized by the Member States only after Spain's on the introduction of an additional certificate for medicinal products. There are two large groups of directives: directives that fully and systematically regulate the substantive law applicable to a particular type of intellectual property rights and regulations that regulate certain aspects of the protection of a particular type of rights, where existing differences in the approach create a risk of harming the functioning of the internal market. Often such regulations are adopted under the influence of cultural and technological changes that require the adaptation of existing legislative norms or the introduction of new legislative acts. This approach has been respected in the fields of copyright and patent law [*12*, 5].

Since the 1990s, the application of the EU harmonization legislation has significantly changed the relationship between European and national intellectual property law. Now, whenever divergences between national laws threaten the proper functioning of the internal market, the Commission has the power to initiate the examination of harmonization directives in the framework of the joint decision-making process, that is, its joint adoption by the European Parliament and the Council. The Directives bring together and harmonize the provisions of laws that apply to intellectual property rights, which, in turn, are retained on national territory.

Conclusions and further researches directions. Thus, in the EU legal system compared with such leading branches of EU law as customs, institutional, competition law, the formation of intellectual property rights as a special field of law is still taking place. Therefore, the study of the peculiarities of public administration in the field of intellectual property in EU countries allows us to identify and outline the immediate prospects for the further development of domestic public administration procedures in this area. It is important that, as samples and possible models for the further reformation of the domestic system of public administration in the field of intellectual property, the best achievements of the European le-

gal science, the successful and universal legal categories and designs that take into account both the specificity of the domestic legal tradition, as well as the and interests of the main subject of intellectual creative activity – a person who is the source of all.

Unfortunately, in today's Ukraine, the protection and protection of the intellectual product continues to be rather conditional. In a modern economy, the product may not only be a material product. People also produce ideas, information products, artistic objects and new technologies. An intelligent product requires a lot of investment and effort, but it's much easier to steal than the usual thing. In the medium to long term, it will also encourage Ukrainian authors, inventors and investors, and contribute to the development of the Ukrainian economy.

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