

ANALYSIS OF THE ACTIVITY OF THE REPUBLIC OF UZBEKISTAN ON IMPLEMENTATION OF THE NORMS OF INTERNATIONAL LAW IN THE FIELD OF INTELLECTUAL PROPERTY

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ABSTRACT

The main purpose of the implementation of international legal norms for each national legal system, in particular in the field of intellectual property is to create the necessary legal conditions conducive to the implementation of international obligations.

Both in the domestic and foreign policy of the Republic of Uzbekistan there is an aspiration to bring the norms and principles of the national system of law in the field of intellectual property to the level of similar international norms.

Keywords: *intellectual property, project, right, contract, international law.*

АННОТАЦИЯ

Основной целью имплементации международно-правовых норм для каждой национальной правовой системы, в частности в сфере интеллектуальной собственности, является создание необходимых правовых условий, способствующих выполнению международных обязательств.

Как во внутренней, так и во внешней политике Республики Узбекистан наблюдается стремление довести нормы и принципы национальной системы права в сфере интеллектуальной собственности до уровня аналогичных международных норм.

Ключевые слова: *интеллектуальная собственность, проект, право, договор, международное право.*

Implementation of the norms of international law in the field of intellectual property is a complex and multidimensional phenomenon, which realises the implementation of international obligations in the domestic legal system of the state. Thus, the activity of ensuring the implementation of certain provisions of humanitarian nature is related to the coordination of authorised authorities in the field of intellectual property. The mechanism of implementation is related to the transformation and adaptation of norms of one legal system to another. The transformation of norms adopted from another legal order of rules has its consequence: the transition from the international legal system to the national one is primarily associated with changes in the content of the legal prescription of norms in the field of intellectual property.

International treaties to which the Republic of Uzbekistan is a member apply to relations connected with the regulation of the exclusive right to the results of intellectual activity and related means of individualisation, except in cases where an international treaty is followed by the need to adopt a domestic act (indirect unification). The essence of indirect unification is that States parties to such an international treaty are obliged to establish in their domestic legislation a more or less detailed legal regime established in this Treaty.

Article 3 of the Law of the Republic of Uzbekistan "On international treaties of the Republic of Uzbekistan" dated 06.02.2019 No. ZRU-518 establishes that "International treaties of the Republic of Uzbekistan, along with generally recognised principles and norms of international law, are an integral part of the legal system of the Republic of Uzbekistan"¹.

It is important to note that the Decree of the Cabinet of Ministers of the Republic of Uzbekistan "On the procedure for the preparation of draft international treaties and the fulfilment of the obligations of the Republic of Uzbekistan under international treaties" of 12 December 2000 No. 473 is one of the main by-laws for the implementation of the above norm.

The legal-scientific practice and theory distinguishes a number of methods of implementation of international legal principles and norms in the national legislative system. Developing this idea, let us turn to the opinion of M. I. Abdulaev, who notes that "To incorporate international legal norms into domestic law, their harmonisation, the legislator takes a number of measures. They are quite diverse. In the legal literature they are called: 1) reference; 2) reception; 3) unification; 4) transformation; 5) creation of a special legal regime; 6) cancellation of domestic acts that contradict international obligations"².

It should be noted here that in case of non-compliance by States with international obligations, implementation loses its effectiveness, which immediately affects the international legal regulation itself. For this reason, there is a timely need to create conditions for the use of various legal means, which then form a specific mechanism for the implementation of international intellectual property law norms in the national legislation of States.

International legal regulation, as I.I. Lukashuk correctly notes "includes not only the creation of norms, but also their implementation, in other words, the law-making

¹ <https://lex.uz/docs/4193763>

² Абдулаев М. И. Согласование внутригосударственного права международным (теоретические аспекты) // Правоведение. - 1993. - № 2. - С. 49.

and law-enforcement phase"³. At the same time, the implementation of the norms of international law is a process no less complex and time-consuming than their creation, and it is on this process that the ultimate effectiveness of international law depends.

But M.M. Karimov gives a more extensive notion, pointing out in his work that "The implementation of international legal norms differs significantly from the implementation of norms of national law. First of all, the differences are caused by the subject composition of both legal systems. Individuals and legal entities subordinated to the national legal order form a horizontal legal order with a central body of state power at its head. The subjects of international law traditionally include sovereign equal states and international intergovernmental organisations, nations and peoples struggling for self-determination, and state-like entities. They all form a horizontal order. Despite the presence of some supranational aspects, it is decentralised. Secondly, the implementation of the norms of national law consists mainly in the implementation of organisational and operational measures by public authorities, i.e. it is carried out through the internal institutional and legal mechanism. The implementation of the norms of international law requires the adoption of measures both at the international and national levels"⁴.

A.V. Nikolaenko also adheres to this position, noting in his study the following important details: "The problem of studying the implementation of international law norms in national legal systems is certainly relevant, which is explained by the controversy of theoretical and legislative provisions regarding the mechanism of recognition of universally recognised principles and norms of international law, norms of international treaties in the domestic legal system and, as a result, the possibility of their application in the territory of a particular state. The concept of implementation is very meaningful and includes the whole diverse process of realisation of the goals of international norms by States. The main components of this process are: the expression of a State's consent to be bound by an international treaty and then the application of the rules of such a treaty in the framework of international or domestic law with its practical implementation in the future. In many cases, implementation is carried out by subjects of international law, using the means and methods of foreign policy, namely international legal norms, such as those laid down, for example, in the UN Charter"⁵.

³ Лукашук И.И. Международно-правовое регулирование международных отношений (системный подход). Москва: Международные отношения, 1975. С. 124

⁴ Каримов М.М. Современные подходы к определению понятия «имплементация международно-правовых норм». URL: <http://www.lib.krsu.edu.kg/uploads/files/public/2030.pdf>

⁵ Николаенко А.В. Понятие имплементации в системе права // «Концепции развития института прав человека в условиях глобализации современного права и политики». — сборник научных трудов по материалам международного научно-практического круглого стола. Ответственный редактор: Н.Н. Кулешова. - 2016. - С. 187.

Supporting the above-mentioned positions, we believe that it is the development of theoretical and methodological basis for the study of the process of implementation of the norms of international law in the field of intellectual property in the national legislation, will provide a comprehensive basis for improving the mechanism of implementation of the above-mentioned norms.

In this regard, it is important to note that the legislative power of the Republic of Uzbekistan has determined that the norms of international treaties on the protection of intellectual property are implemented through the adoption of a domestic act. The legislative practice of Uzbekistan shows that there are no norms obliging to implement the provisions of ratified international treaties, the exception being those rules that recognise the priority of international treaties.

Accordingly, there are international and national methods of applying the rules of international law. Both methods are interrelated. In both the central position is occupied by the state.

"The international method is implemented in the activities of states on the world stage, as well as in the activities of international bodies and organisations created by them. The national method finds expression in the domestic activities necessary for the implementation of the norms of international law, i.e. in the implementation of these norms"⁶.

When it comes to the peculiarities of the mechanism of implementation of international law norms, we can agree with the opinion of R.A. Kalamkarian, who states that "The mechanism of implementation of international law norms governing intellectual property objects is a set of normative and organisational-legal means that are used by subjects of international law at the international and national levels in order to implement the norms. Organisational-legal means of ensuring the implementation of international law at the international level exist in certain forms, which can be classified into three groups: 1) international procedural legal means of implementing international law; 2) international institutional legal means of implementing international law; 3) international legal means of implementing international law applied by a state individually or jointly with other states parties to international treaties. The main ways of implementation are incorporation, general or private reference, adaptation, transformation"⁷.

⁶ Международное право. Общая часть: учеб. для студентов юрид. фак. и вузов / И.И. Лукашук; Рос. акад. наук, Ин-т государства и права, Академ. правовой ун-т. — Изд. 3-е, перераб. и доп. — М.: Волтерс Клувер, 2005 С.119

⁷ Каламкарян Р.А. Международно-правовое значение включенности РФ в дело обеспечения верховенства права в системе международных отношений // Актуальные проблемы современного международного права: материалы XII ежегодной международной науч.-практ. конф., посвященной памяти проф. И.П. Блищенко (Москва, 12–13 апреля 2014 г.) : в 2 ч. Ч. 1 / отв. ред. А.Х. Абашидзе. - М.: РУДН, 2015. - С. 46.

A.S. Haverdovsky states that "the concept of implementation is one of the most widespread theories of law, mediating a set of activities aimed at recognising the legal force and organisational support for the implementation of international legal norms within the state"⁸. Indeed, implementation is the most important component of the effectiveness of international and domestic law.

Considering the above definition in the context of the problem of implementation of international intellectual property law norms, it should be noted that it does not cover the whole range of legal relations arising from the implementation of these norms at the international level. This observation refers primarily to the role of the state as a subject of international law in this process.

Д. Рauschning, studying the issue of application of international law norms in national legislation, points out that "there are conditions for direct application: 1) the norms of the treaty must be self-executing, 2) they must be valid norms of international law"⁹.

G.V. Ignatenko mentioned in his works that "The problem of direct application of the provisions of international treaties is one of the most complex in the interaction of international and national law. The theory of international law pays special attention to it. For a long time there have been disputes about which international treaties (their individual provisions) and under what conditions can be directly applied in the legal systems of States by judicial and other bodies in resolving specific cases"¹⁰.

Such forms of implementation as incorporation, adaptation, transformation, unification, etc. are used to give the norms of international law in the field of intellectual property the force of domestic action.

U.M. Mamadamonov, considering this issue, wrote that "The domestic mechanism of implementation is the final process of implementation of international legal norms into national legislation. The achievement of the final goal of implementing international legal norms into national legislation depends on the effectiveness of the domestic mechanism. The effectiveness of the domestic mechanism is also based on the timely activation of the organisational and legal

⁸ Гавердовский А.С. Имплементация норм международного права. Киев, 1980. С. 62; Буткевич В.Г. Соотношение внутригосударственного и международного права. Киев, 1981. С. 257; Лукашук И.И. Нормы международного права в правовой системе России. М., 1997. С. 12; Абдулаев М.И. Согласование внутригосударственного права с международным (теоретические аспекты) // Правоведение. - 1993. - № 2. - С. 49.

⁹ Раушнинг Д. Применение норм международного публичного права в рамках национальной правовой системы // Российский ежегодник международного права. 1998–1999. СПб., 1999. С. 281.

¹⁰ Игнатенко Г.В. Взаимодействие внутригосударственного и международного права: Учебное пособие. Свердловск, 1981. С. 17—31; Карандашов И.И. Непосредственное действие норм международных договоров в правовой системе Российской Федерации: Дис. канд. юрид. наук. СПб, 2013.

means existing in national legislation, in the process of which certain legal relations are formed within the domestic legal order. The basis for the emergence of these legal relations are international obligations undertaken by the State as a subject of international law"¹¹.

Based on the opinions of the above-mentioned researchers, the following definition can be given: "The mechanism of implementation of international legal norms in the field of intellectual property is a set of national legal and organisational means applied by a state party to international treaties in the field of intellectual property for the purpose of comprehensive, timely and full implementation of the obligations undertaken in accordance with these international treaties."

The well-known scientist I. I. Lukashuk argued that "Due to the lack of clarity in normative legal documents on the issue of direct effect in the scientific literature there is an active discussion. Doctrine often expresses different, but sometimes comparable, opinions on principle points. In order for a rule of international law to be applicable as part of the law of a country, it must be capable of doing so, or, as is commonly said, self-executing. It must be formulated in such a way that it can be applied directly and does not need the issuance of a domestic act specifying it"¹².

If we compare the experience of developed democratic countries, their constitutions state that the generally recognised principles and norms of international law form part of national law (including constitutional law), and in case of discrepancies with the norms of national legislation have priority over them. Article 55 of the French Constitution of 1958 stipulates: "Treaties or agreements duly ratified or approved shall have a force greater than domestic laws..."¹³. Similar rulings are known to the legal systems of other states. The Basic Law of the Federal Republic of Germany recognises "inviolable and inalienable human rights as the foundation of every human community, peace and justice in the world" (Art. 1.2). Moreover, according to Article 25 of the Basic Law of the Federal Republic of Germany: "The universal rules of international law are an integral part of the law of the Federation. They take precedence over laws and directly give rise to rights and duties for the inhabitants of the federal territory".

The interaction of two normative formations - national and international law - loses its functional character when international law actually penetrates into the national legal system. This phenomenon occurs due to the fact that the result of the action of any international normative-legal act is the achievement of a certain degree

¹¹ Мамадамонов У.М. «Влияние права всемирной торговой организации на национальное законодательство Республики Таджикистан» диссертация на соискание ученой степени кандидата юридических наук по специальности: 12.00.10 – Международное право; европейское право (юридические науки). - Д., 2021. - С. 70

¹² Лукашук И. И. Нормы международного права в правовой системе России. М., 1997. С. 13

¹³ https://www.conseilconstitutionnel.fr/sites/files/as/root/bank_mm/constitution_russe_version_aout2009.pdf

of regulation of any relations arising between certain subjects of the domestic system (international legal regulation of human rights issues, the procedure for the conclusion and execution of foreign economic transactions, protection of rights to intellectual property objects, etc.).

Our position on this issue agrees with the opinion of V.V. Gavrilov. In accordance with the theory of implementation, the essence is not the transfer of international law norms into the norms of the national legal order, but the application of the former within a given state with the sanction of the latter. Where domestic law authorises the domestic application of the rules of international treaties, the problem of so-called self-executing and non-self-executing treaties arises"¹⁴.

The status of international treaties in the constitutions of some states is placed on an equal footing with national legislation, and sometimes has a significant priority over them. Such states include France, the USA, Germany, Spain and others. The practice of the above-mentioned countries can show that a treaty acting in the sphere of regulation of relations between national-legal subjects of different state affiliation, as a rule, is self-executing.

Non-executable contract in the field of intellectual property is authorised by the state, for the full and not reproachable execution of which requires an act of national legislation, which will disclose in detail the content of the above norms. The Civil Code of the Republic of Uzbekistan and the Law of the Republic of Uzbekistan "On International Treaties of the Republic of Uzbekistan" refer to such domestic acts. This need can be justified by the fact that non-self-executing international treaties in the field of intellectual property determine the generally accepted standards of behaviour, within the limits of which states establish the rights and obligations of subjects of national law in the field of intellectual property. The above-mentioned international treaties are usually legitimised in order to achieve a certain settlement of relations within a country

Undoubtedly, the peculiarity of the right to the results of intellectual activity is manifested in their territorial character. According to article 7 of the Civil Code of the RUz, if an international treaty or agreement establishes rules completely different from those provided for by the civil legislation, the rules of the international treaty or agreement shall apply).

Summarising the above, we can conclude that the way of adopting a domestic act is the most common way of implementing the norms of international treaties on intellectual property protection, chosen by the legislative power of the Republic of

¹⁴ Гаврилов В.В. Международный механизм контроля за имплементацией универсальных актов о правах человека // Московский журнал международного права. 1995. № 4. С. 24-37.

Uzbekistan. The procedure of transformation, i.e. translation, of the obligations assumed by Uzbekistan mainly takes place through the institution of implementation. Studying the legislative practice of Uzbekistan, we came to the conclusion: there are no norms obliging to implement the provisions of ratified international treaties, except for those rules that recognise the priority of international treaties.