The Trips Agreement in the Legal System of World and in Legislation of Uzbekistan

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ABSTRACT

Protecting the results of intellectual activity remains one of the most urgent problems of the modern world. Depending on the field of application, the concept of intellectual property can be interpreted differently. In a general sense, intellectual property is the right to the results of scientific, artistic, production and mental activity of a person. This article deals with the issues of documents and treaties of the WTO, in particular TRIPS. The two most important principles of the WTO legal system are the national regime and the convenience regime, which are called the principles of non-discrimination. These principles provide for the prohibition of discrimination between similar goods and services of different participating countries.

Keywords: WTO, TRIPS, Uruguay Round, National regime, Convenience regime, Berne Convention, Moroccan Declaration

The development of science, culture and technology in any country indicates the level of civilization of the society, depending on how much attention is paid to it. The intellectual potential of the society and the level of its cultural development depend in many ways on its legal regulation. On a global scale, every year, many objects are created that are directly used in the improvement of techniques and technologies, modernization of production. Therefore, protecting the results of intellectual activity remains one of the most urgent problems of the modern world. Depending on the field of application, the concept of intellectual property can be interpreted differently. In a general sense, intellectual property is the right to the results of scientific, artistic, production and mental activity of a person.

The results of intellectual activity are regulated by various legal documents depending on its nature. According to the nature of liability for the violation of the rights to the tangible form of intangible objects, it is divided into civil, administrative and criminal liability. Civil liability for cases of violation of rights in this field is defined in normative legal documents regulating the results of intellectual activity. In particular, Article 65 of the Law "On Copyright and Related Rights", Article 331 of the Law "On Inventions, Utility Models and Industrial Designs", Article 371 of the Law "On Trademarks, Service Marks and Place of Origin Names" - in Article 121 of the Law "On Company Names" the bases of responsibility for violation of the legislation on intellectual property, including the bases and order of fines, as well as the order of payment of fines by legal entities are provided. At this point, it should be noted that the special norms establishing civil liability are not reflected in other legal documents regulating the field.

The Code of Administrative Responsibility of the Republic of Uzbekistan focuses on the protection of the results of intellectual activity in many ways, and several articles provide for liability for the violation of intellectual property rights. In particular, Article

177 for illegal use of another's trademark, service mark, place of origin or company name; Article 1771 for infringement of copyright and related rights;

Article 1772 provides for administrative liability for infringement of rights to invention, utility model and industrial design. Unlike this Code, the Criminal Code of the Republic of Uzbekistan does not cover all aspects of intellectual property rights violations. In particular, in the field of intellectual property, only one article - violation of copyright or invention rights is recognized as a crime (Article 149). In addition, the provision of this article is narrow and does not reflect all actions that violate personal non-property and property rights.

International documents and international agreements signed (ratified) by the republic are an important part of the intellectual property legislation of Uzbekistan from the point of view of international relations. To date, Uzbekistan has signed (ratified) a number of international documents to harmonize intellectual property norms with world standards. Including, Uzbekistan signed the Paris Convention in 1993, the WIPO Convention and the Patent Cooperation Treaty, the Trademark Rights Treaty in 1998, the Budapest Treaty in 2001, the Strasbourg Agreement and the Nice Agreement, the UPOV Convention in 2004, the BERN Convention in 2005, the Locarno Agreement in 2006 , the Madrid Protocol and the Patent Law Treaty, the Phonogram Convention in 2019, the WIPO Performance and Phonograms Treaty and the WIPO Copyright Treaty, which were added to the Morocco Treaty in 2022 and other documents.

Also, joining the TRIPS agreement allows Uzbekistan to become an equal member of the WTO. The WTO, which has been operating since 1994, controls 98 percent of world trade. The WTO legal system consists of 54 agreements, and this system can be compared with the international legal regulation of interstate political relations within the framework of the United Nations from the point of view of its organizational importance in regulating world trade. There are only a few countries in the world that are not members of this organization.

TRIPS agreement applies to international agreements regulating interstate relations in the field of intellectual property and forms the third conceptual basis of the legal system of WTO agreements [1] along with GATT and GATS. Nevertheless, the TRIPS agreement has many unique features. But before proceeding to the direct review of the principles of the TRIPS Agreement, it is necessary to briefly touch on the main principles of the WTO. The operation of the basic principles of the WTO generally corresponds to the operation of the basic principles of general international law, but with two additional conditions. First, WTO principles apply only to the field of international trade. Second, these principles apply only to member countries. Liberalization of world trade can be cited as one of the main principles of the WTO system. In particular, in Article 2 of the Moroccan Declaration (1994), "the ministers express their determination to resist any protectionist tendencies, and in their opinion, the strict rules agreed upon in the Uruguay Round of negotiations will lead to the freedom and openness of trade [2]. "

The two most important principles of the WTO legal system are the national regime and the convenience regime, which are called the principles of non-discrimination. These principles provide for the prohibition of discrimination between similar goods and services of different participating countries. In other words, each member state of the WTO grants to another member state immediately and unconditionally any concessions granted to a third country. These provisions are directly reflected in Article 1 of GATT [3], Article 2 of GATS [4] and Article 4 of TRIPS [5]. The TRIPS agreement, with some exceptions, includes additional requirements for the provision of national treatment and preferential treatment by WTO members and protection of intellectual property.

Based on the principle of national treatment provided for in Article 3 of the TRIPS Agreement, each member state shall provide for the citizens of other member states, with the exception of the exceptions provided for in the

Paris Convention, the Berne Convention, the Rome Convention and the Washington Treaty, a procedure no less than that provided to its own citizens related to the protection of intellectual property rights. should provide. However, Member States may make use of the exceptions permitted in judicial and administrative procedures involving the choice of address for correspondence or the appointment of an agent within the jurisdiction of the Member [6]. A prerequisite is that these exceptions are necessary to comply with laws and regulations that are not inconsistent with the TRIPS Agreement and that such procedures do not covertly restrict trade.

Such exceptions can also be found directly in the Paris Convention. In particular, according to Article 2 of this document, the citizens of each country that is a member of the convention on the protection of industrial property have the right to use all the benefits provided for their citizens in another country of the convention. Based on this, the rights to intellectual property of citizens of each country participating in the convention and foreign citizens are considered equal [7]. But the conditions for the presence of a place of residence or a production enterprise cannot be a requirement for the use of industrial property rights. The Washington Agreement has a norm analogous to these provisions, according to which the member countries are exempted from the obligation to determine the court and appoint an agent when filing a claim for foreigners. Article 5 of the Berne Convention reflects the full expression of the national regime principle in relation to the above. The Rome Convention is among the international instruments referred to in Article 3 of the TRIPS Agreement. However, at the same time, the text of the agreement contains the following limitation: obligations towards the performer, producers of phonograms and broadcasting organizations apply only to the rights specified in this agreement. The following section of the Article provides an explanation of these exceptions: Members may make exceptions to judicial and administrative procedures permitted in Section 1 only where such exceptions are necessary to comply with laws and regulations and may use such procedures provided they are not applied in a manner that constitutes a disguised restraint of trade[8].

Thus, the application of exceptions provided for in other treaties is limited to two conditions. First, it can be concluded from the text of Article 3, Part 2 of the TRIPS Agreement that the application of exceptions to the national regime is possible only procedurally. Second, the object must be the implementation of a law or regulation that does not conflict with the TRIPS Agreement, as well as WTO agreements and principles in general. Provision of the national regime is traditional for all international agreements in the field of protection of intellectual property rights.

As analyzed above, Article 3 of the TRIPS Agreement is a type of generalization and regulation of similar provisions provided for in existing international agreements. But providing the most favorable regime is based on the main principles of the WTO and is considered a new phenomenon in the field of international regulation of intellectual property. The essence of the most favorable regime is revealed in Article 4, Part 1 of the TRIPS Agreement: any advantage, benefit, privilege or immunity with respect to the protection of intellectual property granted by a member state to the nationals of any other state shall be immediately and unconditionally granted to the nationals of all other members.

As mentioned above, this principle is a WTO norm and is one of the main principles in the system of rules. Officially, it aims to prevent discrimination of any member states and is considered to apply to all areas of regulation that fall under the jurisdiction of the WTO [9]. In this way, the principle of the obligation of countries to provide each other with the most favorable treatment is included in the TRIPS agreement not as a mere article on the protection of intellectual property, but as an agreement within the framework of the WTO. Its essence is that if a WTO member state provides a special preferential regime for the protection of intellectual property rights to another member state and its citizens, then the same regime should be provided to other states and their citizens.

Article 4 of the TRIPS Agreement provides for four exceptions to the most favorable treatment obligation. In the first case, a WTO member state is exempted from the obligation to provide this regime if one of the states ensures the enforcement of a law of a general nature not related to intellectual property protection or applies preferential conditions (preference, immunity and privilege) arising from international agreements on judicial assistance. The second exception applies to cases where benefits are granted under the Berne and Rome Conventions under a regime provided in another country rather than a national regime. The application of the third exception to the rights of performers, phonogram producers and broadcasting organizations concerns benefits not provided for in the TRIPS Agreement. The TRIPS Agreement focuses on economic rights. The fourth exception relates to benefits arising from international agreements related to the protection of intellectual property that were in force before the entry into force of the WTO Agreement. The main condition here is that the TRIPS Council is informed about the agreements and citizens of other members should not be discriminated against unjustly and arbitrarily[10].

In addition to the above principles such as MFN and national treatment, Article 8 of the TRIPS Agreement provides several principles. Based on this article, the WTO member states may take necessary measures in developing or amending their laws and regulations to protect public interests in public health and nutrition, as well as in sectors vital for socio-economic and technical development, which do not conflict with the objectives of the Agreement.

At this point, it should be noted that the legislation of Uzbekistan contains a number of procedures that contradict the principle of the national regime. One of these procedures is the legislation on state duty. The essence of the conflict is that in the Law of the Republic of Uzbekistan "On State Duties" the amounts of state duty rates for the implementation of intellectual property rights are defined differently for residents and non-residents. In this case, sharp differences between the amounts of state duty rates will further intensify the existing conflict. For example, for applications for recognition of a well-known trademark in the republic, if residents are charged a state fee of 4 times the BHM, these figures are 68 times the BHM for non-residents. This means that a non-resident pays 17 times more (!) than a resident for the same public service.

In order to provide a national regime, the amounts of state duty rates should be unified[11]. But there are different options for changing the current customs policy. In the first option, the unification of the rate may lead to an increase in the applicable amount for residents. That is, the reduction of the amount of payment for non-residents is balanced by the increase of the amount of payment for residents. In this case, on the one hand, the amount of the single fee establishes the national regime, on the other hand, the increased fee may weaken the interest of residents to formalize their own intellectual property rights. For example, an increase in the amount of payment for a resident for the registration of a trademark to 5 times from 60 percent of BHM (estimated) may decrease the number of trademark registrations. This, in turn, causes an increase in the weight of counterfeiting. In the second option, the amount of state duty is unified with a low rate. The selection of this option reduces the revenue to the state budget due to the reduction of the payment amount for non-residents, and increases the probability of foreign investment taking over the local market. At the same time, the provision of the national regime increases the investment attractiveness of the state. An increase in the share of foreign investment in the country's economy, in turn, serves to further increase the profit from tax revenue to the state budget[12].

It should be mentioned here that state duties related to intellectual property paid by non-residents in 2021 will amount to 0.05 percent (79.7 billion) of state budget revenues (164.7 trillion) for 2021 (Appendix No. 1). As can be seen from these figures, state duties paid by non-residents do not constitute a significant part of state income (appendix #2) [13].

Both of the above options have their pros and cons. However, it is clear that the integration

of the national economy with the WTO requires the provision of the principle of national regime for citizens of other member states of the organization[14]. Therefore, it is PROPOSED to unify the rates of state duty for residents and non-residents in order to harmonize national legislation on intellectual property protection with the requirements of the TRIPS agreement.

Summarizing all of the above, we can come to the following conclusion: to provide the most convenient mode [15]. The main principle reflecting the jurisdiction of the WTO should be considered as the principle of granting national regime as the main principle of international agreements in the field of protection of the results of intellectual activity. The TRIPS Agreement, in terms of its agreement within the framework of the WTO, supports the WTO rules system in many ways, together with intellectual property. This agreement is explained by the large number of norms. Because the main purpose of the TRIPS agreement is not to replace the existing international agreements in the protection of intellectual property rights, but it is considered to create conditions for the functioning of the principles of the WTO and to provide protection with the force of the WTO in relation to various objects created at different times. This, in turn, leads to the conclusion that, unlike other international agreements in the field of intellectual property protection, the principle of granting national treatment is not the basis of the TRIPS agreement. The principle of providing the most favorable regime for the entire WTO system is more important because it is more suitable for the implementation of the main principle of the WTO - the liberalization of world trade.

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