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INSTITUTIONAL MECHANISM OF PUBLIC ADMINISTRATION IN THE FIELD OF "i i i" (INTELLECTUAL PROPERTY, INVESTMENT AND INNOVATION)

ІНСТИТУЦІЙНИЙ МЕХАНІЗМ ПУБЛІЧНОГО УПРАВЛІННЯ У СФЕРІ "і і і" (ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ, ІНВЕСТИЦІЙ ТА ІННОВАЦІЙ)

The article analyzes the directions of development of the institutional mechanism of public administration in the field of "i i i" (intellectual property, investment and innovation).

Key words: *public administration, institutional mechanism, intellectual property, investment and innovation.*

У статті аналізуються напрямки розвитку інституційного механізму публічного управління у сфері "і і і" (інтелектуальної власності, інвестицій та інновацій).

Ключові слова: *публічне управління, інституційний механізм, інтелектуальна власність, інвестиції, інновації.*

Problem setting. Today, intellectual property is an important lever in the development of any sphere of society and the state. New inventions, utility models, and other objects - all this is the property of the talents of the Ukrainian people, which certainly shows the level of scientific development of certain technologies in our country. Therefore, due to the active development of public relations in this area, the legal system of Ukraine is also rapidly gaining momentum and changing in the field of intellectual property.

Thus, one of the steps that would guarantee the absolute legal protection of the intellectual field of activity of the citizens of Ukraine is the creation by decree of the President of Ukraine, a new body of justice in the field of intellectual property. This will help to significantly improve the situation and protect the property and personal non-property rights and interests of the Ukrainian people from numerous negative cases and phenomena that thrive in our country today, namely: piracy, plagiarism, unfair competition, which leads to intellectual property infringement. Therefore, the creation of a new body of justice in the field of intellectual property serves as a reliable way to protect all intellectual rights and interests of society.

Analysis of recent research and publications. The issue of reforming the judicial system and the formation of patent justice bodies has repeatedly attracted the attention of such well-known scientists and scholars as: G. Androschuk, I. Bazhenov, M. Bank, N. Bocharova, Yu. Boshytsky, Yu. Kanarik, O. Orlyuk, M. Palladium, S. Parkhomchuk, V. Petlyuk, V. Tatkova and others [1-5]. Given the urgency of this problem, there is a need to deepen research on the above issues.

Paper objective. The purpose of this work is to study the role of the institutional mechanism of public administration and a specialized court in the field of protection of intellectual property rights.

Paper main body. Given the opinion of scientists and scientists in the field of intellectual property, for more than several decades there has been significant progress, which we can see in the results of today's activities, namely: inventions, utility models, databases, trademarks, computer programs, scientific discoveries, phonograms, videograms, etc. All this is not only the product of human mental activity, but is also considered an object of intellectual property at the legal level, which also requires legal protection.

In order to ensure proper legal conditions, on June 2, 2016, new amendments to the Constitution of Ukraine were adopted in the area of justice, concerning the establishment of a new higher specialized court in Ukraine. Thus, a similar model of intellectual property protection has already been introduced by European countries, in particular: Austria, Great Britain, USA, Taiwan, Japan, Sweden and Switzerland. These states already have considerable experience in dealing with intellectual property cases, which have been attributed to various types of litigation. Analyzing the positive and negative experience of foreign states in the functioning of a spe-

cialized court, we can draw conclusions about the appropriateness of its application in national realities, or at least the adaptation of such experience to national reality.

Given the conditions that have arisen today in our country in the field of protection of property and personal non-property rights of citizens and, taking into account the experience of foreign countries, the idea arose that it is possible to introduce in the judicial system of Ukraine a specialized instance. patent court. " Virtually all researchers who study the field of intellectual property, support this position and the feasibility of implementing such innovations, as it will reduce the number of negative phenomena that thrive in our country in the field of intellectual property.

Yes, S.O. Parkhomchuk defends the position that "although the introduction of patent litigation in Ukraine is certainly a difficult task, the establishment of the Specialized Court for Intellectual Property and Economic Competition (Patent Court) seems to be a necessary step towards improving the existing judicial system of Ukraine and creating an effective mechanism. protection of intellectual property rights "[1, p. 230].

In this regard, Doroshenko points out that "the urgency of establishing a specialized court on intellectual property for judicial reform is growing and Ukraine has all the prerequisites for this step" [2].

Scientist O. Orliuk also repeatedly stressed the need to create a Patent Court in Ukraine - a court that would deal with intellectual property issues. According to her, "resolving disputes related to the protection of intellectual property rights by judges who are also technical experts would solve many problems, at least with forensic examinations."

As we can see, intellectual property experts, despite seeing various aspects of the benefits of creating a specialized court, almost unanimously support the proposal to create one.

Reflecting on the feasibility of creating a specialized court, Bazhenov MI notes that "Common to develop a position on the need to introduce the investigated court in all these scientists is the statement of shortcomings in the field of judicial protection of intellectual property rights. Among them: the need to resolve conflicts over the division of jurisdiction of the judiciary and eliminate disputes over their jurisdiction; the need to generalize the experience of resolving all disputes arising in the field of intellectual property and the formulation of a single case law; the importance of reducing the time and costs of the parties to the dispute, which currently take place due to the lengthy conduct of various examinations and the involvement of specialists; impossibility to unite in one proceeding several requirements of the parties, which according to the norms of modern legislation should be considered in the order of different proceedings, etc. "[3, p. 122].

The draft law "On the High Specialized Court for Intellectual Property" [4] states that the main idea of the establishment and further functioning of this judicial

institution is, first of all, the effective enforcement of intellectual property rights, improving competitiveness in the distribution of new goods, works and ideas. That is, ensuring proper legal conditions for the development of intellectual property is a priority of this newly created court. Such a new step of our state will allow to prevent unfair competition, as well as to support and protect the intellectual property rights of each of us, which is the main task of the new judiciary.

However, despite the benefits it may bring to society and the state, there are differing views on the appropriateness of reforming this branch of the judiciary. Many researchers are convinced that this will have positive consequences for the development of our state, but there are also many who are against such developments. Yes, M. Bazhenov, whom we quoted above, is convinced that "the creation of a specialized court is unnecessary for Ukraine, and the shortcomings in judicial protection that exist today can be addressed by introducing specialization of judges in courts of general jurisdiction and administrative courts, as well as a clearer distinction. competence of courts" [3, p. 126].

Given the polarity of scholars, the majority still supported the idea of creating such a court and in 2016 amendments to the Constitution of Ukraine were adopted, and on September 29, 2017 the President signed a decree "On the establishment of the Supreme Court of Intellectual Property."

It is characteristic that in order to single out the sphere of intellectual property and create a specialized court instance, there must be a number of court cases that the existing instances cannot handle. It is also worth noting that cases related to this area are considered in various types of litigation, including commercial, administrative, and civil. Thus, according to the materials of the parliamentary hearings on "Building an effective system of intellectual property protection in Ukraine", which took place on December 16, 2019, civil courts of Ukraine during 2009-2018 considered 2511 cases of disputes on IP law, administrative courts - 1582 cases. In 2013 alone - in the first half of 2018, 3896 cases were considered by commercial courts [5, p. 79]. As you can see, the number of cases is quite large and they are concentrated in the courts of various instances. Therefore, in order to separate the cases of this branch, it was necessary to create a new legal institution, which will act as a court of first instance, and the review of its decisions on appeal will be carried out by the chamber, which is part of this body.

In addition, the need to summarize the experience of resolving all disputes arising in the field of intellectual property and the formulation of a single case law; the importance of reducing the time and costs of the parties to the dispute, which currently take place due to the lengthy conduct of various examinations and involvement of specialists - all this is d Ukrainian courts, which does not allow them to objectively and impartially administer justice and protect intellectual property rights, which can serve as another prerequisite that require the start of the High Specialized Court in this area.

As stated in the draft law on the High Specialized Court on Intellectual Property, given the difficult situation that exists today in the judicial system of the state, a new judicial institution was needed, which will have a number of certain features that are not inherent in any court in the national judicial system. exactly:

- This is the only specialized court that has a chamber for appellate review of decisions of all chambers of district local courts in civil, criminal, commercial, administrative cases in the field of protection of intellectual property rights and economic competition in case of violation of substantive or procedural rules by the court of first instance;

- Each regional court on the ground will include 4 chambers that have their own range of jurisdiction;

- Special entities that will also be able to apply to this court, namely: the parties may be a prosecutor who applies in the interests of the state, the Antimonopoly Committee of Ukraine and the executive body;

- A special type of case, as it is related to the personal non-property rights of citizens in the intellectual sphere;

- New opportunities and quality of resolving a number of disputes only with the help of qualified and conscientious court staff in a short time [4].

Conclusions of the research. Thus, given the mistakes of the past, to protect intellectual property rights on the basis of new legal methods and tools, you can only move to a new stage of development, the judicial system of Ukraine, without fear of change and improvement.

Analyzing the draft law "On the Supreme Specialized Court on Intellectual Property", it should be noted that almost all the fears of opponents of the creation of a specialized instance are reflected in it and are corrected. Thus, many publications expressed the opinion that inadequate access to justice was due to the fact that all cases would be heard in Kyiv. In response, the draft law proposes the following combination: "The Supreme Court of Intellectual Property, as a court of first instance in the judicial system, is a local court represented by district courts for zonal regional service of oblasts, the Autonomous Republic of Crimea, Kyiv and Sevastopol. District courts for zonal regional service of the High Court of Intellectual Property are:

- 1) Dnipropetrovsk District Court, which serves Dnipropetrovsk, Zaporizhia, Luhansk and Donetsk regions.

- 2) Kyiv District Court, which serves the cities of Kyiv, Vinnytsia, Zhytomyr, Kyiv, Ternopil, Khmelnytsky, Cherkasy, Chernihiv regions.

- 3) Lviv District Court, which serves Volyn, Zakarpattia, Ivano-Frankivsk, Lviv, Rivne, Chernivtsi regions.

- 4) Odessa District Court, which serves Kirovograd, Mykolaiv, Odessa, Kherson regions, the Autonomous Republic of Crimea and the city of Sevastopol.

- 5) Kharkiv District Court, which serves Poltava, Sumy, Kharkiv regions [6].

We will not dwell in detail on the layout of the regions in the zonal division

(although it is rather strange to refer the Ternopil region to the jurisdiction of the Kyiv District Court), but note that five district courts will still decide on access to justice.

The problem of professionalism of future judges of the Supreme Court on intellectual property issues still remains open, given what categories of professionals participated in the competitive selection and their results. We will describe this problem in detail in the third section of our study.

The question of the inconvenience of the location of instances for the direct work of judges and courts, as the first instance and appellate instances have their own peculiarities of work, and therefore require free placement sounded at a time when there was a single court of first instance in Kiev. Now, with the existence of five district courts within the High Court of Intellectual Property, this problem has lost its relevance [7].

Until recently, the type of court proceedings in which cases and procedural norms will be considered, which will guide the High Court of Intellectual Property (CPC of Ukraine, Code of Civil Procedure of Ukraine or a separate procedural law), has not been determined. At present, this problem has been solved, as it was decided that "it is the economic process will be used in the judicial protection of intellectual property rights after the start of the High Specialized Court of Intellectual Property" [5, p. 74]. It should be noted that although the decision was made to apply the business process created by a specialized court, but it will not happen in its pure form. At least that will be the case if the bill acquires the status of a law. The very status of this legislative act will be unique, as it contains the rules of the judiciary and procedural rules of justice at the same time. It is quite difficult even for professional lawyers and patent attorneys, given the volume of 420 pages and uncharacteristic organizational structure.

Important innovations of the bill are consolidation of opportunities: availability of court costs for low-income categories of society and for small and medium-sized businesses; formation of a judicial system that considers cases of protection of intellectual property rights and competition by realizing the maximum opportunities to involve expert knowledge in litigation; increasing the transparency of court proceedings; increasing the publicity of court decisions (including by translating them into English and / or other languages and publishing them on the court's website) in order to promote cross-border competition and protect intellectual property rights [4].

The draft law also establishes possible safeguards for delaying court proceedings by introducing the possibility of consideration at the level of any of the district courts under the jurisdiction of the High Specialized Court for Intellectual Property Protection and Competition in lawsuits, injunctions, separate proceedings and criminal proceedings. We hope that the proposed safeguards will still work in practice, and all innovations will still have a positive impact on the state of protection of intellectu-

al property rights in Ukraine.

Thus, the national legislation already lays the groundwork for the establishment of the High Court of Intellectual Property, which gives good reason to hope for strengthening the rule of law in the field of use of intellectual property results. At the same time, further development of the legislative provisions of the Law of Ukraine "On the Judiciary and the Status of Judges" and the adoption of a separate law "On the Supreme Specialized Court on Intellectual Property" is important to ensure an effective mechanism for judicial review of cases related to the protection of intellectual property rights.

References:

1. Parkhomchuk S. Ways of introduction of patent jurisdiction bodies into the judicial system of Ukraine [Shlyakhy vprovadzhennya v sudovu systemu Ukrayiny orhaniv patentnoyi yurysdyktsiyi]. *Problems of civil and business law in Ukraine* (2012): 2. pp. 228–230.

2. Doroshenko O. Once again about the patent court [Shche raz pro patentnyy sud]. URL: <http://www.info-prensa.com/article-902.html>.

3. Reflections on the expediency of establishing specialized courts in Ukraine in the field of protection of intellectual property rights [Rozdumy pro dotsil'nist' stvorennya v Ukrayini spetsializovanykh sudiv u sferi zakhystu prav intelektual'noyi vlasnosti]. *Bulletin of Kherson University. Legal Sciences Series*. 2014. № 6-1. Vol.1 pp. 122-126.

4. Explanatory note to the draft Law of Ukraine "On the Supreme Specialized Court on Intellectual Property" [Poyasnyval'na zapyska do proektu Zakonu Ukrayiny "Pro Vyshchyy spetsializovanyy sud z pytan' intelektual'noyi vlasnosti"]. URL: www.me.gov.ua.

5. Information and analytical materials for the parliamentary hearings on the topic: "Building an effective system of intellectual property protection in Ukraine" December 16, 2019. [Informatsiyno-analitychni materialy do provedennya parlament-s'kykh slukhan' na temu: "Pobudova efektyvnoyi systemy okhorony intelektual'noyi vlasnosti v Ukrayini»].

6. Draft Law of Ukraine "On the Supreme Specialized Court on Intellectual Property". URL: www.me.gov.ua. [Proekt Zakonu Ukrayiny "Pro Vyshchyy spetsializovanyy sud z pytan' intelektual'noyi vlasnosti"].

7. Pomaza-Ponomarenko A., Hren M., Durman O., Bondarchuk N., Vorobets V. "Management mechanisms in the context of digitalization of all spheres of society". *Revista San Gregorio. SPECIAL EDITION-2020*. (2020): 42. URL: http://revista.sangregorio.edu.ec/index.php/REVISTASANGREGORIO/issue/view/R_SAN42/showToc.