

STAGES OF CONSTITUTIONAL REGULATION DEVELOPMENT OF INTELLECTUAL PROPERTY RIGHTS: A STUDY IN THE REPUBLIC OF ARMENIA

ETAPAS DEL DESARROLLO DE LA REGULACIÓN CONSTITUCIONAL DE LOS DERECHOS DE PROPIEDAD INTELECTUAL: UN ESTUDIO EN LA REPÚBLICA DE ARMENIA

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Abstract:

Observing the development stages of the RA constitutional regulation of intellectual property rights, legal features, is important from the point of view of developing new conceptual approaches. Within the framework of the research, parallels were drawn with the freedom of creativity, analyzing the existing regulations. To reveal the historical development of intellectual property rights, the method of historicity was used. In order to understand the peculiarities of the constitutional regulation at different stages of the constitutional reforms in RA, legal comparative analyzes of different editions of the Constitution were performed[1].

Keywords:

Intellectual property, freedom of work, industrial property, legal regulation, regularity, development, constitutional reform.

Resumen:

El análisis de las etapas de desarrollo de la regulación constitucional de los derechos de propiedad intelectual en la RA, sus características jurídicas, es importante desde el punto de vista del desarrollo de nuevos enfoques conceptuales. En el marco

de la investigación, se establecieron paralelos con la libertad de creación, analizando las regulaciones existentes. Para revelar el desarrollo histórico de los derechos de propiedad intelectual, se utilizó el método de historicidad. Con el fin de comprender las peculiaridades de la regulación constitucional en diferentes etapas de las reformas constitucionales en la RA, se realizaron análisis comparativos jurídicos de diferentes ediciones de la Constitución.

Palabras clave:

Propiedad intelectual, libertad de trabajo, propiedad industrial, regulación jurídica, regularidad, desarrollo, reforma constitucional.

I. Introduction

The development of Intellectual Property rights in the Republic of Armenia can be conditionally divided into three stages: Soviet, post-Soviet and modern.

Prior to the adoption of the 1995 Constitution, intellectual property law in Armenia was regulated by Article 45 of Chapter 6 of the Constitution of the Armenian Soviet Republic, adopted on April 14, 1978 (dedicated to the fundamental rights, freedoms and duties of citizens of the Republic of Armenia).

II. Stages of constitutional regulation development of intellectual property rights

At the first stage the Constitution stated that: *«the freedom of scientific, technical and artistic creation is guaranteed to the citizens of the Republic of Armenia in accordance with the objectives of communist construction»*. It was ensured by a wide range of scientific research, inventive and rationalizing activities, the development of literature and art. According to that article, the state created the necessary material conditions, supported voluntary companies and creative unions, organized the introduction of inventions and rationalization proposals into the national economy and other spheres of life, guaranteeing the freedom of creativity only to the citizens of its country. By the second paragraph: *«the state protects the rights of authors, inventors and rationalizers, that is to say, the rights of the human being, the laborer, the specialist dealing with the rationalization of production and production processes»*. The Constitution made no mention of the protection of intellectual property and the first legal document on the protection of the rights of the author was the Charter of Authorship[2], which was amended in the *«Copyright»* section of the Civil Code of the Soviet Socialist Republic of Armenia. At the second - post-Soviet stage, the independence process

and the constitutional reforms led to the adoption of a new constitution that was to establish goals based on the unity of civilization values of a particular society and principles of social existence[3]. In 1995 the newly adopted Constitution stipulated that: *«everyone has the right of freedom of creating literary, artistic, scientific and technical work, to enjoy the achievements of science and to participate in the cultural life of society»*. And the second paragraph referred to the intellectual property, according to which: *«intellectual property is protected by law»*.

In the first part of the article, an attempt was made to stipulate a person's freedom of creativity as a provision of a more vital importance for an individual, society and state. This imperative norm was directed to the protection of legal relations related to the result of a person's freedom of creativity - *«the Intellectual Property»*, which led not only to an incomplete regulation of public relations but also to ambiguity or imperfection of the content of normative provisions[4]. And in fact in 1995 Article 36 of the RA Constitution, as a result of the uncertainty and imperfection of its content, led to an incomplete regulation of public relations.

Since the declaration of independence, the Government has been moving forward to implement programs of economic reforms also of legislative and institutional improvement of the above-mentioned field[5].

The Republic of Armenia joined the World Intellectual Property Organization in 1993, and the National Copyright Agency was established[6]. A new Law on *«Copyright and Related Rights»* (1996) was adopted, followed by the creation of the RA Intellectual Property Agency within the Ministry of Trade and

Economic Development.

Armenia has already ratified a number of international documents, such as the Geneva Convention (2003) on the rights of phonogram producers to protect their phonograms from illegal copying, the Rome Convention (2003) on the protection of the rights of performers, phonogram producers and broadcasting organizations, agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (2003) and World Intellectual Property Organization (WIPO) (2005) Copyright Treaty, which greatly contributed to strengthening of the legal basis of the field.

Changes in the field of copyright and related rights were followed by constitutional reforms (2005), and the legislature stipulated by Constitution that: *«intellectual property is protected by law»*[7], and Chapter 14 of the RA Civil Code was already devoted to intellectual property, copyright and related rights.

As a result of constitutional reforms, a logical violation of law-making technique concerning a person's right of *«freedom of creativity»* re-occurred, leading to a gap in a major constitutional norm and lacked the sentence *«a right of literary, artistic, scientific and technical freedom of creativity, to enjoy scientific achievements and to participate in the cultural life of society»*.

Thus, the emphasis was only on the result as the protection of the property of a certain kind requiring special regulation[8].

Third - the beginning of the modern stage is considered 2006, when the new Law on *«Copyright and Related Rights»* was adopted, arising from the need to improve the legislation regulating the relations of the sphere and the directives related to the EU copyright and related rights, the main provisions of 1996 Internet contracts of World Intellectual Property Organizations were taken into account. The adopted law is still in force, but it is a subject to a number of changes as a result of continuous development of the field.



The Republic of Armenia joining the Treaty of Beijing on «Audiovisual Performances» and Marrakesh Treaty «To Facilitate Access to Published Works to Persons Who are Blind, Visually Impaired or otherwise Print Disabled», intends to make corresponding changes in the new draft law.

As a result of the constitutional reforms under the RA 2005 edition, the legislator made an unsuccessful attempt to reform the constitutional norm of freedom of human creativity. This time, under Chapter 2 of Human and Citizen Rights and Freedoms, Article 31, Clause 4 of the Constitution stated that: *«intellectual property is protected by law»*.

Thus, in one paragraph, the Constitution referred exclusively to the protection of intellectual property, which is the result of the freedom of creation, but not to the freedom of creation, which is considered a fundamental human freedom, its essence and content.

In our opinion, in the constitutional amendments of 2005, the legislator again allowed a logical violation of the law-making technique regarding the normative provision of *«freedom of creation»*, which in turn led to a gap in the most important constitutional norm. Apart from the fact that the constitutional reforms did not have a positive result in the direction of fixing the freedom of creativity, but also unlike the previous constitution, the sentence *«the right to freedom of literary, artistic, scientific and technical creativity, to use the achievements of science and to participate in the cultural life of the society»* was missing here.

Thus, in addition to the fact that *«freedom of creation»* was not provided for in a separate article, the emphasis was made only on the protection of the product as a special type of property requiring special regulation.

It turned out that instead of improving the *«freedom of creativity»*, the constitutional reforms further removed it from its roots, which, we believe, spoke of a legal gap, because the specific norm here did not correspond to the appropriate level and patterns of state regulatory activity, and in fact, a radical revision of the said norm arose.

The European legal thought states that in the

globalizing world, the constitution is not so much the main law of the state, but the supreme legal framework of the civil society.

Complete legal formulations of freedom of creativity, intellectual property rights in accordance with the period will lead to the stable development of science, culture and innovations, providing stable prerequisites for creating intellectual values of authors and innovators.

In 2014-2015, new constitutional amendments were planned in Armenia, which would also be aimed at guaranteeing, ensuring and protecting Human Rights, satisfying them substantially and qualitatively raising them to a new level, guaranteeing the supremacy of law, and having a human-centered constitutional system. And since the constitutional amendments of 2005 did not provide the necessary prerequisites for guaranteeing the direct action of human rights, the constitutional reforms of 2015 included among the amendments or additions to a number of norms, the *«freedom of creation»* of a person, which is considered a constitutional freedom.

We think that the mentioned changes were caused by the following: RA planned to improve the economy, create a favorable creative and investment environment, including facilitating the process of signing the *«Deep and Comprehensive Free Trade Agreement»* (DCFTA) between the European Union and the Republic of Armenia, and in that direction, the Government of the Republic of Armenia adopted the Agreement on the Protection of Intellectual Property Rights of the Republic of Armenia.

Thus, taking into account a number of challenges of the future, in 2015, Article 43 of the Constitution came to fill the gap in the field of intellectual property with the text *«freedom of creation»*, according to which *«everyone has the freedom of literary, artistic, scientific and technical creation»*. And the sentence *«intellectual property is protected by law»* was left unchanged, taking its place under the article entitled *«property right»* (Article 60, Clause 7), along with forms of property acquisition, cases of property right limitation, and cases of property expropriation.

III. Conclusion

The new constitutional amendments lead to the idea that the place of intellectual property rights in the constitutional regulation should be guided by the achievement of a harmonious combination of the common good for society by protecting the rights and interests of citizens, i.e. on the general constitutional values of the rule of law[9].

Freedom of creativity, protection of intellectual property rights should lead to stable development of science, culture and innovations, providing sustainable prerequisites for the creation of intellectual values for authors and innovators, which will also stem from the need for Divine existence of human rights.

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