

Some Issues of Conflict of Laws in International Technology Transfer



Hilola Sharipova

PhD researcher, Tashkent State University of Law, Uzbekistan

ABSTRACT: This article analyzes some issues of regulation of international technology transfer, in particular regarding the conflict of laws. Author discusses the conflict regulation of relations on the cross-border transfer of rights to objects of intellectual property, some best practices and comes to opinion that it is appropriate to enshrine the relevant conflict of laws rules in a unifying international legal treaty.

KEY WORDS: conflict of laws, technology, technology transfer, intellectual property, innovation.

I. INTRODUCTION

In the context of strengthening cross-border cooperation, leading to the creation of cross-border clusters in which there is a mutual flow of goods and technologies, there is an erasure of hard boundaries between national and international transfer represented by imports and exports.¹ In the framework of growing globalization, international technology transfer and scientific and technical cooperation are the basic basis for the recovery and rapid growth of the country's economy.

Technology exchange is a specific form of international economic relations, which is a set of relations regarding the production, distribution, exchange and use of innovative benefits - knowledge and information. The objects of the technology market are the results of intellectual activity in materialized (equipment, technical documentation, etc.) and non-materialized forms (knowledge, experience, techniques, etc.)².

The international exchange of technologies is manifested in the spread of economic processes and solutions created in some countries in the practical activities of subjects in other countries. As a result of the use of foreign technology, a product with more advanced characteristics is often produced: a product or service with new properties and high quality, an unusual management or marketing solution for this market is used, a more convenient or profitable financial transaction is offered, or a profitable banking product³.

International technology transfer - the exchange of advanced technologies is taking place at a rapid pace, including an increasing number of countries and peoples in its orbit⁴.

A feature of the current stage of technological development at the international level is that the process of economic and legal isolation of the sphere of functioning and circulation of technologies into an independent area of economic or commercial relations is going on more actively and on a large scale, which is expressed in the internationalization of innovative activity between countries and its economic entities.⁵ All this shows the relevance of conflict regulation of international technology transfer.

II. DISCUSSION

When considering the conflict regulation of relations on the cross-border transfer of rights to objects of intellectual property, it is necessary to pay attention to the fact that in many states conflict rules are adopted, which, in addition, regulate relations for the protection of intellectual property in general.

¹ Асаул А.Н. Перспективы кластерной организации предпринимательской деятельности в России // Вестник гражданских инженеров. 2012. № 3. –С. 223-236.

² Абрамян А.А. Международный обмен технологиями. <https://cyberleninka.ru/article/n/mezhdunarodnyy-obmen-tehnologiyami>

³Международный обмен технологиями и информацией в системе мирохозяйственных связей. https://studref.com/440447/ekonomika/mezhdunarodnyy_obmen_tehnologiyami_informatsiy_sisteme_mirohozyaystvennyh_svyazeu

⁴ЕфимоваЕ. Международный трансфер технологий и механизмы его регулирования. <http://dspace.nbuv.gov.ua/bitstream/handle/123456789/36331/08-Efimova.pdf>

⁵ Талипова Н. Международный обмен технологиями и информацией в системе мирохозяйственных связей. <https://reu.uz/wp-content/uploads/2022/03/oktjabr-2021-g.-talipova-n.t..pdf>

Some Issues of Conflict of Laws in International Technology Transfer

According to the Swiss Federal Law on Private International Law of 1987, intellectual property rights are subject to the law of the state in whose territory protection is sought (clause 1, article 110). Such an approach, associated with the application of the “statute of obligations”, is very common and causes not only the existence in a number of states of the rules on determining the applicable law to contracts the subject of which is industrial property in the absence of an agreement between the parties on the choice of law⁶, but also the presence of a concept, widespread both in doctrine and in practice, about the possibility of applying to these relations the provisions of the 1980 UN Convention on Contracts for the International Sale of Goods.⁷

The rules on the application of the law of the country in which protection is sought are contained in the legislation of a number of CIS countries, for example, in the civil codes of Belarus of 1998 (Article 1132), Armenia of 1998 (Article 1291), as well as in the legislation of a number of other foreign states, for example, Hungary (§ 19 of the Decree on Private International Law of 1979 N13): In the national legislation, in particular, in the sixth section of the Civil Code of the Republic of Uzbekistan, there are no such conflict of laws rules in the field of intellectual property; which should be recognized as a disadvantage when it comes to the choice of law governing the protection of industrial property.

Within the framework of the European Union, Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (RIM-I) applies⁸, which replaced the Rome Convention on the law applicable to contractual obligations of 1980. The subject of this Regulation is contractual obligations in any respect (including the transfer of rights to objects of industrial property), in which a choice arises between the law of different states. The law applicable by virtue of the Regulations may be the law of any third country, including a country not participating in the Regulations, which mediates the universal nature of the document (Article 3), which was also possessed by the earlier Rome Convention. The general principle provided for in Art. 3.1. of the Rules is that the contract must be governed by the law chosen by the parties. If the parties have not provided for which law the contract will be governed by, then the law of the country with which the contract is most closely connected shall apply. There is also a link to the law of the state of location of the party that performs the performance, which is decisive for the content of the contract, which, as a general rule, is recognized as the copyright holder (clause 1, article 4). But, there is also an interesting proviso that if it follows from all the circumstances of the case that the contract has clearly closer ties with another country than the one indicated in paragraph 1 or 2, then the law of that other country applies (para. 3, article 4), which essentially fixes the main conflict binding - the principle of the closest connection. This approach certainly reflects the complexity of relations for the transfer of rights to objects of industrial property, but is common to various objects of civil rights and various civil law contracts, and due to the predominantly registration nature of industrial property objects, it cannot and should not be universalized (since the principle of the closest connection in the case of the transfer of rights to a registered object is reduced exclusively to the law of the country of the right holder). Thus, it seems appropriate to indicate the law of the country of the right holder as the applicable law (in the absence of a choice by the parties) in relations on the cross-border transfer of rights to registered industrial property objects and to apply the principle of closest connection only to the cross-border transfer of rights to unregistered industrial property objects.⁹

III. CONCLUSION

Thus, conflict issues in relation to intellectual property objects should be resolved on the basis of the law of the state that granted legal protection to the relevant industrial property object (the state that issued a patent or other protection document) or the state within the legal system of which the relevant industrial property object exists (in relation to objects that do not require special registration or deposit actions).

It should be noted that if the acquirer of rights in agreements on the alienation of exclusive rights (the licensee in license agreements) has doubts about the legitimacy of the right holder (licensor) possession of an industrial property object and, if necessary, establishing this very legitimacy (whether the object is registered in the prescribed manner, and whether the counterparty is the actual copyright holder), the norms of the legal system of the country in whose patent office the relevant object is registered, - has legal protection, and, accordingly, in the territory of which the use of the protected object is supposed to be applied. In relation to an object registered in several states (an object can be registered simultaneously in several countries, for example, according to the Patent Cooperation Treaty), if it is necessary to transfer rights in each "country of registration", separate agreements are concluded for each "country of registration" with the attachment of a title of protection issued by the patent office of the corresponding state (each agreement is separately registered in the corresponding state, where changes about the right holder or

⁶ See, for example: § 25 of the Decree on Private International Law of 1979 N 13 of the Presidium of the Hungarian People's Republic, art. 117 of the Swiss Federal Law on Private International Law of 1987, the Model Law of the Civil Code of the CIS of 1996. According to paragraph 1 of Art. 1232.

⁷ United Nations Convention On Contracts for the International Sale of Goods 1980 <https://lex.uz/docs/2630897>

⁸ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (“Rome I”). Translation by A.O. Chetverikov. <https://eulaw.edu.ru/>

⁹ Шахназаров Б.А. Правовое регулирование отношений по трансграничной передаче прав на объекты промышленной собственности. Дисс. канд. юрид. наук. М., 2010.

Some Issues of Conflict of Laws in International Technology Transfer

user), which correlates with the territorial principle of protection of industrial property objects. And for each individual agreement on the indicated issues of the “property statute”, by analogy, the law of the country in whose patent office the corresponding object is registered is subject to application. issued by the patent office of the relevant state (each contract is separately registered in the respective state, where changes are made about the right holder or user), which correlates with the territorial principle of protection of industrial property objects. And for each individual agreement on the indicated issues of the “property statute”, by analogy, the law of the country in whose patent office the corresponding object is registered is subject to application. issued by the patent office of the relevant state (each contract is separately registered in the respective state, where changes are made about the right holder or user), which correlates with the territorial principle of protection of industrial property objects. And for each individual agreement on the indicated issues of the “property statute”, by analogy, the law of the country in whose patent office the corresponding object is registered is subject to application.

As for the application of the statute of obligations, then, taking into account the “lex cause”, the right of the party performing the decisive performance under the contract (the right holder - by analogy with the *lex venditoris*) should be applied to the contract - it will be the right that is most closely related to the relations of the parties under a contract for any type of cross-border transfer of rights to an object of industrial property, and not the right of the country where protection is claimed (this is the option contained in the national legislation of a number of countries), - in this case, we unreasonably expand the scope of conflict of laws rules, and artificially universalize the *lex fori* binding, - the law of the court.

It seems appropriate to enshrine the relevant conflict of laws rules in a unifying international legal treaty.

REFERENCES

- 1) Abramyan A.A. International technology exchange. <https://cyberleninka.ru/article/n/mezhdunarodnyy-obmen-tehnologiyami>
- 2) Asaul A.N. Prospects for the cluster organization of entrepreneurial activity in Russia // *Vestnik grazhdanskikh inzhenerov*. 2012. No. 3. -S. 223-236.
- 3) Efimova E. International technology transfer and mechanisms for its regulation. <http://dspace.nbu.gov.ua/bitstream/handle/123456789/36331/08-Efimova.pdf>
- 4) United Nations Convention on Contracts for the International Sale of Goods 1980 <https://lex.uz/docs/2630897>
- 5) International exchange of technologies and information in the system of world economic relations. https://studref.com/440447/ekonomika/mezhdunarodnyy_obmen_tehnologiyami_informatsiey_sisteme_mirohozyaystvennyh_svyazey
- 6) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (“Rome I”). Translation by A.O. Chetverikov. <https://eulaw.edu.ru/>
- 7) Talipova N. International exchange of technologies and information in the system of world economic relations. <https://reu.uz/wp-content/uploads/2022/03/oktjabr-2021-g.-talipova-n.t.pdf>
- 8) Shakhnazarov B.A. Legal regulation of relations on cross-border transfer of rights to objects of industrial property. Diss. ... cand. legal Sciences. M., 2010.
- 9) Decree on Private International Law 1979 N 13 of the Presidium of the Hungarian People's Republic.
- 10) Swiss Federal Law on Private International Law 1987
- 11) Model Civil Code of the CIS 1996



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.