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Intellectual Property and Scientific-Technological Development: in the Prospect of Human Rights Protection

Keywords: *Intellectual property, human rights, scientific-technological development, protection of privacy, European Union.*

Annotation: *This article defines the correlation between intellectual property and human rights in light of scientific-technological development. The certain provisions of international treaties on human rights, and current decisions of the Court of Justice of the European Union concerning the problem of guaranteeing the confidentiality personal data for the proper protection of privacy are highlighted*.

Intellectual property rights are stipulated as human rights in the Universal Declaration of Human Rights (hereinafter "UNDHR"). Article 27 of the UNDHR provides that: "(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits; (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary and artistic production of which he is the author." (1) These rights are further emphasized by Article 15 of the International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR"), Article 19 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"), the Vienna Declaration and Program of Action (hereinafter "VDPA"), and other international and regional instruments.

In recent years, intellectual property rights have become increasingly relevant in diverse policy areas, including trade, health, culture and heritage, investment, environment, food security, and scientific and technological progress.

The role of intellectual property law in the progress of societies cannot be overemphasized; appropriate intellectual property protection can contribute to the economic, social and cultural progress. However, the role of intellectual property in development and in related policy areas rises questions that are complex, rapidly evolving, and at times, controversial.

Nowadays, three areas of relationship between intellectual property and human rights are crucial for further study: non-discrimination, traditional knowledge and science and technology.

In this article we focus our attention on third mutual-related area.

As stated Mr. Brian Burdekin, in his opening address on behalf of the United Nations (hereinafter "UN") High Commissioner for Human Rights during the Panel discussion on

Intellectual property and Human rights, organized by World Intellectual Property Organisation (hereinafter "WIPO") and the Office of the UN High Commissioner for Human Rights:

"…the right to development and intellectual property require balancing the private right of the creator or inventor to protection of person's intellectual property with the right of the community to enjoy the benefits of such knowledge. Domestic law and international treaties on intellectual property usually protect the creator's private rights. In recent years, however, some have questioned the primacy accorded to this right – in the interests of economic development."(2)

Article 15 of the ICESCR (paragraph 1 (c)) stipulates that everyone has right: "To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic protection of which he or she is the author." States Parties not only have an obligation to respect this right, they are also to "… undertake to respect the freedom indispensable for scientific research and creative activity' and to "…recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields" (paragraphs 2 and 3) (3).

The certain advances in the biomedical and life sciences, as well as in information technology may have potentially adverse consequences for human rights, including the problem of guaranteeing the confidentiality personal data for the proper protection of privacy.

It is extremely important to promote legislative measures for the protection of personal data. At present, such protection is not guaranteed worldwide.

However, it is important to study the modernization and development of current legislation of European Union on the retention and protection of personal data, and decisions of the Court of Justice of the European Union concerning inadmissibility of monitoring the activity of Internet users.

On 6 April, 2014 the Court of Justice of the European Union adopted decision on invalidity of the Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (4):

"...It must be stated that the interference caused by Directive 2006/24 with the fundamental rights laid down in Articles 7 and 8 of the Charter is... wide-ranging, and it must be considered to be particularly serious. Furthermore, ...the fact that data are retained and subsequently used without the subscriber or registered user being informed is likely to generate in the minds of the persons *concerned the feeling that their private lives are the subject of constant surveillance."*

...As regards the necessity for the retention of data required by Directive 2006/24, it must be held that the fight against serious crime, in particular against organised crime and terrorism, is indeed of the utmost importance in order to ensure public security and its effectiveness may depend to a great extent on the use of modern investigation techniques. However, such an objective of general interest, however fundamental it may be, does not, in itself, justify a retention measure such as that established by Directive 2006/24 being considered to be necessary for the purpose of that fight."

The concept of European law on self-determination based on citizens' freedom to act and to participate was clearly highlighted in Decision by the German Constitutional Court on

the constitutionality of the national census:

"...Someone who expects, for example, that the participation in an assembly or in a public campaign will be officially registered and that this might put him at risk, will possibly give up the right to exercise the relevant fundamental rights (Art. 8,9 of the German Constitution). This would not only affect an individual's right to develop his personality, but also the common good, as self-determination is an elementary condition for the functioning of a free and democratic society which is based on its citizens' freedom to act and to participate."

It is important to note that only the Directive 2006/24 is abolished by the Judgment of the Court of Justice of the European Union. Whereas, most Member States is still have the national legislation, permissive excessive collection of personal data.

The Judgment of the Federal Constitutional Court of Germany, 2 March 2010 (5) is the unique sample in that matter. Data retention is recognised as an unconstitutional and the Act, aimed to implementation of Directive 2006/24/EC was abolished by the Federal Constitutional Court of Germany, and then by the Court of the Czech Republic, Romania. Other Member States continue to operate the original norms. Is still unknown, as far as national legislators will be bound by the Judgment of Court of Justice of the EU. Perhaps it will take considerable time before the novelty will be agreed on European space.

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