Section 4. Science of law

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Chiladze George Bidzinovich,
University of Georgia, professor

MANAGEMENT OF SCIENTIFIC RESEARCH, INTELLECTUAL PROPERTY AND INNOVATION IN ACCORDANCE WITH THE LAW "ON SCIENCE, TECHNOLOGIES AND THEIR DEVELOPMENT"

Abstract. In the fields of science, technology, innovation and intellectual property development and management, it is important to develop legal bases and uniform approaches that define the scope of their regulation. In this regard, relevant normative acts were adopted by the Parliament of Georgia during the years 1994–2016.

The present paper reviews the relevant articles of the 1994 Law of Georgia on Science, Technology and their Development, the 1999 Patent Law of Georgia, the 2016 Law of Georgia on Innovation, the 2009 Organic Law of Georgia on Normative Acts, and the 1997 Civil Code of Georgia.

The Law of Georgia on Science, Technology and their Development – in relation to other above-mentioned normative acts – has some shortcomings, inaccuracies and they require expansion and specification.

In this respect, relevant changes and recommendations, including those of the editorial character, are proposed.

Keywords: Intellectual Property, Innovation, Science and Technology, Law Regulation.

I. Introduction

The legal basis of the state policy in the field of development of science, technology, innovation and intellectual property is a precondition for the progress and prosperity of the country [1; 2; 3; 4; 5].

The Georgian state recognizes that scientific and technological progress is one of the main factors in the development of society as it creates favorable conditions for revealing the intellectual potential of the country and advancing the innovative economy [6; 7].

Activities in the fields of science, technology, innovation, and intellectual property encompasses the fundamental and the applied research and development, application of their results, and the improvement of the existing technologies and methods. All this is aimed at raising the level of production and manufacturing of the competitive, innovative products [8; 9; 10].

The development of Georgia's state policy in this field, taking into account the interests of the country, is based on its real capabilities. It defines the forms of its participation in the development of science, technology, innovation and intellectual property and creates structures to protect its own interests and rights. The state recognizes that the increase of funding for science is among its obligations.

Several normative acts were adopted by the Parliament of Georgia in the above direction over the

period between 1994–2016. In particular, the 1994 Law of Georgia on Science, Technology and their Development, the 1999 Patent Law of Georgia, the 2016 Law of Georgia on Innovation, defined the basic principles of scientific, technological, innovative and intellectual property policy and the legal basis for their regulation. With these laws, the state recognized their important role in the socio-economic development of the country and undertook responsibility for their development in terms of providing financial as well as organizational and legislative support [11; 12; 13].

The main text

There are a number of shortcomings and inaccuracies in the above-mentioned normative acts, some articles require expansion and clarification. In particular, Article 18 of the Law of Georgia on Science, Technology and their Development deals with the issues of protection of intellectual industrial property. I would note, that the title of the article does not fully correspond to its content. It is narrower in scope than the further provided expansion on the topic. In particular, in addition to intellectual and industrial property, the article as well talks about "the results of other scientific and technological activities", including the secrecy of the rules of production. The above objects represent the property of the state, physical or legal person (persons) and the state provides them with legal protection.

It can be argued that there is certain conflict between the rules of regulation of the Law of Georgia on Science, Technology and their Development and one of the basic laws regulating the field of intellectual property, the Patent Law of Georgia. In particular, under special law, patents on intellectual and industrial property may be granted for an invention or a utility model. In the mentioned cases, these include:

– Equipment (machines, mechanisms, equipment, tools, electronic circuits, etc.);

– Substance (solutions, alloys, chemical compounds, etc.);

– Biological material (strain of microorganisms, plant and animal associations, cell cultures, etc.);

– Method (technological processes, techniques, operations, etc.).

– Use of a product known from the existing level of equipment for a new purpose [14].

That is, this list does not talk about the secret of the rule of production. At the same time, Article 16 of the Patent Law of Georgia contains a complete list of objects that are not considered as inventions. In particular, as such are not considered as the following:

A) discovery, scientific theory, mathematical method;

B) artistic creation;

C) algorithm, computer program;

D) method and system of upbringing, teaching, grammatical system of language, method of performing mental operations, rules of playing, drawing;

E) method of management of activities and organization;

F) building, spatial planning and urban development plans/projects;

G) Submission/presentation of information.

The above objects are not considered patentable only if these objects directly represent the subject of the application.

Thus, Georgian Patent Law does not protect know-how, as it does not belong to industrial property.

The Law of Georgia on Science, Technology and their Development also needs to clarify the term about what is meant by the "secret of the rule of production", as this law does not define it in its definition of the used terms. Obviously, in such a case we should mean "know-how". It is unclear, however, exactly why this term is not used in the text of the law.

I should note that the protection of industrial and commercial secrets is carried out under Article 1105 of the Civil Code of Georgia. In particular, according to paragraph 1 of this Article, an entrepreneur who holds a production-commercial secret (know-how), which is a technological, organizational or commercial information of special importance, as is confirmed by the necessary and sufficient measures taken for its se-

cret storage, as is At the same time, in a broader sense, the „secret of the rule of production" is a "know-how", sincein addition to being the knowledge related to production process, is also a combination of technical, commercial, financial, administrative and other knowledge, drawn up in the form of technical documentation, expressed inuseful skills and experience, which are needed for organizing the particular types of production process. This ruleis practically used in industrial or professional activities, however it is not yet available to everyone. At the same time, it is important to note that it is not patented for any reasons [15].

Industrial-commercial secret, which is a technological, organizational or commercial information of special importance, must be validated by the necessary and sufficient measures taken for its keeping insecrecy. That is, the law must specify directly as exactly what necessary measures are to be taken to consider them sufficient [16].

Article 18 of the Law of Georgia on Science, Technology and their Development also refers to the protection of intellectual industrial property. I should note that such a term – "Intellectual Industrial Property", is not contained in the Patent Law of Georgia (see Article 2, where the definition of terms is discussed). This term is also not found in the Civil Code of Georgia. In particular, the fourth book of the Code deals with intellectual property law and its second Chapter regulates the industrial property issues:

Article 1100. Protection of rights to invention, utility model and industrial design;

Article 1101. Protection of selection rights;

Article 1102. Protection of exclusive rights to a trademark;

Article 1103. Right to geographical indication of origin and appellation of origin;

Article 1104. Protection of trade name;

Article 1105. Protection of industrial-commercial secret.

Thus, both the Patent Law of Georgia and the Civil Code of Georgia do not recognize the term "intellectual industrial property". That is, we have a collision between normative acts and the question arises as to which of them should be given precedence.

In this regard, we can be guided by Article 6 (6) of the Organic Law of Georgia on Normative Acts (Concept and Types of Legal Acts), according to which, the Code is a systematic normative act of the legal norms which regulate (the defined (uniform) public relations. And according to Article 7, Paragraph 3 of the same law (interrelation of normative acts), the following hierarchy applies to the legislative acts of Georgia, the Constitutional Agreement of Georgia and the international treaty and agreement of Georgia:

A) the Constitution of Georgia, the Constitutional Law of Georgia;

B) the Constitutional Agreement of Georgia;

C) International treaty and agreement of Georgia;

D) Organic Law of Georgia, Decree of the President of Georgia;

E) Law of Georgia, Rules of Procedure of the Parliament of Georgia [17].

Thus, we can conclude that since the organic law of Georgia is hierarchically higher than the law of Georgia, it is clear that the term "industrial property" established by the second Chapterof the Civil Code of Georgia should be unconditionally shared in the Law of Georgia on Science, Technology and Development. In particular, it should be established in Article 18 of the law.

Conclusion

The title of Article 18 of the Law of Georgia on Science, Technology and their Development does not fully correspond to its content. It is narrower in scope than the further provided expansion on the topic. In particular, in addition to intellectual and industrial property, it also discusses "the results of other scientific and technological activities", including the secrecy of the rules of production.

There is a certain collision between the rules regulated by the Law of Georgia on Science, Technology and their Development and one of the main laws regulating the field of intellectual property – the Patent Law of Georgia. In particular, according to

the special law, the list of intellectual and industrial property objects that can be granted a patent, does not mention the secrecy of the production rules. At the same time, Article 16 of the Patent Law of Georgia contains a complete list of objects that are not considered inventions. Georgian Patent Law does not protect know-how, as it does not belong to industrial property.

The term "secret of the rule of production" shall be specified in the Law of Georgia on Science, Technologies and their Development. This law does not define it in the definition of terms. Obviously, in such a case we should mean a "know-how". However, this term is not directly used in the text of the law.

Protection of industrial-commercial secret is carried out by Article 1105 of the Civil Code of Georgia. In a broad sense, the "secret of the rule of production" is "know-how", as in addition to being the knowledge related to production process, it also presents a combination of technical, commercial, financial, administrative and other knowledge, drawn up in the form of technical documentation, expressed useful skills and experience required for the particular types of production process. It is practically used in manufacturing or professional activities however has not been yet available to everyone and for some reason, is not patented.

Industrial-commercial secrecy must be validated by the necessary and sufficient measures taken to keep it secret. In other words, the Law of Georgia on Science, Technology and their Development should specify what are the necessary measures that shouldbe taken so they can be consider to be sufficient.

Article 18 of the Law of Georgia on Science, Technology and their Development refers to the protection of intellectual industrial property. The term "Intellectual Industrial Property" is not contained in the Patent Law of Georgia (see Article 2, which deals with the definition of terms). This term is also not found in the fourth book of the Civil Code of Georgia, which deals with intellectual property law, as well as in its second chapter, which the regulates industrial property issues.

Thus, both the Patent Law of Georgia and the Civil Code of Georgia do not recognize the term "intellectual industrial property". Thus we have here a collision between normative acts. In resolving the issue as towhich of them must be given priority, we should be guided by Article 2, Paragraph 6 and Article 7, Paragraph 7 of the Organic Law of Georgia on Normative Acts. Since the organic law of Georgia is hierarchically higher than the law of Georgia, the term "industrial property" established by the second part of the Civil Code of Georgia should be shared and unconditionally established in Article 18 of the Law of Georgia on Science, Technology and their Development.

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