

INTERNATIONAL REGULATION OF COMMERCIAL CONCESSIONS (FRANCHISING) IN RUSSIA

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Abstract: The purpose of this paper is to define the system of international regulation of commercial concessions (franchising) in Russian practice. The problems of unification and harmonization of Russian legislation on the basis of international law are identified. Ways to eliminate the discrepancy between norms of Russian legislation and requirements of the world community at the present stage are studied. The general methodological basis was formed by the general scientific (dialectical) method of cognition, comparative legal and logical methods that allowed us to consider the problems on the development of international regulation of commercial franchising in Russia. By analyzing the norms of international law, the directions of its development and improvement in the sphere of commercial concession are revealed. The basic international acts regulating commercial concession (franchising) are investigated, and their efficiency is estimated. Particular attention is paid to the issues of unification and harmonization of national legislation on the basis of universally recognized principles and norms of international law and international treaties of the Russian Federation. The development of the model law "On Franchising" is substantiated taking into account national legislations on a global scale. The measures to protect intellectual property and the problems of their implementation in the Russian legislation are argued. The position on the need to develop a Model Agreement on Commercial Concession (franchising) based on the current legislation in the Russian Federation, norms of international law, including the European Code of Ethics for Franchising, has been scientifically formulated. The theoretical provisions formulated in the paper can be useful for determining the effectiveness of civil legislation that consolidates the contractual regulation of commercial concession can be used in law enforcement practice, as well as in the training course "Civil Law".

Keywords: commercial concession, franchising, intellectual property, private international law; model law.

1 Introduction

Commercial concession in Russia is mainly international in its nature. This is explained by the fact that the subject composition of one of the parties is represented by a foreign legal entity or an individual possessing the status of an individual entrepreneur.

In accordance with paragraph 4, Article 15 of the Constitution of the Russian Federation, the generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If an international treaty of the Russian Federation establishes other rules than prescribed by domestic law, then the rules of the international treaty are applied.

A similar rule is also contained in Article 7 of the Civil Code of the Russian Federation, which also stipulates that the international treaties of the Russian Federation are applied to property and personal non-property relations that are directly regulated by civil law, unless an international treaty requires that a publication of an internal act be required for its application.

Clarifying by the Plenum of the Supreme Court of the Russian Federation of October 10, 2003, No. 5, according to which they directly operate within the jurisdiction of the Russian Federation, determine the meaning, content and application of laws, the activities of the legislative and executive authority, the local self-government and are provided with justice, are significant in implementation of the common principles, norms and international treaties of the Russian Federation.

The Russian Federation international treaties that directly regulate a commercial concession are not adopted. However, at the international level uniform rules are being developed in this area. In particular, UNIDROIT have been developed: there are the "Guide to international master franchise arrangements" (2007) which has a recommendatory nature and its application can be agreed by the parties to the relevant treaty and the Model franchise disclosure law (2002) which establishes the

franchisor's duty to disclose information, its volume, restore the violated rights of a franchisee and the responsibility of a franchisor in the event of failure to perform their duties.

Issues affecting certain aspects of commercial concession are regulated by a whole block of international agreements in the field of intellectual property. For example, the Paris Convention for the Protection of Industrial Property (1883), the Universal Copyright Convention (1952), the Convention on the Prohibiting and Preventing of Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), Berne Convention for the Protection of Literature and Artistic Works (1886), the Agreement "On Measures to Prevent and Suppress the Use of False Trademarks and Geographical Indications", 1999, the Agreement on Cooperation in the Protection of Copyright and Related Rights (1993), the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957) and others (Tuan, 2017; Skvortsov, 2015; Afanasev et al, 2007; Afanasev & Breeva, 2016; Afanasev, 2015).

In the global economy conditions, the commercial use of intellectual property as an effective mechanism to promote international trade in goods and services plays a significant role for the successful development of franchising. Protection of intellectual property objects is one of the main objectives of their legal circulation not only in Rho from these, but also abroad. International acts are mainly directed to this sphere of legal regulation and, in accordance with international obligations assumed, Russia should strive to include its general principles and norms in national legislation (González & Villalobos Antúnez, 2016).

2 Methodology

It seems relevant that universally recognized principles and norms of international law and international treaties of the Russian Federation are reflected in Russian civil legislation on the commercial concession, what will allow our country to establish foreign economic relations faster and more efficiently, attract foreign investments, develop certain branches of the market economy, etc.

The international treaties under consideration provide for convergence of national legislation by unifying and harmonizing the law on their basis. Thus, Article 25 of the Paris Convention for the Protection of Industrial Property states that each country which is party to this Convention undertakes to take the necessary measures in accordance with its Constitution to ensure its application. It is understood that each country at the time of the depositing of an instrument on ratification or accession, must be able, in accordance with its domestic law, to implement the provisions of this Convention. A similar rule is contained in Art. X of the World Convention on Copyright and Art. 36 of the Berne Convention for the Protection of Literary and Artistic Works.

There is often a need for joint solution of common tasks and concerted actions in the legal sphere of cooperating states and interstate associations. Hence, this is a basis for the need to bring together national legislation. The convergence process implies formation of a single direction for the development of law, the implementation of stages on carrying out actions on removal of the legal differences and the development and adoption of uniform rules of law.

3 Results and Discussion

The positions on solving this problem in the scientific world are different. Repeatedly, the authors raised the issue of unifying the norms in the field of commercial concession (franchising) by adopting the International Convention on Franchising (Moon & Sharma, 2014).

The adoption of such an act may cause considerable difficulties in many countries as to legal harmonization of the norms of national law with it, and as a consequence of the impossibility of accession. This is due either to the peculiarities of the legal regulation of franchising (commercial concession) in each individual state or the absence of any such norms at all.

With this development of international regulation of franchising legal relations, two models for the development of national legislation in this sphere are seen. The first model is based on the reception of norms of international law and their inclusion in their own civil legislation. In this situation, it is necessary to take into account the development of national legislation, franchising business relations, and the ability to perceive the norms of international legislation (Duissembayev & Ibrayeva, 2014). Introduction of the norms of civil legislation taking into account international norms should be implemented in stages, taking into account the economic stability and legal status of a state, the need for protection of business entities, private and intellectual property.

The second model is oriented towards the exclusive adherence to the norms of international law and the reform of the domestic legislation with a view to adapting it to world practice. With such a view on the development of legislation, accession to international rules will require harmonization and unification of the national law.

For more effective development of national legislations, it is possible to form common norms in the form of a model act. Such a separate law is a balanced document and the formulation of specific articles.

The Model franchise disclosure law (2002) being currently in force, is not capable of settling all aspects of the franchising relationships. It basically regulates the franchisor's responsibilities in disclosing information, its volume, restoring the violated rights of the franchisee and the responsibility of the franchisor in the event of failure to perform its duties.

International integration and the development of the international market require new approaches to the development of states. The improvement of national legislation should not be isolated from international norms, especially those to which they are attached. Eliminating disagreements among the legislations or their contradiction is one of the necessary requirements at the present stage of the world community. Therefore, the drafting of the Model Law "On Franchising" will provide an opportunity for states to approach uniformly the problem of harmonization of national legislations on a global scale. Firstly, the use of the model law by states - parties to the agreement in the field of individual property is only possible when the states deem it necessary. Moreover, it is possible to change the very shape of the model law, and its individual positions. Secondly, a uniform understanding of the legal nature of franchising will facilitate the relations of entrepreneurs, eliminate different interpretations by the parties of the norms of international and national laws, and conflicts in law will be eliminated. Thirdly, the employers will not need to know all the subtleties of the national legislation where the dispute will be considered, what will significantly reduce legal costs, and also legal aid and representation costs.

A significant role in the legal regulation of franchising is assigned to two acts: Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) which forms the basis of the global trading system, intellectual property protection, to which Russia joined on August 22, 2012, and Washington Treaty on Intellectual Property in Respect of Integrated Circuits (1989). These acts stipulate development of uniform norms and principles with regard to the availability, scope and use of intellectual property rights related to trade (Leiderman & Lipovetsky, 2001; Orlitsky, 2002).

Measures to protect intellectual property are multifaceted, and their strengthening or weakening can have different effects on the country's economic stability. With the strengthening of intellectual property protection measures, it is necessary to take

into account that they lead to a decrease in technological production and the monopolistic behavior of foreign producers.

On the other hand, the franchising method of doing business with a foreign element is increasingly being used in Russia. It seems necessary to seek compromise solutions in the field of the regime on protection of intellectual property rights, what can provide a balance between the interests of different states in the development of relevant conventions, agreements and treaties. It is necessary to pay attention not only to the legal side of the problem issue, but also to market mechanisms that can create conditions for the growth of the entire economy of the country.

Ratification of absolutely all norms of international law for Russia is not possible. The reasons for such incomplete implementation of the norms of international law are immaturity of national legislation, as well as the absence of market mechanisms in some areas.

Improvement of Russian legislation within the framework of international integration and globalization, creation of a single market for ensuring full and real freedom of production of goods, services and intellectual property is a long and laborious process capable of bringing the country to a qualitatively new level in the world.

4 Summary

To date, international franchise relations are characterized by contractual regulation, which is supplemented by the requirements of the law applicable in the event that the relationship is not settled or fully regulated by a treaty. When developing franchising agreements the parties should be guided by the national law. This has its drawbacks. Firstly, they do not take into account the specific requirements of international trade. Secondly, the norms of the national law of different countries can differ significantly, since they are directed, first of all, to the regulation of internal relations.

These shortcomings can have adverse consequences: difficulty in resolving emerging conflicts, infringement and violation of rights, inhibition in the development of international franchising, etc.

With the aim of developing international franchising, the International Chamber of Commerce has developed a Model Contract for International Franchising, which is recommendatory and minimizes the application of the national law of a country, and assumes great importance due to the lack of an appropriate international settlement through the harmonization and unification of the norms of foreign legislation.

However, the Model Contract of International Franchising under consideration does not reflect the current Russian legislation on commercial concession, what significantly complicates its application in practice.

5 Conclusions

In order to regulate franchising relationships and due to the lack of proper federal legislation, it is advisable to develop a Model Agreement on Commercial Concession (franchising). It is reasonable to formulate in it the standard rules necessary for registration of contractual relations by contractors and reflecting national and international law. The said Model Agreement should be of a recommendatory nature, that is, its individual provisions can be changed at the discretion of the parties.

The expediency of developing this Model Contract is seen in the following. First, due to its development by the relevant state bodies, it will show the existing economic relations typical for franchising in Russia. Second, it will clarify the situation with respect to legal contractual arrangements in this area. Third, the uniform rules recommended to the participants of these legal relations and providing them with an opportunity to agree main rights and responsibilities, will allow the search for the relevant rules of national and international law and the costs of legal

advice to minimize. Fourth, the model rules will promote development of international economic interaction between domestic and foreign economic entities.

Thus, it is necessary to develop a Model Agreement for commercial concession (franchising), taking into account both the current legislation of the Russian Federation and the norms of international law, including The European Code of Ethics for Franchising.

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