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NON-CONTRACTUAL OBLIGATIONS IN INTELLECTUAL PROPERTY LAW

The article deals with obligations as the basis for the emergence of civil law relations, in connection with this, the specificity of non-contractual obligations is revealed. In particular, attention is paid to both illegal non-contractual obligations, namely torts, i.e. liabilities from causing damage to property, incl. in case of illegal use of objects of intellectual property rights. The article highlights the jurisprudence in connection with this the approaches of judges are analyzed in the consideration and resolution of disputes relating to the violation of exclusive rights to intellectual property. The article also discusses legitimate non-contractual obligations, for example, competitive obligations, the subject of which is the creation of the results of intellectual creative activity. Competitive obligations, in turn, are pre-contractual relations, i.e. precede the conclusion of an agreement, in particular, an appropriate agreement is concluded with the winner of a tender or auction on the creation of an object of intellectual property rights or an agreement on the sale of paintings, other objects of art. The article also considers such an extra-contractual obligation as a public promise of a reward, for example, for the creation of any work of science, literature, art. Thus, intellectual property law as a sub-branch of civil law closely interacts with other institutions of civil law.

Key words: non-contractual obligations, obligations from infliction of harm, violation of the exclusive right, competitive obligations, tender, auction, public promise of remuneration.

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Зияткерлік меншік құқығындағы шарттан тыс міндеттемелер

Мақалада азаматтық-құқықтық қатынастардың туындауының негізі ретіндегі міндеттеме қарастырылады, осыған байланысты шарттан тыс міндеттемелердің ерекшелігі ашылады. Атап айтқанда, заңсыз шарттан тыс міндеттемелерге де, атап айтқанда деликттерге, т.б. мүлікке зиян келтіру бойынша міндеттемелер, соның ішінде зияткерлік меншік құқығы объектілерін заңсыз пайдаланған жағдайда. Мақалада сот практикасына ерекше тоқталған, осыған байланысты зияткерлік меншік объектілеріне айрықша құқықтарды бұзуға қатысты дауларды қарау және шешудегі судьялардың тәсілдері талданады. Мақалада сондай-ақ шарттан тыс заңды міндеттемелер, мысалы, пәні зияткерлік шығармашылық қызметтің нәтижелерін жасау болып табылатын конкурстық міндеттемелер қарастырылады. Бәсекелестік міндеттемелер, өз кезегінде, шартқа дейінгі қатынастар, яғни. шарт жасалғанға дейін, атап айтқанда, зияткерлік меншік құқығы объектісін жасау туралы конкурстың немесе аукционның жеңімпазымен тиісті шарт немесе картиналарды, өнердің басқа да объектілерін сату туралы шарт жасалады. Мақалада сондай-ақ мұндай шарттан тыс міндеттеме, мысалы, сыйақы туралы жария уәде ретінде қарастырылады. кез келген ғылым, әдебиет, өнер туындысын жасау үшін. Осылайша, зияткерлік меншік құқығы азаматтық құқықтың қосалқы саласы ретінде азаматтық құқықтың басқа институттарымен тығыз байланыста болады.

Түйін сөздер: шарттан тыс міндеттемелер, зиян келтіруден туындайтын міндеттемелер, ерекше құқықты бұзу, конкурстық міндеттемелер, конкурс, аукцион, сыйақы туралы жария уәде.

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Внедоговорные обязательства в праве интеллектуальной собственности

В статье рассматриваются обязательства как основания возникновения гражданско-правовых отношений, в связи с этим раскрывается специфика внедоговорных обязательств. В частности, уделяется внимание как неправомерным внедоговорным обязательствам, а именно деликты, т.е. обязательства из причинения вреда имуществу, в т.ч. в случае незаконного использования объектов права интеллектуальной собственности. В статье освещается судебная практика, в связи с этим анализируются подходы судей при рассмотрении и разрешении споров, касающихся нарушения исключительных прав на объекты интеллектуальной собственности. В статье также рассматриваются и правомерные внедоговорные обязательства, например, конкурсные обязательства, предметом которых является создание результатов интеллектуальной творческой деятельности. Конкурсные обязательства, в свою очередь, являются преддоговорными отношениями, т.е. предшествуют заключению договора, в частности с победителем тендера или аукциона заключается соответствующий договор о создании объекта права интеллектуальной собственности или договор продажи картин, иных предметов искусства. В статье также рассматривается такое внедоговорное обязательство как публичное обещание вознаграждение, например, за создание какого-либо произведения науки, литературы, искусства. Таким образом, право интеллектуальной собственности как подотрасль гражданского права тесно взаимодействует с другими институтами гражданского права.

Ключевые слова: внедоговорные обязательства, обязательства из причинения вреда, нарушение исключительного права, конкурсные обязательства, тендер, аукцион, публичное обещание вознаграждения.

Introduction

Obligations are the basis of civil turnover. Through obligations, there is a turnover of goods, performance of work or rendering of services. In the theory of civil law, obligations are divided into two types: contractual and non-contractual obligations. Contractual obligations arise by virtue of the agreement of the parties, while non-contractual obligations are based on other legal facts, namely: unilateral actions, infliction of harm, salvage of property, etc.

Legal facts act as the grounds for the emergence, change or termination of civil legal relations, while legal relations may often arise by virtue of legal composition, that is, several legal facts.

As noted by V.V. Dolinskaya, the main characteristics of legal facts are the following: they are based on life circumstances; these circumstances have an external form of expression; it is a legal category; it is qualified as such by sources of law; its meaning is due to the consequences that it entails; legal facts must be recorded and can be certified (Dolinskaya, Slesarev 2017 : 15).

Quite a lot of research is devoted to contracts in the field of intellectual property, but the purpose of the study in this article is to study non-contractual obligations in relation to intellectual property.

Results and discussion

Let us consider each type of non-contractual obligations separately in order to understand which non-contractual obligations may arise in relation to intellectual property.

Obligations from infliction of harm or as otherwise they are called tort obligations are generated as a result of committing lawful and unlawful actions. Thus, as a result of the emergence of such obligations comes the obligation to compensate the damage caused to either property or non-property benefits and rights. The objects of such obligations may be life and health or other personal non-property rights, as well as, of course, property. The person who caused the harm must compensate it in kind or in the form of damages.

Article 917 of the Civil Code of the Republic of Kazakhstan provides for general grounds for liability for causing harm.

According to paragraph 1 of Article 917 of the Civil Code of the Republic of Kazakhstan, damage (property and (or) non-property) caused by illegal actions (inaction) to property or non-property benefits and the rights of citizens and legal entities is subject to compensation by the person who caused the harm in full. Legislative acts may impose the obligation to compensate for harm on a person who

is not the tortfeasor, and also establishes a higher amount of compensation.

It follows from the content of this article that harm acts as a general basis for the emergence of a tort obligation, that is, these are the adverse consequences that arise as a result of the commission of unlawful actions (inaction) against the benefits and rights of citizens and legal entities.

S.A. Stepanov notes that the basic principle of obligation due to the infliction of harm is to fully compensate for the harm by the person who caused it. In the literature, this is called a general tort, according to which the wrongfulness of the action and the guilt of the tortfeasor are presumed (Stepanov, Alekseev 2013: 366).

The subjects of tort liabilities are the tortfeasor and the victim. The victim can be any subject of civil rights, regardless of the degree of legal capacity, age, gender, nationality, citizenship or legal status (Anisimov 2013 : 403).

The inflictor of harm can be both individuals or legal entities, and the state represented by its state bodies and administrative-territorial units.

The institution of obligations as a result of compensation for harm performs a protective function, and also ensures the protection of rights and interests, the violation of which has already occurred. The content of the obligation reflects its compensatory (restorative) function (Sadikov 2010: 447).

The next general basis for liability for causing harm is illegal actions or omissions, that is, such actions (omissions) are illegal.

Wrongfulness in tort obligations means any violation of someone else's subjective absolute right, resulting in harm, unless otherwise provided by law (Sadikov 2010 : 451).

Paragraph 2 of Article 917 of the Civil Code of the Republic of Kazakhstan provides that the person who caused the harm is exempted from its compensation if he proves that the harm was caused through no fault of his, except for the cases provided for by this Code. That is, the norms of the Civil Code definitely give reason to believe that a person is exempt from compensation in the absence of guilt.

It is written in the literature that legally significant for the emergence of a tort obligation is the fault of the tortfeasor in any form: intent, gross or simple negligence. The form of fault does not affect the amount of compensation. In all cases, the harm, as a general rule, is compensated in full, so the amount of liability depends on the amount of harm, but not on the form of guilt of the tortfeasor (Sadikov 2010: 454).

Not everyone agrees with this position. In particular, as T.T. Shiktybaev, one cannot categorically reject the meaning of guilt in civil law, especially in tort relations. We fully share the position of the legislator, which establishes the principle of guilty liability of the tortfeasor (Article 917 of the Civil Code of the Republic of Kazakhstan). The behavioral aspect of the offender's guilt in eliminating harmful consequences has its own subjective side, since guilt includes, firstly, the possibility of foreseeing the consequences of one's unlawful behavior and, secondly, the consciousness of the possibility of preventing them (Shiktybaev). According to the author, the main condition in determining the person responsible for the harm (the causer or the victim) that arose as a result of the action (inaction) of the victim himself should not be the mental attitude of the latter to his behavior, but the external manifestations of his mental activity, which, in relation to guilt or the innocence of the offender and determine who and to what extent will bear the burden of property liability in each specific case (Shiktybaev).

Harm can also be caused by lawful actions. This was expressed in paragraph 3 of Article 917 of the Civil Code of the Republic of Kazakhstan, which states that the harm caused by lawful actions is subject to compensation in cases provided for by the Civil Code of the Republic of Kazakhstan and other legislative acts.

In our opinion, here we are talking about a subject who acted in good faith.

O.A. Otradnova writes that the person who caused the harm acted in bad faith, since the requirements of good faith provide precisely for refraining from such actions. If the harm has already been done, the implementation of the principle of good faith in this case is manifested in preventing an increase in the amount of harm caused, in the implementation by the harm-doer of all actions aimed at minimizing the amount of harm and in the fastest possible voluntary compensation for the harm caused. (Otradnova 2009: 380).

An important fact is the presence of a causal relationship between the illegal action (inaction) and the resulting harm.

A causal relationship between the wrongful action (inaction) of the tortfeasor and the resulting harm exists if: a) the first precedes the second in time; b) the first gives rise to the second (Sadikov 2010: 452).

Obligations are closely related not only to the movement of material objects, but also mediate the circulation of intellectual property objects. Torts

may arise as a result of harm to the subjective civil rights and benefits of authors and copyright holders of intellectual property.

The obligations of causing harm in the field of intellectual property law include the illegal use of property exclusive rights, for example, property copyright, related, patent rights, rights to means of individualization and other exclusive rights, as well as violation of the personal non-property rights of the author, inventor (right of authorship, the right to a name, the right to the inviolability of the work).

S.A. Sudarikov sees the reasons for violations of intellectual property rights in the very essence, that is, in the monopoly of this right. The monopoly nature of intellectual property rights gives rise to violations of this right. Legislatively assigned rights to a particular object to the right holder mean that the right holder can set any prices for his property. However, no statutory right can override economic laws. (Sudarikov 2009: 304-305).

Exclusive rights refer to absolute rights, this explains the monopoly of the copyright holder. At the same time, we agree with S.A. Sudarikov in terms of monopoly, but do not agree on the actions of economic laws..

In fact, being involved in civil circulation, objects of intellectual property are already subject to economic laws. And why are they created? They are created for the sake of obtaining an economic effect in the form of profit, or in the form of self-realization of creative potential. In our opinion, the reason for the violation of intellectual property rights lies in their creative intellectual nature. After all, creativity cannot be reduced to any particular pattern, the idea and thought are constantly evolving, taking on different forms and content, and the copyright holders ultimately do not want to part with the monopoly of their exclusive right to the object, and do not want to admit that other authors and copyright holders are also can create something unique, even if somewhat similar.

Another reason, in our opinion, is the lack of a formal approach to securing their intellectual property rights. Ignorance and ignorance of the legal protection of intellectual property objects lead to litigation and endless clarification of the ownership of exclusive rights.

In turn, Article 49 of the Law of the Republic of Kazakhstan dated June 10, 1996 No. 6-I "On Copyright and Related Rights" (hereinafter referred to as the Law of the Republic of Kazakhstan) provides for ways to protect copyright and related rights, which come down not only to filling intangible nature, but also material. (https://online.zakon.kz/Document/?doc_id=51005798#activate_doc=2). Like any other property right, the exclusive right is subject to monetary value, as well as the damage caused to the exclusive rights of the copyright holder, which is subject to compensation, which allows not only to restore the good name of the author or copyright holder, but also his property sphere.

Of course, the infringement of intellectual property rights must be proven. And only after establishing the fact of violation, the harm caused is subject to compensation.

At the same time, in Russian judicial practice, compensation is one of the most popular ways to protect exclusive rights (Novoselova 2017: 480).

The maximum amount of compensation in case of violation of exclusive rights is provided for by the special legislation of the Republic of Kazakhstan.

Examples from the judicial practice of the Republic of Kazakhstan are quite diverse.

The Judicial Board of Appeal for Civil and Administrative Cases of the Astana City Court considered a civil case on the claim of ROO "IKP" against JSC "Republican Television and Radio Corporation" (hereinafter – the Corporation) for the recovery of compensation in the amount of 2,354,265 tenge, indicating that the defendant used objects of related rights , by broadcasting phonograms published for commercial purposes, namely the songs: "C" performed by A.S. and D.; "E" performed by gr. "MAPT"; "P" performed by A.Zh.

By virtue of the agreement, the plaintiff was transferred to collective management the property rights of the indicated performers and to the phonograms used on the TV and radio channel. For violation of the rights of performers, he asks to recover compensation of 435,975 tenge for each song, in total 1,307,925 tenge. For violation of the rights of N.M., as a producer of phonograms, he asks to recover compensation for each phonogram in the amount of 20 minimum wages, which is 348,780, and, accordingly, the amount for three phonograms is 1,046,340 tenge.

The representative of the defendant did not recognize the claim, pointing out that the rights of the performers and the phonogram producer were not violated. Payment of remuneration for works used without the consent of the copyright holders, in accordance with paragraph 1 of Article 39 of the Law on Administrative Offenses of the Republic of Kazakhstan, was paid in accordance with the license agreement PI "A".

By the decision of the court, the claim was partially satisfied, compensation in the amount of

435,975 tenge was recovered from the Corporation in favor of RPO "Ikp".

It follows from the materials of the civil case that between the IE "N.M." (User) and A.S. (Copyright Holder) concluded Agreement No. 137 dated July 21, 2010, in accordance with the terms of which the Copyright Holder transferred exclusive rights to the User to use the works specified in clause 5 of this Agreement, i.e. albums / compilations in the following ways: audio recording, ringtones, broadcast on television, including cable and satellite, radio, MS, CD, VCD, DVD, VHS, MP3, VP4, use in the media, as well as the use of photos and videos.

In accordance with clause 1.1.4 of the above Agreement, the User has the right, including broadcasting, followed by broadcasting on the air and cable TV, etc. within the territory of the Republic of Kazakhstan and beyond its borders.

Clause 5 of the Agreement provides for the works "B.ө.t.", "E." performed by the duet "A. men D."

A similar agreement was concluded by IE "N.M." (User) and A.Zh. (Copyright holder) No. 16 dated January 23, 2006, clause 5 of the Agreement provides for the works "P", "S.қ." "A.a."

Also between IP "N.M." (Licensor) and the MART trio represented by M.B., S.M., K.Zh. (Licensee) concluded the License Agreement No. 10 dated 06/01/2007, in accordance with paragraph 2.1. which the Licensor transferred to the Licensee for a period of time exclusive rights to albums (phonograms), related (and copyright) rights that belong to the Licensor, in terms of their reproduction on media with subsequent sale, as well as by leasing, broadcasting, with subsequent broadcasting and cable TV, etc. within the territory of the Republic of Kazakhstan and beyond its borders.

According to the Appendix to the license agreement of IP "N.M." including the work "E.a."

The right to manage the above property rights of IP "N.M." handed over to ROO "IKP" on the basis of the Agreement dated 01.10.2009.

Acts of fixing the fact of the use of phonograms published for commercial purposes dated 06/25/2012, dated 07/25/2012 recorded the facts of the use of the following phonograms: "P" performed by A. Zh., "S" performed by the duet A.S. and D., "E.a" performed by the group "MAPT".

07/31/2012 for No. 12/15, No. 12/16 N.M. claims were sent to the defendant to prohibit the use of works transferred to him by the copyright holders in accordance with the License Agreements.

The court also established that between PI "A" and the RPO "Ikp" concluded an agreement No. 1 dated December 6, 2011 with a period of validity from November 1, 2011 to December 31, 2012, under the terms of which the parties agreed that if the RPO " Ikp" will collect remuneration for performers and / or producers of phonograms, the management of whose property rights has been duly transferred to PI "A", RPA "IPK" undertakes to transfer this remuneration to PI "A". In turn, if PI "A" collects remuneration for performers and / or producers of phonograms, the management of whose property rights is duly transferred to RPO "IKP", PI "A" undertakes to transfer this remuneration to RPO "IKP".

Acting within the framework of the specified agreement, PI "A" transferred the remuneration received from the defendant to the plaintiff, which is confirmed by the submitted payment orders.

Under such circumstances, the panel finds that the defendant used the objects of related rights in accordance with the requirements of subparagraph 2) of paragraph 1 of Art. 39, paragraph 2 of Art. 46-1 of the Law, the remuneration was paid to PI "A" in accordance with the terms of the license agreement.

It should also be noted that between RPO "IKP" and the Corporation a similar license agreement on the use of phonograms published for commercial purposes and performances recorded in these phonograms by radio transmission was not concluded.

At the same time, the board finds the conclusions of the court in the motivational part that the ACD R studio, represented by N.M. is not a producer of phonograms, is not based on the materials of the case and the requirements of the law.

In view of the foregoing, the board finds that the grounds for bringing the defendant to liability under paragraphs. 6 p. 1 art. 49 of the Law, absent, the arguments of the defendant's appeal are substantiated, the decision is subject to change with the cancellation of the satisfied part of the claim with the refusal of the claim in full. With regard to the recovery of compensation from the Corporation in the amount of 435,975 tenge, cancel and refuse the claim of RPO "Ikp" in full (http:sud.kz).

In this example, it is obvious that the board came to the right conclusion, because the defendant used the objects of related rights in accordance with the requirements of the Administrative Code of the Republic of Kazakhstan and the terms of the license agreement, that is, he acted lawfully.

The Bostandyk District Court of Almaty considered a civil case on the claim of N.D. to E.KZ LLP on copyright protection. At the same time, the Company violated the copyrights of the artist, and the Company is obliged to pay an amount of 4,500,000

(Four million five hundred thousand) tenge as compensation for the use of the Work. The parties reached an amicable agreement ((http:sud.kz).

This example illustrates the possibility of concluding a settlement agreement in cases where guilt in committing copyright infringement is proven in court.

Often, personal non-property rights are also a subject of dispute. Thus, the cassation judicial board of the North-Kazakhstan Regional Court of the Republic of Kazakhstan considered a civil case on the claim of T.S. to NPO EF LLP on copyright protection by imposing a ban on the use of technology in the manufacture of medicines, payment of compensation in the amount of 74,760,000 tenge and confiscation of counterfeit medicines.

In the appeal, the plaintiff T.S. asks to cancel the judicial acts in the case and make a new decision to satisfy the claim. Indicates that the courts have violated and incorrectly applied the norms of substantive and procedural law, since the courts do not consider his works (dissertation, dissertation abstract and industrial regulations) to be objects of copyright, that is, paragraph 1 of Art. 971 of the Civil Code and paragraph 1 of Art. 6 of the Administrative Code, with which he does not agree, since from the Rules for awarding scientific degrees not applied by the courts, and the content of his defended scientific works, the novelty of the developed technology for the complex processing of balsam poplar buds, the development of industrial regulations for the substance "Ef", tincture "Ef-2" follows , suppositories "Ef-3".Алқа т.с. талап-арызының негізі сотталушының диссертацияны, автореферatты және ережелерді авторлық құқықты бұза отырып пайдаланбауы, бірақ "Эф", "Эф-2", "Эф-3"дәрі-дәрмектерін өндіру технологияларын қолдануы деп дұрыс тұжырым жасады.

The Board correctly concluded that T.S. is not the defendant's use of the dissertation, author's abstract and regulations, as such, in violation of copyright, but the use of technologies for the production of medicines "Ef", "Ef-2", "Ef-3".

We believe that the courts of first instance and appeal came to the conclusion that the defendant did not infringe the copyright of T.S. due to the lack of an object of protection, since the technologies for the production of medicines are not subject to copyright regulation, and therefore the courts refused to satisfy the claim in full.

At the request of the defendant LLP "NPO EF" dated March 1, 2004, the Committee for Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan issued a provisional patent No. 16150 for the invention "a method for obtaining biologically active substances from the balsam poplar buds", the invention was registered in the State Register of Inventions of the Republic of Kazakhstan on June 15, 05 year, the defendant is the patent owner, the plaintiff is the author of the invention. The claims are formulated as follows: a method for obtaining biologically active substances from balsam poplar buds, including steam treatment at a steam pressure of 0.1-3 atm and a temperature of 105-130 degrees Celsius.

According to the letter of the Committee for Control of Medical and Pharmaceutical Activities of the Ministry of Health of the Republic of Kazakhstan dated 21.06.10, the medicines "Ef", "Ef-2", "Ef-3" manufactured by NPO EF LLP were registered on 10.22.03, in accordance with the current At the time, the Decree of the President of the Republic of Kazakhstan No. 2655 dated November 23, 1995 "On Medicines" did not include the coordination of technological regulations for the production of medicines within the competence of the Ministry (vol. 1 case sheet 157).

Following the introduction to the thesis by T.S. on the topic "Improving the technology of processing balsam poplar buds and developing medicines based on them", defended on November 18, 2005 at the South Kazakhstan State Academy, the developed technology for the complex processing of poplar buds was adopted as the base for the construction of the production workshop of NPO EF LLP, and on April 6, 2004, the 1st stage of the enterprise was put into operation.

All of the above was taken into account by the courts when making a decision, and the cassation board considers it proven in the case that the scientific work of T.S. was based on a preliminary patent for the invention "a method for obtaining biologically active substances from balsam poplar buds", until the defense of T.S. technological regulations were developed that were used with his knowledge by the defendant when filing an application for the said patent, and that, having a license for production, NPO EF LLP, in which the plaintiff worked as a production manager, produced medicines "Ef", "Ef-2" , "F-3".

The concluded settlement agreement also points to the inconsistency and inconsistency of the plaintiff's arguments on extending the provisions of copyright to the Ef-2 tincture and Ef-3 suppositories to their qualification as objects of patent law.

In addition, as the courts rightly pointed out, copyright applies to works of science, art and

literature, but medicines are not, in accordance with Art. 2 of the Patent Law, this law regulates property relations, as well as personal non-property relations related to them, arising in connection with the creation, legal protection and use of industrial property objects.

The arguments of the complaint about classifying his scientific works as objects of copyright protection only because they are composite works (clause 2, clause 3, article 972 of the Civil Code) are untenable, since this does not apply to the merits of the claim, and, moreover, the plaintiff admits a contradiction, indicating that he is the author of a scientific work and, at the same time, a composite (collection).

The Board concludes that the courts reasonably took into account the chronological sequence and interconnectedness of the defendant's activities in issuing permits and organizing the production of medicines "Ef", "Ef-2", "Ef-3", in which the plaintiff T. S., which began in February 2004 with the approval of industrial regulations in the Committee of Pharmacy, as well as data on the preparation, defense, publication of the plaintiff's scientific work, begun during his postgraduate studies (2001-2005). At the same time, in the opinion of the board, the fact of defending the dissertation of T.S. in November 2004, since the defense confirmed the scientific status of this work, which allows it to be attributed to the object of copyright in accordance with paragraph 1 of Art. 971 of the Civil Code of the Republic of Kazakhstan.

Since the organization and the actual production cycle for the manufacture of medicines "Ef", "Ef-2", "Ef-3" in NPO EF LLP was carried out with the direct participation of the plaintiff, which is confirmed by the indication in the Introduction to the dissertation on the construction of a production workshop and production products from poplar buds, – the plaintiff's arguments that he was not aware of the activities for the organization of production at NPO EF LLP, and that the courts unreasonably applied the statute of limitations do not deserve attention. At the same time, the board believes that the production of drugs "Ef", "Ef-2", "Ef-3" until the spring of 2010 does not affect the expiration of the limitation period, since, according to paragraph 1 of Art. 180 of the Civil Code, the limitation period begins from the day when the person knew or should have known about the violation of the right (http:sud.kz).

Thus, the plaintiff misinterpreted the norms of the Law of the Republic of Kazakhstan "On Copyright and Related Rights" and the Patent Law of the Republic of Kazakhstan, therefore, the courts correctly concluded that the plaintiff's claims were inconsistent, respectively, there was no talk of any material compensation.

Often, copyright holders go to court with claims to ban the import of an intellectual property object, offer it for sale, sale and other introduction into civil circulation in the Republic of Kazakhstan before the expiration of the protection period, thereby substantiating their claims by the fact that they are the legal owner of a certain object. Such copyright holders cannot allow the parallel use of similar objects by someone else, completely forgetting that such actions generally lead to a violation of competition law and negatively affect the firmness and freedom of civil circulation. And it would have been so, if not for the adoption in 2012 in the legislation of the Republic of Kazakhstan of the norm on the exhaustion of exclusive rights.

One of these entrepreneurs turned out to be the plaintiff AsPharmaS.A. (France), who filed a lawsuit against GX LLP to ban the import of a medicinal product, offer it for sale, sale and other introduction into civil circulation in the Republic of Kazakhstan before the expiration of the term of protection of the invention, protected by a patent, indicating that AsPharmaS. BUT. is the owner of the RK patent No. 9196, for the invention "Methods for the purification of 10-deacetyl-baccatin III and taxotere, taxotere trihydrate", issued on June 15, 2000 with priority dated March 22, 1993. The patent in part of paragraph 10 of the claims is valid until March 18, 2019.

LLP "GX" received in the Republic of Kazakhstan the state registration of the drug under the trade name "Vizdok". The registration certificate for the medicinal product was issued. The drug is also included in the state register of medicines, medical devices and medical equipment of the Republic of Kazakhstan from the moment of its state registration.

The plaintiff believes that the defendant's actions create a threat of violation of the plaintiff's exclusive right to an invention protected by the Patent (substance protected by paragraph 10 of the Patent's claims). Asks to ban "G X" LLP from importing a medicinal product (any dosage) with the trade name "Vizdok" in the Republic of Kazakhstan, offering it for sale, sale, other introduction into civil circulation in the Republic of Kazakhstan until the expiration of the term of protection of the invention protected by paragraph 10 of the formula of the patent of the Republic of Kazakhstan "Methods for the purification of 10-deacetyl-baccatin III and taxotere, taxotere trihydrate" No. 9196.

By the decision of the Specialized Interdistrict Economic Court of Almaty dated October 06, the claims were satisfied.

By the ruling of the Appellate Judicial Board of the Almaty City Court dated February 12, 2015, the decision of the court of first instance was canceled for the adopted new appeal decision.

As established by the court and confirmed by the case file, AsPharmaS.A. holds the RK Patent No. 9196 for the invention "Methods for the purification of 10-deacetyl-baccatin III and taxotere, taxotere trihydrate", issued on June 15, 2000 with priority dated March 22, 1993.

Paragraph 6 of Article 12 of the Patent Law of the Republic of Kazakhstan dated July 16, 1999 determines what is not recognized as a violation of the exclusive right of the patent owner to import into the territory of the Republic of Kazakhstan, use, offer for sale, sale, other introduction into civil circulation or storage for these purposes of funds containing protected objects of industrial property, if they were previously introduced into civil circulation on the territory of the Republic of Kazakhstan by the patent holder or another person with the permission of the patent holder; paragraph 10 of Art. 6 of the Patent Law, defining the criterion of patentability; subclause 7) clause 4 of the Rules for state registration, re-registration and amendments to the registration certificate of medicines, medical devices and medical equipment, approved by order of the Minister of Health of the Republic of Kazakhstan dated November 18, 2009 No. 735, providing for the concept of a generic (reproduced drug) as a drug that corresponds to the original drug in terms of the composition of active substances, dosage form and entered into circulation after the expiration of the title of protection for the original drug, or under a license agreement, came to the rightful conclusion that the plaintiff did not prove a violation of his exclusive rights to the drug, as well as the legitimacy of the defendant's arguments that the plaintiff's actions are aimed at restricting the free circulation of the Vizdok drug, which competes with a similar drug imported by the plaintiff, the cassation board considers lawful and justified (http:sud.kz).

Thus, not always certain actions of competitors should be qualified as unlawful actions, one should not forget about the freedom of competition and its protection.

Of course, in practice, cases of harm to trademark owners are also common.

The court of the Specialized Interdistrict Administrative Court of the city of Astana considered the case of an administrative offense against CenterPivo-A LLP, in committing an administrative offense under Article 158 of the Code of the Republic of Kazakhstan on Administrative Offenses.

Based on the appeal of the director of SHYMKEN BEER LLP K.A. on the fact of illegal use of TsentrPivo-A LLP (hereinafter – LLP) of the trademark "SHYMKEN BEER", "SHYMKENT SYRASY" (hereinafter – Trademarks), an unscheduled check was registered for compliance with the requirements of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks and Place Names origin of goods.

Based on the results of the inspection of the activities of CenterPivo-A LLP, stockpiled metal barrels or kegs with beer labeled "Derbes Shymkent Soft" were found, where in the word "Shymkent" after the letter "m" the word "kent" was painted over with a black marker. Below on the label in the Kazakh language is written "DERBES SHYMKENT SOFT", also in Russian "BEER LIGHT DERBES SHYMKENT SOFT".

Registration of the appellation of origin of goods "SHYMKENT BEER SHYMKENT SYRASY" was carried out for Shymkentpivo LLP in accordance with the Certificate for the right to use the appellation of origin (AO) No. 44-1.

According to paragraph 1 of Art. 37 of the Law, "The owner of the right to use the appellation of origin of goods has the exclusive right to use it." Therefore, Shymkentpivo LLP has the exclusive right to use the appellation of origin of goods, such as: Shymkent, Shymkent, Shym and other derivative indications.

The court does not agree with the conclusion of the specialist dated 04/02/2016, since the specialist compared the combined symbol "Derbes Shymkent Soft" with "SHYMKENT BEER, SHYMKENT SYRASY" marked with a trademark, but did not take into account that "SHYMKENT BEER, SHYMKENT SYRASY" is appellation of origin of goods, as it is registered in the state register of appellations of origin of goods No. 44-1 dated October 6, 2015, in accordance with paragraphs. 11 of Article 1 Law of the Republic of Kazakhstan dated July 26, 1999 No. 456-1 "On Trademarks, Service Marks and Appellations of Origin of Goods", as well as on the above grounds. Thus, the fact that TsentrPivo-A LLP committed an administrative offense in terms of the illegal use of the name of the place of origin of goods was proven by the case materials. The court considered it possible to impose a penalty in the form of a fine with confiscation of the appellation of origin of goods (http:sud.kz).

It is obvious that guilt proven by a court decision in committing an administrative offense in terms of illegal use of the appellation of origin of goods gives grounds to file a civil claim for damages caused to the right holder, as well as to demand material compensation for violation of the exclusive right to the appellation of origin of goods.

The cassation judicial board of the court of the city of Astana considered a civil case on the claim of IP "Center A-t "OA" T.S." to the NGO "Creative Center A-t "OA" on imposing on the defendant the obligation to stop using the trademark and on the counterclaim of the NGO "Creative Center A-T "OA" to IP T.S. and the Committee for Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan on invalidating the decision of the Appeals Board, registering a trademark, assigning to IP T.S. obligation to return the seal and copies of documents, recognition of the actions of IP T.S. an act of unfair competition.

IP T.S. is the owner of the trademark, then its demands for the termination of the use of the trademark "OA" or a designation confusingly similar to it, the exclusion of the use of the trademark "OA" from all information sources, the exclusion of the word "OA" from the name of the Public Association and its re-registration are subject to satisfaction.

Considering that the circumstances of the case were established correctly, the collegium considered that the courts had made a mistake in applying the norms of substantive law, the collegium considered it possible, without sending the case for a new trial, to cancel the judicial acts held in the case regarding the satisfaction of the counterclaim with the issuance of a new decision to refuse satisfaction of the claim for recognition of the trademark registration as invalid. At the same time, by a resolution, the board ordered the NGO "Creative Center AI "OA" to stop any use of the trademark "OA" or a designation confusingly similar to it, to exclude from all information sources (mass media, television and radio, Internet, advertising, etc. .) use of the trademark "OA", exclude the words "OA" from the name of the Public Association and re-register it (http: sud.kz).

Thus, questions are resolved in court if a trademark is registered and its right holder is determined. And the right holder has the right to demand compensation for damages caused by the unlawful use of a trademark that is confusingly similar. Compensation as a form of civil liability is not provided for by the legislation of the Republic of Kazakhstan in case of violation of exclusive rights to a trademark.

In this respect, Kazakh legislation differs from Russian legislation.

According to paragraph 3 of Article 1252 of the Civil Code of the Russian Federation, compensation is subject to collection when the fact of an offense is proven, while the copyright holder is exempted from proving the amount of losses caused to him (http://www.consultant.ru/document/cons_doc_LAW_64629/a68c2e03d7967da86ff598906972cd025196845e).

Obviously, compensation for damages and compensation are not identical concepts.

It should be noted that the nature of compensation was described in one of the judicial acts by the Intellectual Property Rights Court of the Russian Federation: "... is a sanction for a non-contractual civil offense. Compensation is an independent type of civil liability, and the rules provided for in relation to other types of civil liability cannot be applied to it (Ostanina E.A., Taradanov 2015 : 418).

At the same time, we agree with this position, and as we see from the above judicial practice, Kazakh courts hold a similar opinion when making decisions.

Moreover, as I.A. Zenin, the copyright holder has the right to demand compensation from the infringer for each case of misuse of an intellectual property object individually or for the entire offense as a whole, that is, to sum up several compensations (Zenin 2012:391).

Kazakhstani judicial practice does not differ in a different approach. Each fact of infringement of rights to objects of intellectual property and compensation for damages are the subject of separate claims.

When considering disputes in the field of intellectual property, we see that the courts take into account the legal nature of objects, since this specificity is reflected in the use of objects and legal protection.

The next institution that we will touch upon in this article are obligations due to unjust enrichment, which also arise due to illegal actions.

In accordance with paragraph 1 of Art. 953 of the Civil Code of the Republic of Kazakhstan, a person (purchaser) who, without the grounds established by law or a transaction, acquired or saved property (unjustly enriched) at the expense of another person (victim), is obliged to return to the latter the unjustly acquired or saved property, except for the cases provided for in Article 960 of the Civil Code of the Republic of Kazakhstan (https://online.zakon.kz/Document/?doc_id=51013880#activate_doc=2).

O.S. Ioffe wrote that the conditions for the emergence of this kind of obligation are: firstly, it is necessary that one person acquire (save) property at the expense of another, that is, that an increase or preservation of property in the same amount on one side should be the result of a corresponding decrease in it on the other side. In the absence of this condition, the obligation either does not appear at all, or does not arise in relations between these subjects. Secondly, it is necessary that the acquisition (saving) of property by one person at the expense of another occurs in the absence of sufficient grounds for this, provided for by law or a transaction (Ioffe 2004: 818).

Obligations due to unjust enrichment differ significantly from obligations due to infliction of harm. The groundless nature of the acquisition (saving) of property makes it objectively illegal. But it does not follow from this that it is caused only by illegal actions. There are known cases of unjust acquisition as a result of events, not actions.

It does not matter what caused the obligation to arise as a result of unjust enrichment, it is significant that the acquisition of property is groundless, illegal. The difference from obligations from causing harm is that harm can be caused by both illegal and lawful actions. (Ioffe 2004: 819).

Obligations due to unjust enrichment always have property as their object, in contrast to obligations from causing harm, since intangible benefits can be the subject of harm.

The acquisition (saving) of property is recognized as unjustified because either the corresponding basis was absent from the very beginning, or it disappeared later (Ioffe 2004: 819).

D.G. Lavrov notes that it is necessary to distinguish between the objective wrongfulness of the very fact of unjust enrichment and the nature of the actions leading to the emergence of the corresponding obligation. Very often they are lawful actions committed either by the victim himself, or by the enriched person, or by third parties (Lavrov, Sergeev, Tolstoy 2008:780).

It is difficult to disagree with D.G. Lavrov, obligations due to unjust enrichment are objectively illegal.

O.N. Sadikov notes that the rules on unjust enrichment apply regardless of whether the enrichment was the result of the behavior of the enriched person, the victim himself, third parties or happened against their will. The reasons and motives for unjust enrichment and the presence, or, conversely, the absence of guilt in the actions of the parties, have no legal significance. The result is important: enrichment without a proper legal basis (Sadikov 2010:491).

At the same time, guilt is taken into account, this is provided for in paragraph 2 of Art. 955 of the Civil Code of the Republic of Kazakhstan, according to which: “The acquirer is liable to the victim for any, including accidental shortage or deterioration of unjustly acquired or saved property that occurred after he learned or should have learned about the unjustified enrichment. Until that moment, he is liable only for intent and gross negligence. (https://online.zakon.kz/Document/?doc_id=51013880#activate_doc=2).

The property constituting the acquirer’s unjust enrichment must be returned to the victim in kind. If it is impossible to return in kind the unjustly received or saved property, the acquirer is obliged to compensate the victim for the real value of this property at the time of its acquisition, as well as to compensate for losses caused by a subsequent change in the value of the property, if the acquirer did not reimburse its value immediately after learning about the unjustified enrichment.

A person who unjustifiably received or saved property is obliged to return or compensate to the victim all the income that he has derived or should have derived from this property from the time when he learned or should have learned about the unjustified enrichment.

According to Art. 960 of the Civil Code of the Republic of Kazakhstan is not subject to return as unjust enrichment:

1) property transferred in fulfillment of an obligation before the due date for fulfillment, unless the obligation provides otherwise;

2) property transferred in fulfillment of an obligation after the expiration of the limitation period;

3) amounts of money and other property provided to a citizen, in the absence of bad faith on his part, as a means of subsistence (salary, royalties, compensation for harm to life or health, pension, alimony, etc.) and used by the acquirer;

4) amounts of money and other property provided in pursuance of a non-existent obligation, if the acquirer proves that the person demanding the return of the property knew about the absence of the obligation or provided the property for charity purposes (https://online.zakon.kz/Document/?doc_id=51013880#activate_doc=2).

Obligations due to unjust enrichment may arise in the area of intellectual property. Therefore, when such facts are revealed, right holders should not forget about this and demand not only the return of

unjust enriched (saved), but also the compensation of the earned income.

Moreover, if actions not directly aimed at ensuring the interests of another person, including in the case when the person who committed them mistakenly assumed that he was acting in his own interest, led to unjust enrichment of another person, the rules of the chapter on obligations due to unjust enrichment are applied.

Actions in someone else's interest without an order also refer to non-contractual obligations, and, as a rule, they can arise simultaneously with obligations due to unjust enrichment.

Art. 855 of the Civil Code of the Republic of Kazakhstan provides that actions without an order, other indication or previously promised consent of the person concerned in order to prevent harm to his person or property, fulfill his obligations or in his other legitimate interests (actions in someone else's interest) must be performed based on obvious benefit or benefit and actual or probable intentions of the person concerned, with due diligence and prudence due to the circumstances of the case (https://online.zakon.kz/Document/?doc_id=51013880#activate_doc=2).

This norm actually defines the main conditions: firstly, the actions are performed without an order, other indication or previously promised consent of the person concerned, and secondly, the goal is to prevent harm to the person of the person concerned or property, the fulfillment of his obligations or in his other legitimate interests, in thirdly, the actions proceed from the obvious benefit or benefit and the actual or probable intentions of the person concerned; fourthly, the actions are performed with care and discretion.

Thus, in order to recognize actions as an obligation in someone else's interest without a mandate, they must meet the specified conditions.

Often, the authors note that in real life situations sometimes arise when some persons voluntarily perform certain actions in the interests of other persons, without having any authority from the latter to commit them. Most often this is done for moral reasons in order to prevent (reduce) harm that threatens the property interests of persons who are temporarily absent or for other reasons cannot take care of protecting their interests themselves (Sergeev, Tolstoy 2008:786).

Of course, as a result of such circumstances, persons perform not only actual, but also legal actions, and at the same time they have the right to demand compensation for the losses that they have suffered in connection with the commission of actions in someone else's interest without an order and may even receive a reward.

Obligations arising from unilateral transactions include competitive obligations, namely: a public promise of remuneration and obligations arising from tender, auction and other forms of bidding (ie obligations from unilateral actions).

According to paragraph 2 of Art. 910 of the Civil Code of the Republic of Kazakhstan in the tender obligation, its initiator, on the basis of the subject determined by him and the initial conditions of the tender, makes an offer to take part in it to an indefinite or certain circle of persons and undertakes to pay the established remuneration to the winner of the tender and (or) conclude an agreement with him corresponding to the content of the tender obligation (https://online.zakon.kz/Document/?doc_id=51013880#activate_doc=2).

An offer to take part in the competition can be made by the initiator of the competition directly or through the intermediary organizer of the competition.

The rights and obligations of the mediator are determined by his contract with the tender initiator.

The legal facts that make up the competition are successive unilateral transactions: announcement of a competition, submission of works for the competition, adoption of an evaluation decision, payment of remuneration or return of the submitted works. The main legal fact in the development of the competitive legal relationship is the announcement of the competition. It is this legal fact that gives everyone (with a closed competition – for a certain circle of people) the opportunity to take part in the competition. The implementation of this opportunity is accompanied by the performance by the relevant persons of actions to submit works, other results they have achieved for the competition (Sergeev, Tolstoy 2008:801-802).

The competition may be open, when the invitation of the competition initiator to take part in the competition is addressed to everyone by an announcement in the press and other mass media, or closed, when the offer to take part in the competition is sent to a certain circle of persons at the choice of the competition initiator.

An open tender may be conditioned by the preliminary qualification of its participants, when the initiator of the tender conducts a preliminary selection of persons wishing to take part in the tender.

In accordance with paragraph 1 of Art. 911 of the Civil Code of the Republic of Kazakhstan, any person who has publicly announced the payment of

remuneration in monetary or other form for the best performance of work or the achievement of other results must fulfill the obligation to the person who, in accordance with the terms of the competition, is recognized as its winner.

Paragraph 2 of Article 911 of the Civil Code of the Republic of Kazakhstan defines the conditions that provide for the content of a public promise of remuneration: conditions that provide for the essence of the assignment, criteria and procedure for presenting results, the amount and form of remuneration, as well as the procedure and timing for announcing results.

A public promise of a reward, as the very name of the obligation implies, implies some kind of reward, and the decision to pay the reward and its payment itself must be accepted and implemented within the time frame established by the promise.

As for works that did not receive remuneration, the person who made a public promise of remuneration is obliged to return them to their creators, unless otherwise provided by the terms of the competition.

If you pay attention to the content of paragraph 4 of Art. 911 of the Civil Code of the Republic of Kazakhstan, it follows from its content that only works of science, literature or art, that is, only objects of copyright, can be the subject of a public promise of an award.

Public promises of rewards for the creation of works of science, literature and art are quite common, but it remains unclear why the Civil Code of the Republic of Kazakhstan excluded such a possibility for industrial property objects, even if not all, with the exception of means of individualization. After all, as a result of a public promise of an award, an object of copyright can be created as a kind of image, for example, such an image becomes a trademark after state registration.

According to paragraph 4 of Art. 911 of the Civil Code of the Republic of Kazakhstan, if a competition is announced for the creation of a work of science, literature or art, the person who made the public promise acquires the pre-emptive right to conclude an agreement with the creator of the work for its use with the payment of a fee, unless otherwise established by the public promise of remuneration.

The Civil Code and the Law of the Republic of Kazakhstan "On Copyright and Related Rights" recognize the copyright agreement as the only (except for inheritance) basis for the transfer of copyright to use a work (Articles 30 and 31 of the Law of the Republic of Kazakhstan "On Copyright and Related Rights"). Therefore, the transfer (acquisition) of property rights to use works directly "by competition" is excluded. An author's agreement may be concluded with the winner of the competition (Basin, Suleimenov 2006: 325). The initiator of the tender has not only the pre-emptive right to conclude such an agreement, but is not obliged to conclude it (Basin, Suleimenov 2006: 325).

As V.T. Smirnov, a public promise of a reward is a promise of property reward addressed to an indefinite circle of persons for achieving a conditioned result. Who will achieve this result (Smirnov, Sergeev, Tolstoy 2008:799).

The public promise of a reward is a one-way deal. In fact, the onset of legal consequences depends on whether the result is achieved or not.

In the legal literature, the following signs of a public promise of a reward are noted.

The first sign is that this obligation is characterized by the announcement of the issuance of a reward for certain actions by a capable person. The obligation to pay a reward arises on the condition that the promise of the reward makes it possible to establish by whom it was promised. The person who responds to the promise is entitled to demand a written confirmation of the promise and bears the risk of the consequences of not presenting this demand if it turns out that the announcement of the reward was not actually made by the said person.

The second sign is its urgent nature.

The third sign is his public character. In addition, if the amount of the reward is not indicated in the public promise, it is determined by agreement with the person who promised the reward, and in the event of a dispute, by the court.

The fourth feature is the absence of a direct motivational connection between the announcement made and the performance of the required actions, which gives rise to the obligation to pay the reward, regardless of whether the corresponding action was performed in connection with the announcement or regardless of it (Ryzhenkov 2013:388-389).

O.S. Ioffe wrote that in order for a promise to be legally binding, it must meet certain criteria, namely:

a) the promise of a reward must be public, that is, addressed to an indefinite circle of persons;

b) the promised remuneration must be property, that is, monetary or otherwise, having a value expression;

c) a necessary element of the content of the public promise of the reward is an indication of the result to be achieved as a condition for receiving the reward;

d) the promise of a reward should make it possible to establish by whom it was promised (Ioffe 2004:750).

When an author writes a work in response to an announced competition, he does not make any transactions in the course of his creative activity, not to mention that the competition can be held on already created and even published works, but the provision of the achieved result to the one who announced the promise of the award, as well as agreement (whether explicit or tacit) to include an assessment of the result achieved prior to such announcement is, of course, a bargain. Consequently, along with the achieved result, the legal structure that generates the obligation includes at least two unilateral transactions – the promise of a reward and a response to it expressed in one way or another (Ioffe 2004:750-751).

A public promise of a reward can be regarded as a public offer, since the offer of a public promise of a reward provides for making a deal on the conditions specified in the offer with anyone who responds, and we propose to consider the response to a public promise an acceptance.

Thus, the authors have developed key features of a public promise of a reward. As wrote O.S. Ioffe, an obligation based on a competition obliges the organizer to pay and authorizes the applicant to receive a conditional remuneration for the work submitted by him and recognized as worthy (Ioffe 2004:752).

Of course, the subject of this obligation may be the creation of the result of creative activity. In Kazakhstan, the announcement of a public promise of an award is not uncommon; periodically, such contests are announced by the well-known Paragraph Information System. Moreover, in our opinion, the object can be not only works of science, literature and art, but also inventions or useful models that could be further used in industry, given the focus of Kazakhstani society and the state on industrialization, such tasks cannot be solved without material incentives authors.

Literary works on a given topic can be created simultaneously and independently of one another by several authors without any coincidence of artistic and other merits, excluded by the individuality of literary creativity. In this regard, it is customary to distinguish between a public promise of an award, which is built as a competition and is not a competition (Ioffe 2004:751).

The situation is different with competitions for works of science, literature and art. In these cases, the organizer has mutual obligations with the winning applicants: he is obliged to pay remuneration, but has the right to use the awarded works, but not in any way, but only as provided in the competition announcement. For example, a performance organization has announced a competition for a stage work with the right to use it for staging on stage, it does not have the right to publish the awarded work as a literary work (Ioffe 2004:761).

At the same time, it should be remembered that the use of awarded works must be based on the rules of intellectual property law, which means that the right to use the object of copyright in a certain way must be granted on the basis of an author's agreement.

The general rule on the payment of a premium does not deprive the author of the right to receive remuneration for the use of his work in accordance with the norms of copyright law. But in the conditions of the announced competition, it may be stipulated that the use of the awarded work does not belong to a separate payment. In the latter case, the premium should not be less than the amount of the author's fee established by law, since it is not allowed to reduce the current remuneration rates for authors in any way, including through a competition. Otherwise, the author will be entitled to recover from the organizer for the use of his work the difference between the premium received and the rates of royalties. In order, however, for the competition to play a stimulating role, the premium, the payment of which excludes royalties, must be greater than the amount of the remuneration that would be due under the norms of copyright law to the author for the use of his work (Ioffe 2004:761).

In accordance with paragraph 1 of Art. 912 of the Civil Code of the Republic of Kazakhstan, a person who has publicly announced the payment of remuneration has the right to refuse this promise in the same form, except when the announcement itself provides for or follows from it that the refusal is unacceptable or a certain period is given for performing the action for which the reward is promised, or to at the time of the announcement of the refusal, at least one of the responding persons has already performed the actions specified in the announcement.

At the same time, it should be remembered that the cancellation of a public promise of a reward does not relieve the one who announced the reward from reimbursement to the person who responded of the expenses incurred by him in connection with the commission of the action provided for by the announcement. The amount of compensation in all

cases cannot exceed the remuneration specified in the announcement.

Another type of competitive obligations are tenders and auctions.

According to paragraph 1 of Art. 915 of the Civil Code of the Republic of Kazakhstan, when bidding in the form of a tender, its initiator (organizer) undertakes, on the basis of the initial conditions proposed by him, to conclude an agreement (as a seller, buyer, customer, contractor, lessor, tenant, etc.) with one of the tender participants who will offer the best terms of the contract for the tender initiator.

On the basis of the tender, purchases of state bodies, companies that are part of state holdings, companies in the field of subsoil use, as well as those organizations that, with their internal rules, have adopted this type of purchase of goods, works or services, are built.

The purpose of a tender is to obtain goods, works or services on the basis of the most advantageous proposals for the customer.

As a rule, an appropriate contract is concluded with the winner.

Of course, the creation of intellectual property is also the subject of a tender, for example, the creation of certain software. Often this is not limited only to the creation, customers may also require technical support for the program, which is already drawn up in a mixed contract: copyright and services. If the tender initiator refuses to conclude an appropriate contract with the winner, the tender winner has the right to recover the losses caused to him.

By means of a tender, contracts are concluded between the tender initiator and the tender participant that offered the best terms of the contract for the tender initiator to create (develop) advertising slogans and images, works of science, literature and art, inventions and utility models, topologies of integrated circuits.

The participants of the tender, within the terms established by its terms, send their proposals to the tender initiator or its organizer in writing with all the documentation stipulated by the tender attached. The terms of the tender may provide for the submission of proposals in sealed envelopes and under slogans.

Violation of the deadlines for submitting proposals entails the exclusion of the person who missed the deadline from the number of tender participants, unless the initiator or organizer notifies this person in writing of admission to participate in the tender.

The tender may be declared invalid by its initiator if less than two participants took part in it or the proposals of the tender participants will be recognized by its initiator as not satisfying the conditions of the tender.

Another transaction that entails the emergence, change or termination of intellectual property rights is an auction, in which, in accordance with paragraph 1 of Art. 916 of the Civil Code of the Republic of Kazakhstan, the seller undertakes to sell the subject of the auction to the bidder who offers the highest price for it.Зияткерлік меншік құқығының туындауына, өзгеруіне немесе тоқтатылуына әкеп соғатын басқа мәміле аукцион болып табылады, бұл ретте ҚР АК 916-бабының 1-тармағына сәйкес сатушы аукцион затын өзі үшін неғұрлым жоғары баға ұсынатын аукционға қатысушыға сатуға міндеттенеді.

The auction can be held on the terms of an increase (according to the English method of bidding) or a decrease in the price (Dutch method) from the price announced by the seller. The terms of an auction held to reduce prices may provide for a minimum price at which an item can be sold.

The subject of the auction may be any movable or immovable property not withdrawn from civil circulation, including intellectual property objects, contracts and property rights, including import, export and other quotas and licenses.

When bidding in the form of an auction in the field of intellectual property, works of art, paintings, sculptures, sale of property exclusive rights to any object of intellectual property rights may be alienated.

At the same time, there is one feature: the exclusive right to the result of intellectual creative activity or means of individualization exists regardless of the ownership of the material object in which such a result or means of individualization is expressed (Article 968 of the Civil Code of the Republic of Kazakhstan), that is, the author, losing ownership of the thing in which a painting or sculpture is expressed does not lose its personal non-property copyrights to these objects.

There are also a number of features for auctions, the subject of which is intellectual property: the right to follow and the right to access.

The right of reproduction is the right of the author to a share of the proceeds from the public resale of original works of fine art and original manuscripts (Sudarikov 2009:130).

In the legislation of the Republic of Kazakhstan, this provision is reflected in paragraph 2 of Art. 17 of the Law of the Republic of Kazakhstan “On Copyright and Related Rights”: “In each case of public (through an auction, fine art gallery, art salon,

shop, and so on) resale of the original work of fine art after the first alienation of ownership of such a work of fine art, the author or his heirs are entitled to a remuneration from the seller in the amount of five percent of the resale price (the right to follow). This right is inalienable during the lifetime of the author and passes exclusively to the author's heirs by law or will for the duration of the copyright. (https://online.zakon.kz/Document/?doc_id=51005798&sub_id=170000&pos=5;-106#pos=5;-106).

We agree with S.A. Sudarikov that the right to follow has elements of both personal non-property and exclusive rights. On the one hand, the right to follow is inalienable, which is characteristic of a personal non-property right, and the inalienability of the right is introduced into the legislation to prevent the forced waiver of the author from his right. On the other hand, the duration of the right to follow is equal to the duration of the exclusive right (Sudarikov 2009:130).

According to paragraph 1 of Art. 17 of the Law of the Republic of Kazakhstan «On Copyright and Related Rights» the author of a work of fine art has the right to demand from the owner of the work to provide the opportunity to exercise the right to reproduce his work (the right of access). At the same time, the owner of the work cannot be required to deliver the work to the author (https://online.zakon.kz/Document/?doc_id=51013880#activate_doc=2).

The right of access secures the interests of the author, but does not make it possible to exercise dominance over the thing in which the work is expressed.

And not always, in our opinion, the right of access can be ensured, here a conflict of interest may arise between the author and the owner.

Proposals for participation in the auction must contain information about the subject of the auction, the place and time of its holding.

Persons wishing to take part in the auction must, before the start of the auction, unless otherwise provided by the conditions of its conduct, submit an application for participation in the auction and pay the established amount of the guarantee fee.

The auction can take place if at least two participants (buyers) take part in it.

If none of the participants wished to purchase the subject of the auction, the original price may be reduced or the subject of the auction removed from this auction.

Unless otherwise established by the terms of the auction, an agreement is concluded with the auction participant who offered the highest price for the sale of the subject of the auction to him. At the same time, you should remember the requirements of special legislation in the field of intellectual property and follow them when concluding a contract.

National Company JSC (hereinafter – JSC) filed a lawsuit against A.N. on recognizing the software product of the ABU «F» (hereinafter referred to as the software) as an official work and compelling to transfer the source data / codes. In support of this argument, the plaintiff refers to paragraph 2 of Art. 14 of the Law on Administrative Offenses of the Republic of Kazakhstan, according to which the property rights to an employee work belong to the employer.

The applicable law to the subject of the dispute is paragraph 2 of Art. 14 of the Law as amended on 10.06.1996, according to which the property rights to use an official work belong to the employer, if it is provided for in the contract between him and the author, and not otherwise provided, i.e. property rights belong to the author, i.e. A.N., but to the employer, i.e. Joint-stock companies they can belong if there is a civil-law author's contract, while it should be noted – not labor.

In such circumstances, the court considered that this legal justification was sufficient to leave the claims of the JSC without satisfaction. The plaintiff demanded that the software be recognized as a service work. However, in the opinion of the court, a work that was created within the limits of the labor and job duties of an employee can be recognized as official. At the same time, a specific work can be recognized as official only if the employment contract or job description includes a provision that the employee's duties include creative work, the result of which is a certain object of copyright.

The plaintiff did not submit job descriptions for the period 1997-2001, according to which A.N. the creation of specific information systems (software products) was imputed as a labor duty.

The plaintiff has been using this information system for more than ten years, sees this screensaver in the program, and has never demanded from the author A.N. replace it, indicate the owner of the exclusive rights – JSC, although A.N., as an employee of the JSC, was in the service of dependence on the employer. For a long time, AO did not declare its rights to the service work anywhere.

Certificate of state registration of rights to the object of copyright No. 822 dated June 19, 2012. it is confirmed that the author of the software created on 10.09.1998 is A.N., the owner of property rights is LLP on the basis of an agreement dated 22.05.2012.

Thus, the court came to the conclusion that the claims of JSC for recognition of the software as

an employee work, for compulsion to transfer the source data / codes for the software product, as well as the password, must be left without satisfaction (http:sud.kz).

The JSC was unable to prove in court that its former employee A.N. during the period of work and on the instructions of the joint-stock company, he created software for the needs of the joint-stock company, thereby losing the case, and the joint-stock company had to conclude an agreement with the LLP, which A.N. assigned the rights to this software. Due to the fact that a joint-stock company is a national company, it is obliged to make purchases of goods, works and services according to the rules of procurement, that is, to announce tenders, competitions, but if the rights are acquired from developers or intellectual property owners, a so-called purchase agreement is concluded from one source. According to paragraphs. 28 art. 2 of the Law of the Republic of Kazakhstan "On Public Procurement", goods are also understood as objects of intellectual property rights. In accordance with paragraphs. 3 p. 3 art. 30 of the Law of the Republic of Kazakhstan "On Public Procurement", the acquisition of goods, services that are objects of intellectual property from a person who has exclusive rights in relation to the purchased goods, services is one of the grounds for public procurement from a single source by directly concluding a public procurement contract. But this is not enough, since the alienation and granting of rights to objects of intellectual property must be carried out according to the rules of special legislation. And this is confirmed by the provision of paragraphs. 9 st. 4 of the Law of the Republic of Kazakhstan «On Public Procurement», according to which, that the implementation of public procurement is based on the principles of compliance with the rights to intellectual property objects contained in the purchased goods (https://online.zakon.kz/Document/?doc_id=34146377#activate_doc=2).

Conclusion

Thus, it is obvious that the basis for the emergence of relations regarding intellectual property can be not only contracts, but also non-contractual obligations. At the same time, when applying the legislation regarding non-contractual obligations, one should not forget about the requirements of special regulatory legal acts when regulating relations in the field of intellectual creative activity.

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