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## PECULIARITIES OF JUDICIAL PRACTICE IN THE SPHERE OF PROTECTION OF RIGHTS TO GEOGRAPHIC INDICATIONS IN FRANCE

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### SUMMARY

It is stated in the article that France is one of the main beneficiaries of the system of protection of rights to geographic indications in the EU. Active application of geographic indications points not only to effectiveness of protection of these rights of intellectual property in France, but also to significant socio-economic motivation in realization of registration of such geographic indications. Main features of protection of intellectual property rights to geographic indications in France have been examined. Problematic aspects of judicial practice in the sphere of protection and safeguard of rights to geographic indications have been researched.

**Key words:** intellectual property law, geographic indications, France, judicial practice.

### ОСОБЕННОСТИ СУДЕБНОЙ ПРАКТИКИ В СФЕРЕ ЗАЩИТЫ ПРАВ НА ГЕОГРАФИЧЕСКИЕ ОБОЗНАЧЕНИЯ ВО ФРАНЦИИ

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### АННОТАЦИЯ

В статье указано, что Франция является одним из основных бенефициаров системы защиты прав на географические обозначения в ЕС. Активное применение географических обозначений указывает не только на эффективность защиты этих прав интеллектуальной собственности во Франции, но и на значительную социально-экономическую мотивацию в осуществлении регистрации таких географических обозначений. Рассмотрены основные особенности защиты прав интеллектуальной собственности на географические обозначения во Франции. Исследованы проблемные аспекты судебной практики в сфере защиты и охраны прав на географические обозначения во Франции.

**Ключевые слова:** право интеллектуальной собственности, географические обозначения, Франция, судебная практика.

**Target setting.** France is considered one of the most important beneficiaries of the system of protection of rights to geographic indications in the EU. This follows, in particular, from the number of protected indications of origin of the goods on the EU level registered by the residents of a certain country. Thus, France takes the first place among about 5000 registered geographic indications in the Community. Basic amount of geographic indications is given to wine, France has registered about 450 of them [1, p. 21]. Such an active application of geographic indications shows not

only the effectiveness of protection of these rights of intellectual property in France and other countries of the Community, but significant socio-economic motivation in realization of registration of such geographic indications. However, it should be noted that there are problematic issues of judicial practice in the sphere of protection and safeguard of rights to geographic indications in France.

**Scientific and theoretical basis** of the present research have been made up of works by prominent national and foreign lawyers and scholars as well as experts

in intellectual property: G.O. Androshchuk, M.I. Arkhypova, V.O. Brayana, M. Geuz, S.A. Gorlenko, S. Escudero, Yu.M. Kapitsa, V.O. Kalyagin, M.S. Kovalchuk, A.O. Kodynets, O.V. Kokhanovska, K. Lakert, R.A. Maydanyk, P. Matelia, V.M. Melnykov, O.P. Orlyuk, O.O. Ruzakova, M.M. Sokolova, O.M. Taranenko, O.O. Tverezenko, O.I. Kharytonova and others.

**The objective of the article** is to do research into the main features of the protection of rights of intellectual property to geographic indications and distinguish problem-



atic aspects of judicial practice in the sphere of protection and safeguard of rights to geographic indications in France.

**Main body.** The Code of intellectual property is the main institutional normative and legal act in France [2]. Peculiar feature of French legal regulation is the possibility to combine protection of rights to geographic indications and a trademark of the subject of economic activity. This process follows from the option to incorporate characteristics of a trademark into a geographic indication and vice versa. Thus, if a certain trademark of some manufacturer has a good reputation, is widely known in business turnover, defines specification of product marking a certain territory, there are no other manufacturers of analogous product with corresponding specification and connection with peculiarities of the territory, then such trade mark can be given the same protection as to a geographic indication. On the other hand, any manufacturer has the right to register a trademark with a geographic indication, if the latter does not mislead the consumer about the origin and qualities of the goods and does not use already protected geographic indication. Consequently, all proper means of protection can be given to a trademark, which includes a geographic indication as a separate element.

Judicial protection of the right of intellectual property to geographic indications is provided according to the Civil procedural code of France [3]. It sets judicial procedures for the internal rules of judicial system. It is also possible to define administrative procedures of jurisdictional organs for the protection of intellectual property rights to geographic indications applied within the limits of registration procedure of these rights in the EU and in the national registration system of France. The latter are directed to the enforcement of rights both of proprietors and other people, who produce the goods on a certain territory. In order to comply with the rules and legislation on the use of geographic indications, especially those relating to wine and alcoholic drinks, there is a strict system of control from the side of state organs and individuals, associations, concerned with conforming to fixed rules of business turnover.

Problematic issues of judicial practice in the sphere of protection of rights to geographic indications in France present a certain interest as well. However, it should be noticed that in France, where indications of origin of goods have been protected since

the end of 19th century, there exists a special authority – National institute for origin and quality (INAO), which deals together with National institute of industrial property (patent bureau of France) with the complex of issues connected with origin of goods. France is a party to Madrid treaty on measures for prevention and ceasure of use of untrustworthy trademarks and geographic indications [4]. It is a party to Lisbon treaty as well as to more than twenty agreements with other countries on providing protection of its own origin of goods. Besides, France could not avoid problems of almost the biggest violation of rights of its producers in the part of illegal use of geographic indications (for example, Champagne – champagne, Cognac – cognac, Provence, etc).

The first problematic issue is excessive procedural dispositivity of court's realisation of its powers to ban distribution of counterfeit goods. In this context S.O. Gorlenko states, that not only producers, but state organs as well can bring an action to court for an unlawful usage of origin of goods and geographic indications in order to protect them [5, p. 14].

However, analyzing judicial practice of France in the part relating to the realization of rights to geographic indications it can be concluded that the problem lies in extra dispositivity of the process of detection and prevention of distribution of counterfeit goods [6], due to the fact that expenses are to be borne completely by a proprietor, who is not always ready to spend the money on preventing the violation of his/her rights.

Thus, for instance, it is mentioned in academic literature that in France there is a possibility to detain an item in case of existing information about proprietors for the period of up to 10 days until clarification of all necessary circumstances, examination of marking correspondence to labelling. This has been given legal protection in France [7, p. 67–68].

It is worth noting that an effective system of control of complying with the standards of legal protection of origin of goods and geographic indications was established in France. Thus, an indicator of quality of an item is a system of control called Appellation d'Origine Controllee (AOC) (Appellation d'Origine Protegee (AOP) according to a new system), which corresponds to the category PDO only in relation to wine and alcoholic drinks, and in 1990 – to agroproducts [8, p. 165]. Before introducing a new item on the market, one or

more than one competent controlling bodies or bodies that certify food products, or both of them must certify observance of goods' production and qualities. These bodies can be both governmental and non-governmental. They make a final decision by the results of the tests.

Court plays the role of an arbiter that settles the dispute on the basis of adversariness. V.M. Melnykov gives an example of the case, which brightly illustrates principles of judicial protection of rights to geographic indications in France. Thus, the following case can be one of the examples. The case was dealt by the Federal Court of Australia brought by three people: French National institute of origin and quality (INAO), semi-governmental organisation founded in 1935 to protect geographic indications of French wines, and Association of manufacturers of wine made from grapes grown in the winemaking region "Cote-de-Provence". The defendant was an Australian firm "Stuart and Key Bryce", which produced the wine under the name "La Provence". The name "Cote-de-Provence" was put into the corresponding National register that proved proper awareness of the defendant on existing protected geographic indication. The court found labels "Cote-de-Provence" and "La Provence" similar to the extent of mixture taking into account identity included into the name of the geographic object Provence, by analogy with label "South Australia" and "Australia", "Napa Valley" and "Napa" (a famous winemaking region in California). On the day of the court decision pronouncement the defendant excluded the product marked by disputable label and stopped the violation [9, p. 244–245]. It points to a high level of protection both of the rights of manufacturers, who use geographic indications, and fast and due justice.

However, in France manufacturers are not ready to bear significant expenses connected with protection of their rights in court, but at the same time they invest a lot into the procedure of control over the registration and quality of products with geographic indications. This stipulates the necessity of more active state participation in these processes, in legal regulation in particular, by means of development of legislative stimulus for manufacturers to provide and properly fulfill their right to legal protection in this part.

Another, but not the least important problem within the framework of judicial



practice of researched area of France is court application of special decrees to provide legal protection of geographic indications. In general, these decrees can contradict in their certain parts to the national legislation of France. Thus, for instance, such decrees are called ordinances and within the limits of judicial practice, contrary to the system of sources of law of France, they substitute laws while handling cases involving rights to geographic indications.

Analyzing all the above mentioned such statement should be admitted logical, as official collections of judicial practice on these categories of cases are published annually, which is the evidence of utmost importance and role of this source of law in the development of the institute of legal protection of geographic indications. Such official collections help form complex legal positions on issues of protection of rights to the means of individualization of participants of civil turnover and perform the functions of legal norms.

One more problematic issue in judicial practice of protection and safeguard of geographic indications in France is the definition of a geographic indication as a trademark. As Paul Mateli correctly points out, the question is whether a geographic indication can be a trademark. Actually, it is so due to the fact that natural role of geographic indication is to identify the location. Therefore, it cannot function as a trademark and identify the object of industry or commerce. Moreover, its application as a trademark could be deceptive because of mistaken direction to or mentioning of the origin of a product. At the same time, it should be admitted that in real life there is a great number of geographic indications, and this great number remains unknown to the public in the sense of directions to the origin. However, even if a geographic indication is known as such, it is quite possible that its application to mark industrial or commercial object does not evoke any associations with its origin. In similar cases geographic indications act as fictitious names [10, p. 74].

Analyzing all the abovementioned it should be stated that judicial practice in France followed the same way. During the period when the law of 1857 was in force it was judged that geographic indication Rue-de-Mad, which is the name of the river running on the territory of the community, was not connected in any way with the origin of products manufactured at the saw-mill, and as a consequence this geographic

indication was able to act as an autonomous mark (Cassation Court, July 21, 1958 – Annaly, 1962) [11]. During the period when the law of 1964 was in force judicial practice continued developing the same way. For instance, the following court decisions were reached: a) the name Dundee, a geographic name of a Scottish city, can be a trademark to indicate orange marmalade, as it was found that oranges were not grown either in Dundee city or in the neighbourhood, and the population was not famous for production of jam; b) the name Wembley, the name of London's suburb where the stadium is situated, can be a trademark to indicate balls and other sports equipment as the name Wembley does not in fact indicate the origin of balls and other sports equipment; c) it was also ruled that the name Te Savoyard can be a trademark to indicate knives as Savoic has no specific traditions of producing knives [12, p. 12–13].

There has been no such judicial decisions made recently due to the established system of protection of rights to geographic indications, which was developed inter alia thanks to law enforcement in judicial practice of France.

**Conclusions.** Summing up all the mentioned above we can state that judicial practice of France makes it possible to admit geographic indication as a trademark applying relevant norms of French legislation in cases when geographic name of location is not connected to peculiar features of an item stipulated by the place of its production, processing, supply (distribution). However, in such situations it is very hard to draw the line between the end of legal protection of geographic indications and the beginning of legal protection of trademarks where legal regimes can intersect. One of the ways to solve this problem is a complex legal regulation of means of individualization taking into account characteristics of each object.

One of the problems is excessive dispositivity of the process of detection and prevention of distribution of counterfeit goods, due to the fact that expenses are to be borne completely by the proprietor, who is not always ready to spend the money on preventing the violation of his/her rights.

Not the least important problem within the framework of judicial practice is court application of special decrees to provide legal protection of geographic indications. As a whole these decrees can contradict in their certain parts to the national legislation

of France. All the problematic issues mentioned in this article are also of great importance.

However, despite existing problematic issues of judicial practice in the sphere of protection and safeguard of rights to geographic indications, in France comparing with Ukraine proper functioning of the system of legal protection of geographic indications is enforced, since judicial organs communicate with each other in questions concerning equal application of substantive and procedural law.

### References:

1. Крисанов Д. Географічні зазначення походження агропродовольчої продукції: європейський досвід і вітчизняні перспективи. *Економіст*. 2014. № 10. С. 18–24.
2. Intellectual property code: Act No. 2006-236 of 1 March 2006 Entry into force: 02-03-2006. URL: [https://www.legifrance.gouv.fr/content/download/1959/13723 /version/3/file/Code\\_35.pdf](https://www.legifrance.gouv.fr/content/download/1959/13723 /version/3/file/Code_35.pdf).
3. Codice civile/Regio Decreto 16 marzo 1942 No 262. URL: <http://www.wipo.int/wipolex/ru/profile.jsp?code=IT#a1>.
4. Угода про заходи щодо попередження та припинення використання неправдивих товарних знаків та географічних зазначень: міжнародний документ від 04.06.1999 р. URL: [http://zakon4.rada.gov.ua/laws/show/997\\_225/print\\_1433745430082269](http://zakon4.rada.gov.ua/laws/show/997_225/print_1433745430082269).
5. Горленко С.А. Правовая охрана географических указаний во Франции. *Патенты и лицензии: журнал*. 2006. № 3. С. 11–15.
6. Оськина И., Лупу А. Судебное правотворчество во Франции. URL: <http://justicemaker.ru/viewarticle.php?id>.
7. Данилина Е.А. Судебное доказывание и доказательства при рассмотрении дел по правовой охране товарных знаков и наименований мест происхождения товаров в административном и судебном порядке : дис. ... канд. юрид. наук. Москва, 1999. 214 с.
8. Знаменская В.С. Правовая охрана наименований мест происхождения товаров зарубежом : дис. ... канд. юрид. наук. Москва, 2016. 259 с.
9. Мельников В.М. Товарные знаки за рубежом в канун XXI века. Москва : ИНИЦ Роспатента, 2002. 360 с.
10. Поль Матели. Новое французское законодательство по товарным



знакам / пер. с фр. В.И. Еременко; общ. ред. и предисл. А.Н. Григорьев. Душанбе: НПИЦентр, 1998. Кн. 3. 149 с.

11. Городов О.О. Право на средства индивидуализации (товарные знаки, знаки обслуживания, наименования мест происхождения товаров, фирменные наименования, коммерческие обозначения). Волтерс Клувер. Москва. 2006. 427 с.

12. Беликова К. Охрана географических указаний и наименований мест происхождения товара в Европейском Союзе. *ИС. Промышленная собственность*. 2011. № 1. С. 10–18.

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## ДОГОВОРНАЯ ТЕОРИЯ ПРОИСХОЖДЕНИЯ ГОСУДАРСТВА: ПЕРИОД СТАНОВЛЕНИЯ

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#### АННОТАЦИЯ

В статье исследуются проблемы становления и развития теорий естественного права и общественного договора в трудах голландских и английских учёных XVII в. Установлено, что указанные теории начали развитие в раннебуржуазный период как продолжение античного наследия под влиянием гуманизма и рационализма. В общем, теория общественного договора – это политико-правовая доктрина, обобщающая принципиальное значение договора между людьми для общественно-государственного устройства. Она является составной частью теории естественного права.

С точки зрения основных представителей этих теорий XVII в. Г. Гроция, Б. Спинозы, Т. Гоббса и Дж. Локка при определённом концептуальном различии в их взглядах можно выделить общее для них понятие общественного договора, а именно как общую договорённость людей и верховного правителя, целью которой является защита интересов и прав народа.

**Ключевые слова:** естественные права, общественный договор, суверен, народ, Нидерланды, Англия, революции, новое время.

#### CONTRACT THEORY OF ORIGIN OF THE STATE: PERIOD OF FORMATION

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#### SUMMARY

The article explores the problems of the formation and development of theories of natural law and social contract in the works of Dutch and English scientists of the 17th century. It is established that these theories began to develop in the early bourgeois period, as a continuation of the ancient heritage, under the influence of humanism and rationalism. In general, the theory of a social contract is a political and legal doctrine that substantiates the fundamental importance of a contract between people for social organization. It is an integral part of the theory of natural law.

From the point of view of the main representatives of these theories of the 17th century G. Grotius, B. Spinoza, T. Hobbes and J. Locke with a certain conceptual difference in their views, we can distinguish a common concept of social contract for them, namely, as a common agreement between people and the supreme ruler, the purpose of which is to protect interests and rights of the people.

**Key words:** natural rights, social contract, sovereign, people, Netherlands, England, revolution, new time.