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Legislative Regulation of Legal Goodwill Protected by Geographical Indication and Trademark (Comparative Analysis)

The current article is dedicated to the relationship between geographical indication da trademark issues.

The topicality of the study is caused by the fact that the development of free trade relations at the international level has necessitated the existence of appropriate means of protection of geographical indications.

For the first time the term – geographical indication is found in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Pre-existing international conventions were familiar with the terms appellation of origin and indication of source. TRIPS agreement broadened the legislative regulations, which ensures solid mechanisms for the protection of intellectual property. Also, geographical indication includes preciously established terms. Proper geographical indication protects consumers' rights and promotes economical development of the specific geographical area.

The article addresses the legal nature of trademark. Also, cases where the trademark is derived from the name of the geographical indication are discussed.

The current study represents an analysis of judicial practice in the view of registration of trademark. The registration and appellation procedures, the importance of manufacturer's good faith during the business activities are analyzed as well.

Keywords: *Intellectual property, Geographical indication (GI), Trademark, Consumers' Rights, Company name, Good Faith.*

1. Introduction

What makes unique a given good is its origin, its link with the *terroir* – a French word which stands for „soil''. This strict connection between the product and the *terroir* means a certain kind of quality, read through the eyes of the consumers. The stringer is the link between a good and its place if origin the more numerous are the details about it.[1]

Geographical indications are generally traditional products, produced by rural communities over generations that have gained a reputation on the markets for their specific qualities.[2]

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1 *Cavalieri A.,* The Recent Conflicts Between Geographical Indication and EU Trademarks in the Light of the Recent Developments in Community Law and Jurisprudence: A GIs' Overprotection? May 13, 2019, WIPO Academy, University of Turin and ITC-ILO - Master of Laws in IP - Research Papers Collection - 2017-2018, 2, <https://ssrn.com/abstract=3387401> [23.02.2022]; *MICARA*, The Geneva Act of the Lisbon Agreement for the protection of appellations of origin and their international registration: an assessment of a controversial agreement, in IIC, International Review of Industrial Property and Copyright Law, 2016.

2 *Thangaraja A.,* The Consumer Experience on Geographical Indicators and Its Impact on Purchase Decision: An Empirical Study, 2018, International Journal of Pure and Applied Mathematics, Vol.118, No. 20 2018, 2625-2630, 2625, <https://ssrn.com/abstract=3713469> [23.02.2022].

Although Article 22(1) does not provide what form indications can take, it is accepted that an indication is not expressly limited to the name of a place. A word or a phrase for example may serve as a geographical indication without necessarily being the name of a territory and so may "evoke" the territory. For example, "Basmati" is known as an indication for rice coming from the Indian sub-continent, although it is not a place name as such. In addition, while a word may be an indication, other types of symbols, such as pictorial images, icons or emblems (for example the symbol of the Eiffel Tower to designate French products) may also serve as identifiers.[3]

GIs are also a global issue, regulated in international law by the WTO and attracting increasing attention world-wide. Indeed, geographical indications have been said to be "the Sleeping Beauty of the intellectual property world" as although they have been around for a long time, there has been a widespread awakening in recent years, as to their business value.[4]

The determining factor of using a trademark is the individualization of the product, i.e. whether the consumer links the manufactured product to a specific company. The consumer has the opportunity to choose the desired product, which he knows and trusts, thus, the purpose of using the trademark is to provide the consumer with accurate information about the origin of a particular product, its manufacturer and other characteristic features, which is why he chooses the product.[5] Trademark despite its legal essence, has the great importance in everyday life.

While making a choice, for the customer it is enough to see a product of a familiar trademark on the counter. In a such case, the consumer no longer reads the composition of the product, production conditions and other related processes, because the consumer has confidence to the manufacturer who owns the trademark. Hence, the existence of proper legislation related to the trademark is a prerequisite for the protection of consumer rights and the development of the fair-trade environment.

2. Consumer's Right to the Information of the Product

According to the 4th paragraph of the article 26 of the Constitution of Georgia Freedom of enterprise shall be guaranteed. Monopolistic activities shall be prohibited, except in cases permitted by law. Consumer rights shall be protected by law.[6]

The aim of the Consumer Law is to protect natural persons – Consumers' autonomy, who participates in civil relationship without income interest. In such economic relations the subject of protection is the so-called „weak side", who are actively involved in civil relations without profit interests. Protection means the legal regulation of the consumer rights guaranteed by the law and ensuring its implementation in life.[7]

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[3] UNCTAD – ICTSD, Resource Book on TRIPS and Development, Cambridge University Press: Cambridge, 2005, 289.

[4] *Zografos D.,* Geographical Indications and Socio-Economic Development, December 2008, Insensate Working Paper No. 3 <https://ssrn.com/abstract=1628534> [23.02.2022]; WIPO Magazine, "Geographical Indications: From Darjeeling to Doha" July 2007.

[5] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case № AS-306-2020, dated 18 November 2020, §49 (in Georgian).

[6] Constitution of Georgia, 24 August 1995, #786-RS.

[7] *Lakerbaia T., Zaalishvili V., Zoidze T.,* Consumer Law, The Way Towards Harmonization with European Law, Tbilisi, 2018, 35 (in Georgian).

The customer experience has a positive impact on customer experience, this relationship is mediated by the GI. When the customer is having positive experience, he is about to make positive purchase decision. This is favorably influenced by the mediator GI.[8]

Consumer Rights is a collective concept and combines the right of an individual involved in economic relations to receive quality, safe goods or services, complete information related to it, and in case if the manufacturer neglects the aforementioned obligations, he should be able to receive the reimbursement for the damages.[9] In early 30s of twentieth century, precedential law established the principle of „care for consumers''. In the case of Donoghue v. Stevenson (1932) the plaintiff asserted that he became ill after drinking soft drinks. After drinking the entire bottle of a soft drink, he found remains of a snail in it. The plaintiff demanded damages from the manufacturer of the drink. With respect to this case, the House of Lords introduced the so-called principle „care for consumers". According to this principle, a manufacturer must realize that his negligence during the process of manufacturing drinks may cause damage to those, who drink them. The principle of care for customers was applied not only with respect to many manufacturers and was not limited to the protection of customers against snails remaining in drinks, but was also applied in the case concerning the negligence of a producer of linen. For linen cleaning he used some new substances (which had been a step forward in production) but due to some negligence, they were not fully removed from the cloth. As a result of this negligence one of the customers suffered from skin diseases. In the case Crant v. Australian Knitting Mills LTD (1938), a British Privy Council on Australian matters applied the principle developed in Donoghue v. Stevenson, and the manufacturer was found liable for damage caused to the buyer.[10]

Nowadays, the global competitive environment deals with the quality products so they can attract their consumers and also, they can differentiate their products from others.[11]

Subparagraph „c" of article 27 of paragraph 2 of „Trademark Law" of Georgia is one of the case of Consumers' Rights protection on legislative level, and in case of infringement of the protected good the court is responsible for the response. Analyzing the abovementioned article, gives us ability to conclude, that the article on one hand has imperative characteristic and as a legal result, defines that misleading trademark registration shall be canceled, but on the other hand possibility of the registered misleading trademark underlines the strict legislative policy towards the protection of consumers' rights.[12]

According to the 10bis article of the „Paris Convention for the Protection of Industrial Property'' the countries of the Union are bound to assure to nationals of such countries effective

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[8] *Thangaraja A*., The Consumer Experience on Geographical Indicators and Its Impact on Purchase Decision: An Empirical Study, International Journal of Pure and Applied Mathematics Vol.118, No. 20, 2018, 2625-2630, 2626 <https://ssrn.com/abstract=3713469> [23.02.2022].

[9] *Lakerbaia T., Zaalishvili V., Zoidze T.,* Consumer Law, The Way Towards Harmonization with European Law, Tbilisi, 2018, 35 (in Georgian).

[10] *Gogiashvili G.,* Judge Made Law, Tbilisi, 2020, 133 (in Georgian).

[11] *Thangaraja A*., The Consumer Experience on Geographical Indicators and Its Impact on Purchase Decision: An Empirical Study, International Journal of Pure and Applied Mathematics, Vol. 118, No. 20 2018, 2625-2630, 2625, <https://ssrn.com/abstract=3713469>, [23.02.2022].

[12] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №AS-307-2021, dated 30 June 2021, §19 (in Georgian).

protection against unfair competition.[13] Legal acts existing on both international and domestic level, obligates manufacturers and dealers, before selling goods, to reflect the information of goods' origin, composition and other essential characteristics, for the consumers to make the rational choice. Otherwise consumer has right to defend violated right through the court.

3. Place Geographical Indication and Trademark in Legal Space

3.1 General Classification of Intellectual Property Rights

The multilayered legal nature of intellectual property caused multiplicity of the terms denoting the concept of an object and its scientific meaning.[14] Although, a modern western doctrine (in contrast to the Russian doctrine that uses the term – Интеллектуальные Права) definitely corresponds the term – intellectual property and intellectual property rights. This is very important, insofar as it clearly describes the immanent features of the legal nature of the object.[15]

The World Intellectual Property Organization was created by the WIPO convention on July 14, 1967, came into force in 1970, and was made a specialized agency of the United Nations (UN) in December 1974. WIPO has two main objectives: to promote the protection of intellectual property rights by encouraging new treaties and the modernization of domestic laws and by collecting and providing information and technical assistance; and to ensure cooperation among intellectual property unions by centralizing their administration.[16]

Article 2 (VIII) of establishing convention of World Intellectual Property Organization of 1967 defines intellectual property right by the objects. According to the mentioned article objects of the Intellectual property rights are:

– literary, artistic and scientific works;
– performances of performing artists, phonograms, and broadcasts;
– inventions in all fields of human endeavor;
– scientific discoveries;
– industrial designs;
– trademarks, service marks, and commercial names and designations

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[13] Paris Convention for the Protection of Industrial Property, 29 March 1883, <https://www.sakpatenti.gov.ge/media/page_files/Paris_Convention_1.pdf> [23.02.2021], Georgia became the part of the Paris Convention for the Protection of Industrial Property during USSR in 1965, the obligation was prolonged based on the declaration on 18 January 1994, <http://www.wipo.int/treaties/en/notifications/paris/treaty_paris_147.html> [23.02.2022].

[14] Prof. *T. Zarandia* points out that "there is no such unified concept as property, instead, there are completely different concepts and definitions famous for the most of continental Europe codifications that depended on historical and political circumstances within which the codification took place". See, *Zarandia T.,* Property Law, 2nd revised ed., Tbilisi, 2019, 206 (in Georgian); *Taliashvili T., Shamatava I.,* New Legal Regulation of Intellectual Property Protection and Enforcement, Journal of Law, No.2, 2019, 14 (in Georgian).

[15] *Taliashvili T.,* Foundations of Legal Protection of Geographic Indication of the Goods, Doctoral Dissertation, TSU, Tbilisi, 2003, 8 (in Georgian); *Taliashvili T., Shamatava I.,* New Legal Regulation of Intellectual Property Protection and Enforcement, Journal of Law, No.2, 2019, 15.

[16] *Benko R.*, Protecting Intellectual Property Rights, Washington D.C., American Enterprise Institute, 1987, 4.

– protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.[17]

According to the paragraph 6 of article 5 of the Constitution of Georgia „the State shall take care of the protection of national values, identity and cultural heritage, and of the development of education, science and culture.'' Paragraph 1st of article 20 of the Constitution of Georgia defines that „Freedom of creativity shall be guaranteed. The right to intellectual property shall be protected.'' Based on the named provisions of the Constitution of Georgia, it is obvious that the protection of intellectual property and the fruits of creative work, the development of education, science and culture is an important interest recognized by the Constitution of Georgia.[18]

Thus, Intellectual Property Law is designed to stimulate innovation and invention. Intellectual property rights, such as patents, trademarks, copyrights and designs give the right holder exception and sometimes exclusive right to use the fruits of human intellect to his behalf.[19]

Intellectual Property Rights can be broadly divided into two categories in the form of industrial property rights and copyright, depending upon the case of understanding and type of use. Industrial Property Rights refer to the testing of right over matters that will be useful for industries and commerce.[20]

The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.[21] Hence, the latter category of rights include both trademark and geographical indication.

3.2 Legal Nature of Appellation of Origin and Geographical Indication

Paris Convention for the Protection of Industrial Property, which was adopted in 1883 is the oldest and the broadest international document on Industrial Property, it does not include the term – Geographical Indication. Paris Convention uses terms – *appellation of origin*[22] and *indication of source.*[23] We can find the term - *appellation of origin* in the international act - Lisbon Agreement for the Protection of Appellations of Origin and their International Registration[24] and in Geneva

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[17] Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967 and as amended on September 28, 1979, art. 2(VIII) <https://www.wipo.int/edocs/pubdocs/-en/wipo_pub_250.pdf> [23.02.2022].

[18] Judgement of the Constitutional Court of Georgia on the case №2/1/877 „LTD Alta", "LTD Okay", "LTD Zoommer Georgia", "LTD Georgian Mobile Import" and "LTD Smile" v. the Parliament of Georgia, dated 25 December, 2020 § 39 (in Georgian), <https://matsne.gov.ge/ka/document/view/50-71127?publication=0> [23.01.2022].

[19] *Menabdishvili S.,* Collision of Competition Law with the Intellectual Property Law, Student Law Journal, 2014, 165 <https://dspace.nplg.gov.ge/bitstream/1234/278910/1/Studenturi_Samartlebrivi_-Jurnali_2014.pdf> [23.01.2022] (in Georgian).

[20] *Parwar A.*, Importance of Geographical Indication in the Growing IPR World, August 5, 2009, 1 <https://ssrn.com/abstract=1444419> [23.02.2022].

[21] Paris Convention for the Protection of Industrial Rights, par. 2, article 1st, <https://www.sakpatenti.gov.ge/media/page_files/Paris_Convention_1.pdf> [23.02.2022].

[22] Appellation of origin.

[23] Indication of source.

[24] Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, October 31, 1957, Ratified by the parliament of Georgia on February 17, 2004 act №3343 – RS, <https://www.sakpatenti.gov.ge/media/page_files/trt_lisbon_001en.pdf> [23.02.2022].

Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.[25] Article 2 of Lisbon Agreement defines the appellation of Origin with the following content: „In this Agreement, "appellation of origin" means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.''[26] Consequently, it can be said that the „appellation of Origin'' is the narrowest term in this field, because the product which has the sign of „appellation of origin'' must be produced from the good cultivated in specific geographical area, and the production process must be done in locally established technology.

For the first time in international law TRIPS agreement gave the term - „geographical indication''. This term was defined like the product is from the WTO[27] member state, region or location.[28] Article 22 of Agreement on Trade-Related Aspects of Intellectual Property Rights adopted in 1994, gives the following content of „geographical indication'': „Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.''[29]

Regardless of the common object of legal regulation, there is distinction between geographical indication and appellation of origin in the doctrine. As we mentioned, according to the TRIPS agreement, geographical indication is the indication, which gives information on specific country, region or location. This definition is different from the content of appellation of origin of Lisbon agreement, which states that appellation of origin must be „geographical name'' of country, region or community.

It should also be noted that when we talk about geographical indications, except geographical indication and appellation of source the term geographical indication includes indication of source, which might be referred like: „made in Georgia''. „Indication of Source'' like the Geographical indication is the broad term and includes as geographical indications as well as appellation of origins. „Indication of Source'' creates consumers' expression about the indication of geographical area of goods.[30]

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[25] Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, May 20, 2015, <https://wipolex.wipo.int/en/text/370115> [23.02.2022].

[26] <https://www.sakpatenti.gov.ge/media/page files/trt lisbon 001en.pdf> [23.02.2022]; *Cavalieri A.,* The Recent Conflicts Between Geographical Indication and EU Trademarks in the Light of the Recent Developments in Community Law and Jurisprudence: A GIs' Overprotection? May 13, 2019, WIPO Academy, University of Turin and ITC-ILO - Master of Laws in IP - Research Papers Collection - 2017-2018, <https://ssrn.com/abstract=3387401> [23.02.2022].

[27] World Trade Organization.

[28] *Dzamukashvili D.,* Intellectual Property Law, Intellect, 2006, 496 (in Georgian).

[29] Agreement on Trade-Related Aspects of Intellectual Property Rights, <https://www.sakpatenti.gov.-ge/media/page_files/27-trips_Vnr9Cmd.pdf> [23.02.2022].

[30] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №AS-307-2021, dated 30 June 2021 §21.2. *also see* Model Law for Developing Countries on Marks, Trade Names and Acts of Unfair Competition, WIPO, Geneva, WIPO, <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_-805.pdf> [25.02.2022]; Introduction to Georgraphical and Recent developments in the World Property Intellectual Property Organization (WIPO), Worldwide Symposium on Georgraphcal Indications, organized by the World Intellectual Property Organization (WIPO) and the United States Patent and Trademark Office (USPTO) San Francisco, California, 2003, <https://www.wipo.int/edocs/mdocs/-geoind/en/wipo_geo_sfo_03/wipo_geo_sfo_03_1- main1.pdf> [25.02.2022].

GIs signifies that a specific product is being produced in a particular geographical origin and its qualities are, in total, attributed to that particular origin.[31]

3.3 Dual Legal Nature of the Registration of Trademark

According to the precedential law of European Court of Human Rights, trademark from the registration moment falls within the scope of the term 'possessions' in Article 1 of Protocol No. 1.[32] In some cases, not only the registration of trademark, but also the application for the registration itself, and even the legal status of a trademark holder may rise property rights, which falls within the scope of the term 'possessions' in Article 1 of Protocol No. 1.[33]

In the light of the dominant opinion in the economic doctrine of the United States of America, trademark is private good, which has four values derived from property right – administrative, rentability, enforcement and the last prohibition values.[34] However, this is disputed by the competing opinion, that trademark is public good. Trademark distinguishes the good and the service from the competitor's goods and services.[35]

According to the paragraph 1st of article 3 of Georgian law on Trademarks, a trademark is a sign or any combination thereof represented graphically that is capable of distinguishing the goods and/or services of one company from those of another.[36] The main characteristic of a trademark is that it should not be the identical to other company's trademark.[37]

Industrial property similarly to real estate protection regime is the subject of registration in special public registry. Consequently, after the registration the right will be protected by the presumption. Thus, it can be concluded, that the special right to design, (protected by the Georgian law on „Copyright and Related rights'', if it is not registered in „sakpatent''), appellation of origin, geographical indication, integral microchip topography; trademark; inventions of animal breeds and/or plant varieties are protected by the presumption. The fact of registration in the framework of trademark has special importance in the world.[38]

Analysis of the concept of GIs and trademarks, clarifies that trademark has broader concept than GIs. In permitted occasions, GIs might be included in trademark, also direct or indirect indication of geographical area should underline the goods origin.[39]

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[31] *Parwar A.,* Importance of Geographical Indication in the Growing IPR World, August 5, 2009, 1, <https://ssrn.com/abstract=1444419> [23.02.2022].

[32] Anheuser-Busch Inc. v. Portugal [GC], no. 73049/01, §§66-72, ECHR 2007-I/, https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Anheuser-Busch%22],%22itemid%22:[%22001-78981%22]}

[33] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №AS-1285-1223-2014, dated 01 December, 2015 (in Georgian).

[34] *Buadze K., Shekiladze N., Zhorzhoiani G.,* The Economic Importance of Protection of Trademark, Georgian-German Journal of Comparative Law, Publication of State and Law Institute, 10/2020, 2 (in Georgian), <http://lawjournal.ge/index.php/10-2020/> [18.02.2022].

[35] *Resinek N.,* Geographical indications and trademarks: Coexistence or ,"First in Time, First in Right Principle", European Intellectual Property Review, Vol. 29(11), 2007, 448.

[36] Georgian Law on Trademarks №1795-IIS, Parliament of Georgia 05/02/1999, article 3, <https://matsne.gov.ge/document/view/11482?publication=8> [23.02.2022].

[37] Ruling of Civil Chamber of Tbilisi City Court in the Case N2/3925-15, dated 25 February 2016 (in Georgian).

[38] *Ruseishvili N.,* The Burden of Proof in Litigation Related to Intellectual Property Law, Articles on Current Issues of Evidence Law, David Batonishvili Law Institute Publications Tbilisi, 2016, 79 (in Georgian).

[39] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №AS-307-2021, dated 30 June 2021 §21.3 (in Georgian).

Acquisition of right to trademark starts from selecting the desired symbol of trademark and submission the application to „Sakpatenti". The real substantive scope of the object of protection is fixed through the registration. At the same time, the registration indicates the list of good for which the trademark is intended to be used. One of the important function of registration is that the information about all registered trademarks are published by „Sakpatenti", which is a warning to the competitors of the trademark owner.[40]

The purpose of trademark registration is not only to protect individuals' rights to property, but also in the scope of public interests to protect potential consumers from misleading information on the characteristic, quality, geographical origin or other specifications of goods.[41]

Right to trademark falls in the scope of right to property, only if it does not infringes bona fide third parties' rights.[42] Otherwise, court nulls and voids the registered trademark on the basis of the lawsuit of the interested person.

3.4 Trademark and Geographical Indication in Company Name

According to the paragraph 1st article 16 of Georgian Law on Entrepreneurs: The brand name of an entrepreneur is a name which is registered as such with the Registry and under which the entrepreneur operates. New redaction of the Georgian Law on Entrepreneurs entered into force from the 1st of January, 2022. Different from the previous redaction of the law, current law states that A brand name of an entrepreneur (except for an individual entrepreneur) shall be different from a brand name of an already registered entrepreneur. The brand name of an entrepreneur shall be changed or an additional indication shall be added to it, if it is necessary to differentiate it from the brand name of another entrepreneur.[43]

Due to the function of the name of legal entity, it should contain the identity markings which differentiates one legal entity to another. Also, the brand name of the entrepreneur shall not overlap the existing name of other existing non-commercial legal entity name.[44]

Article 8 of the partis convention requests the countries that a trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark. Thus, the trade name/brand name shall be protected in all members states without submission of application or registration, whether it is the part of trademark or not.[45]

As a rule, trademark is a registered sign, referring the origin of goods or services.[46] The registration of solely geographical names as trademarks, designating specified geographical

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[40] *Dzamukashvili D.,* Law of Intellectual Rights, Tbilisi 2012, 393-394 (in Georgian).

[41] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №AS-100-2021, dated 27 May 2021, §47; *See also* Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №AS-1330-2018, dated 15 October 2020 § 20. See also, Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №AS-62-52-2015, dated 28 July 2016, §29.

[42] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №AS-970-919-2015, dated 16 March 2016 § 1.8.

[43] Article 16, paragraph 5, of Georgian Law on Entrepreneurs, dated 2 August 2021, № 875-VRS-XMP.

[44] For the definition of legal person see: *Burduli I., Egnatashvili D.,* Commentaries of Civil Code of Georgia, Vol 1, art. 24, 2017, 186 (in Georgian).

[45] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №AS-306-2020, dated 18 November 2020 § 37 (in Georgian).

[46] *Schnitger H.,* Credit Law, *Lutringhause P.,* Delict Law*, Shushcke v.* Enforcement Law*, Tolkmit I.,* Intellectual Property Law, Tbilisi, 2011, 86 (in Georgian).

locations which are already famous, or which are known for the category of goods or services concerned, and which are therefore associated with those goods or services in the mind of the relevant class of persons, is excluded.[47]

In contrast to the Lisbon agreement, the EU regulations, almost completely apply the „first in time, first in right'' principle while protection GIs. Article 14(1) Regulation 2081/92 explains that if an application of a trademark was submitted before the date of the publication of the application for the PDO or PGI in the Official Journal of the European Communities, it has priority. The exception to the 'first in time, first in right' principle is that where the application of trademark and PDO/PGI[48] were at the same time, the latter takes priority.[49] Same provision is in the Georgian Law on „Appellations of Origin of Goods and Geographical Indications''.[50] Article 14 is regulating the relationship between an Appellation of Origin or Geographical Indication and a Trademark. During the registration process Appellation of Origin and GI has advantages to Trademark. If the application for registration of trademark and application for registration of Appellation of Origin and GI is submitted at the same time, application for registration of trademark shall be retained until the decision on registration of the appellation of origin or geographical indication is taken. Paragraph 5 of the mentioned article states that If violation of one of the conditions provided for in Article 11 takes place by using of the trademark registered before the registration of the appellation of origin or geographical indication, the interested party may bring action claiming to cease the use of such a trademark within 5 years from the day of recognition of the infringement of the appellation of origin or geographical indication. The duration of time for the submission of claim and the starting point of the time indicates the protection of consumers' rights.

Some authors considers problematic addressing „first in time, first in right'' principle, because it seems not to be adequate applying the general „first in time'' principle in case of conflict between GIs and TMs, because they are intrinsically different in nature, whereas the principle requires in theory a comparison conducted at the same level.[51]

The Chamber of Civil Cases of the Supreme Court of Georgia defined that the existence of GI in trademark is not a necessary precondition for a trademark to be considered misleading in relation to the geographical origin of the goods.[52] The trademark which includes GI, should be accompanied by the proper indication of goods' origin in order not to mislead consumers.

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[47] T-197/13, MONACO, EU:T:2015:16, § 48; 25/10/2005, T-379/03, Cloppenburg, EU:T:2005:373, § 34, 15/01/2015,

[48] protected designations of origin (PDOs) and protected geographical indications (PGIs) in EU regulations are the same to Geographical Indication (GI).

[49] *Friedmann D.,* TPP's Coup de Grâce: How the Trademark System Prevailed as Geographical Indication 2017 in: *Chaisse J., Gao H., Chang-fa Lo (eds.),* Paradigm Shift in International Economic Law Rule-Making, TPP as a new Model for Trade Agreements,? New York: Springer, Series, Economics, Law, and Institutions in Asia Pacific, 2017, 273-291, 278, <https://ssrn.com/abstract=3090172> [25.02.2022].

[50] Georgian Law on Appellations of Origin of Goods and Geographical Indications, dated 22 June 1999, №2108-IIS.

[51] *Cavalieri A.,* The Recent Conflicts Between Geographical Indication and EU Trademarks in the Light of the Recent Developments in Community Law and Jurisprudence: A GIs' Overprotection? May 13, 2019, WIPO Academy, University of Turin and ITC-ILO - Master of Laws in IP - Research Papers Collection - 2017-2018, <https://ssrn.com/abstract=3387401> [23.02.2022].

[52] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №AS-307-2021, dated 30 June 2021 §22.6 (in Georgian).

4. The Special Importance of Geographical Indication for Wines and Spirts

The TRIPS Agreement was the first multilateral text dealing with geographical indications. It is perhaps the most important international treaty in that field, due to its broad membership, the application of minimum standards and its detailed rules on enforcement through a strong dispute settlement mechanism. Indeed, even though some previous international treaties such as the Paris Convention, the Madrid Agreement and the Lisbon Agreement dealt with the protection of indications of source or appellations of origin, the protection provided was often inadequate because on the one hand, the provision of the Paris Convention was too general on this matter and on the other, the Madrid Agreement and Lisbon Agreement only had limited membership.[53]

Changes were adopted in the „Paris Convention for the Protection of Industrial Property" by the Hague Act 1925, but the member states had total freedom to define the legislative means for the protection, which in its hand was ineffective.

The French AOC system, with its roots in the Middle Ages, gained momentum at the end of the 19th Century. The increased Trans-Atlantic contact brought some vine diseases such as *Phylloxera* from the U.S., which killed around seventy percent of all vines in France. This catastrophe led to an enormous deficit of genuine French wine and a concomitant supply of counterfeit French wine. Increasingly, vintners became the driving force behind the protection of geographical designations linked to a delineated terroir, specialized grape types and production techniques.[54]

TRIPS agreement has special article for the regulation of wines and spirits issues. Article 23rd states that Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.[55] In other words, the additional protection of article 23 ensures a much more effective protection than that provided under article 22 of the TRIPS agreement, since it protects GIs identifying a product where used on another product of the same product category from all illegitimate use, regardless of whether the public is being misled or whether is an act of unfair competition present.[56]

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[53] *Zografos D.,* Geographical Indications and Socio-Economic Development (December 2008), IQ sensato Working Paper No. 3, 1 < https://ssrn.com/abstract=1628534> [21.02.2022].

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[55] Agreement on Trade-Related Aspects of Intellectual Property Rights. <https://www.sakpatenti.gov.-ge/media/page_files/27-trips_Vnr9Cmd.pdf> [21.02.2022].

[56] *Addor F., Grazioli A.,* Geographical Indications beyond Wines and Spirits, The Journal of World Intellectual Property, Geneva, 2002, Vol.5, No.6, 882, <https://www.researchgate.net/publication/-240268885_Geographical_Indications_Beyond_Wines_and_Spirits-A_Roadmap_for_a_Better_Protection_for_Geographical_Indications_in_the_WTO_TRIPS_Agreement> [25.01.2022].

5. Regulating Rules of Protection of Trademark

Property may be tangible or intangible, but the simple fact that a thins is property in name (i.e. „intellectual property“) does not make it a legal private property interest. In normative terms, property is often referred to as a bundle of rights“. The „rights to exclude“ is widely considered the most important right in the bundle.[57]

10ter article of „Paris Convention for the Protection of Industrial Property'' defines: (1) the countries of the Union undertake to assure to nationals of the other countries of the Union appropriate legal remedies effectively to repress all the acts referred to in Articles 9, 10, and 10bis. Aslo, they undertake, further, to provide measures to permit federations and associations representing interested industrialists, producers, or merchants, provided that the existence of such federations and associations is not contrary to the laws of their countries, to take action in the courts or before the administrative authorities, with a view to the repression of the acts referred to in Articles 9, 10, and 10bis, in so far as the law of the country in which protection is claimed allows such action by federations and associations of that country.[58]

Around the world, practices of Trademark protection established two methods of obtaining special rights. According to the first method, the acquisition of a special right does not require any special procedure and is achieved through the actual use of the trademark, and according to the second method, in order to obtain a special right to a trademark, it is necessary to register the trademark in the relevant institution.[59] Upon completion of the registration, the trademark may be applied to goods for which the mark is registered.[60] According to paragraph 3 of article 3 of Georgian Law on „Trademarks'': A trademark is protected by means of its registration at "Sakpatenti" or on the basis of an international agreement, but the right to trademark might be existed without registration. In the late case the right is granted based on the Paris Convention for the Protection of Industrial Property'', March 29, 1889. Trademarks and the repression of unfair competition are the objects of the convention (article 1.2) as well.[61]

Charter II of Georgian Law on „Trademarks“ regulates the acquisition and maintenance of an exclusive right on a trademark. Article 16 defines appellation rules: a) An applicant can appeal against a decision of examination as to form at the Chamber of Appeals[62] within 3 months from

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[57] *Marlan D.,* Trademark Takings: Trademarks as Constitutional Property under the Fifth Amendment Takings Clause, University of Pennsylvania Journal of Constitutional Law, Vol. 15, no. 5, May 2013, 1581-1632, 1592.

[58] Ruling of the Civil Chamber of Tbilisi Court of Appeale in the Case N2B/3269-17, dated 10 June 2018 (in Georgian).

[59] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case № AS-1285-1223-2014, dated 1 December 2015 § 70, 71 (in Georgian).

[60] *Kerly D. M., Underhay F.G.,* Law of Trade-Marks, Trade-Name, and Merchandise Marks. London, Sweet & Maxwell (2), 538, <https://heinonline.org/HOL/Page?handle=hein.beal/ltmtnmm0001&id=-602&collection=beal&index=> [31.01.2022].

[61] Ruling of the Civil Chamber of Tbilisi Court of Appeale in the Case №2B/3269-17, dated 10 June 2018 (in Georgian).

[62] The Chamber of Appeals is established on the basis of Article 9 of the Georgian Law on Patents as a dispute resolution authority operating at Sakpatenti and hearing disputes related to Sakpatenti decisions on intellectual property objects, criteria for protection of objects, granting patents and registration of other objects of industrial property <https://www.sakpatenti.gov.ge/media/page_files/appeal_statute_1_N5rZTT6.pdf> [31.01.2022]

taking the decision; b) An applicant can appeal against a decision of substantive examination to refuse the registration of the trademark in respect of the entire list of the goods or its part at the Chamber of Appeals within 3 months from taking the decision; c) Within 3 months from the date of publication of the application data in the Bulletin, any interested party is entitled to bring an action before the Chamber of Appeals against the decision on trademark registration only on the grounds that the requirements of Article 4 or 5 of this Law is violated. In addition, it is not admissible to appeal against a decision concerning the trademark registration on the basis of an enacted court decision at the Chamber of Appeals on the same grounds. The decision of the Chamber of Appeals may be appealed in the court.

The decision of the Chamber of Appeals may be appealed in administrative chamber of court. In this case, court shall verify the compliance of the administrative act to the Georgian legislation. According to the article 60^1 of General Administrative Code of Georgia an administrative act shall be null and void if it contradicts the law or if other requirements determined by law for drafting or issuing it have been substantially violated.[63] Thus, we have special terms for the appellation, which are regulated by the administrative legislation. As soon as the appellation terms are gone, the trademark might be registered and after the registration of the trademark in the Register[64], "Sakpatenti" shall issue a trademark certificate.

The intangible nature of intellectual property and the particular intersection with the consumers' rights necessitates the existence of various mechanisms for the protection of intellectual property in both international and domestic legislation. In accordance with the 10bis article of ,,Paris Convention for the Protection of Industrial Property'': the countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. All acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor must fall in the scope of unfair competition.[65]

Civil chamber of the court may be annul a trademark registration at the request of a third party on the bases of „b" and „c" subparagraphs of article 28 of Georgian Law on „Trademarks".

On some practicing lawyers' mind, after the expiration of the 3 months period set for an administrative appeal, it should no longer be possible to appeal a registered trademark in a civil manner, as this would harm the entrepreneurial activity. However, on the contrary, it should be noted that the mentioned articles have their legitimate basis. According to subparagraph „b" of paragraph 1st of article 28 of Georgian Law on ,,Trademark'' a trademark registration may be annulled by the court at the request of a third party, if the trademark has been registered with a dishonest intent; and the subparagraph „d" defines that a trademark registration may be annulled by the court at the request of a third party, if the trademark contains the brand name for which the

[63] Ruling of the Civil Chamber of District Court of Mtskheta in the Case №180310014555877, dated 24 December 2014, § 7.20. (in Georgian)

[64] Paragraph 1 of article 17 of Georgian Law on ,,Trademarks'' defines that: ,,If within the period prescribed in Article 16 (4) of this Law an appeal is not filed with the Chamber of Appeals, or if on the basis of the appeal filed in accordance with Article 16 (4) the Chamber of Appeals takes a decision to register a trademark, "Sakpatenti" shall register the trademark in the Trademark Register (hereinafter - the Register) and publish the data on the registered trademark in the Bulletin."

[65] Ruling of the Civil Chamber of Tbilisi Court of Appeale in the Case №2B/3269-17, dated 10 June 2018 (in Georgian).

rights are originated before the filing of the application for the trademark registration, as a result of which a likelihood of confusion arises. In both cases the respondent is not „Sakpatenti'', but the entrepreneur who holds the trademark.[66]

The principle of good faith is the lever by which the interests of the parties must be balanced. This principle applies to those participants for whom the autonomy of the will has become a mean of obtaining an unjustified (unfounded) advantage in the free market.[67] In civil relationship a good will principle has dual nature: *firstly*, good faith as the most important principle of law, implies good faith in an objective sense. The solidity and stability of civil turnover depends on good faith of its participants. Good faith expresses the notion of natural or legal person formed in the society about the moral action during the acquisition, realization, protection of rights, as well as fulfillment of the obligation. Every person must act in good faith during the exercise of his rights or obligations. *Secondly,* good faith is the situation when the person does not know, that his/her action is unlawful and violates others' rights.[68]

When analyzing the persons' action in accordance with the good faith principle, the peculiarities of specific relation and the process of formation/development of the relation must be taken in consideration.

Thus, the legislature regulates the legal consequences in respect of the trademark in case of indicating geographical origin, the consequence might be the invalidation of trademark, or cancellation the registration of trademark, although each of these legal consequences has different preconditions. In one occasion the trademark is presented in such way that the misleading circumstances are revealed during the registration process, while in another case, the cancellation of registered trademark is condition by the use in such way, that misleads consumer about the origin of marked goods. For example, if a trademark of vodka, which is made in Latvia gives the consumer an allusion to its Russian origin, such exploitation of trademark may mislead the consumer, if the trademark is commercialized in such way that the geographical origin of the goods implied by the individual does not correspond to the actual origin of the goods.[69]

6. Conclusion

Based on the topics discussed in the article, the compliance of Georgian legislation with the regulations established by international acts is obvious. Disputes over trademark and geographical indications have increased in courts. Court takes in consideration of both entrepreneur's and consumer's interests in decision making process.

The best practice of appellation in civil chamber is established by the court, because of purpose and importance of consumers' rights. It should be noted that the court uses best European practice in its decisions related to trademarks and GIs.

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[66] Ruling of the Civil Chamber of District Court of Mtskheta in the Case №180310014555877, dated 24 December 2014, § 7.16. (in Georgian).

[67] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №NAS-541-513-2015, dated 22 July 2015 (in Georgian).

[68] Ruling of the Civil Chamber of Tbilisi Court of Appeale in the Case №2B/3269-17, dated 10 June 2018. (in Georgian).

[69] Ruling of the Civil Chamber of the Supreme Court of Georgia in the Case №AS-307-2021, dated 30 June 2021 §22.5 (in Georgian).

There are demands at the international level for extending the protection under TRIPS beyond wire and sprits. The purpose is to confer more effective level of protection to geographical indication of all products with the increased internationalization of foods and product market; GIs have become a key source to niche marketing.[70]

GI is a descriptive sign and any entrepreneur from the geographical area can use it.[71] However, in some cases the name of a geographical region or location merely indicates a particular style of product, but not its real place of origin. For example, the terms "Chicago Pizza", "Greek Salad" and "Turkish Coffee" respectively denote a style of pizza, salad and coffee, but not the origin.[72]

Geographical Indications are not exclusively commercial or legal instruments, they are multi-functional.[73] We can conclude that GI also has social, cultural and economic importance. In social and cultural terms, GI promotes the specific geographical area on international market, which raises awareness and all these creates economic benefits.

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