

Applicable Law to Intellectual and Industrial Property Agreements According to Turkish Private International Law and Rome I Regulation

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Abstract : Intellectual and industrial property rules, have a substantial effect on the sustainable development. Intellectual and industrial property rights, as temporary privileges over the products of intellectual activity, determine the supervision of information and technology. The level and scope of intellectual property protection thus influence the flow of technology between developed and developing countries. In addition, intellectual and industrial property rights are based on the notion of balance. Since they are time-limited rights, they reconcile private and public benefits. That is, intellectual and industrial property rights respond to both private interests and public interests by rewarding innovators and by promoting the dissemination of ideas, respectively. Intellectual and industrial property rights can, therefore, be a tool for sustainable development. If countries can balance their private and public interests according to their particular context and circumstances, they can ensure the intellectual and industrial property which promotes innovation and technology transfer relevant for them. People, enterprises and countries who need technology, can transfer developed technology which is acquired by people, enterprises and countries so as to decrease their technological necessity and improve their technology. Because of the significance of intellectual and industrial property rights on the technology transfer law as mentioned above, this paper is confined to intellectual and industrial property agreements especially technology transfer contracts. These are license contract, know-how contract, franchise agreement, joint venture agreement, management agreement, research and development agreement. In Turkey, technology transfer law is still a developing subject. For developing countries, technology transfer regulations are very important for their private international law because these countries do not know which technology transfer law is applicable when conflicts arise. In most technology transfer contracts having international elements, the parties choose a law to govern their contracts. Where the parties do not choose a law, either expressly or impliedly, and matters which is not excluded in party autonomy, the court has to determine the applicable law to contracts in a matter of capacity, material, the formal and essential validity of contracts. For determining the proper law of technology transfer contracts, it is tried to build a rule for applying all technology transfer contracts. This paper is confined to the applicable law to intellectual and industrial property agreements according to '5718 Turkish Act on Private International Law and Civil Procedure' and 'Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)'. Like these complex contracts, to find a rule can be really difficult. We can arrange technology transfer contracts in groups, and we can determine the rule and connecting factors to these groups. For the contracts which are not included in these groups, we can determine a special rule considering the characteristics of the contract.

Keywords : intellectual and industrial property agreements, Rome I regulation, technology transfer, Turkish act on private international law and civil procedure

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