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Key principles of international law regulating the protection of industrial property in DRC

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Abstract

This work deals with key principles of international law that regulate the protection of industrial property rights in the DRC. Generally contained in legal instruments with binding effects to DRC (Paris convention and TRIPS agreement) and that work in a complementarity system, principles referred to, are the national and most-favored nation treatment, the territoriality, state independence of industrial property rights and the priority rights principle. According to their contents, contracting States have obligation to adopt laws in their respective national legal systems to implement those general principles and strategies of protection in term of minimum standard of protection.

In search of complying with such obligation, DRC adopted a law that addresses issues related to industrial property rights. However, it still lacks serious conformity with TRIPS Agreement requirements despite the transitory period granted by the WIPO. Regarding to that, some scholars consider, on the one hand, that DRC is still on the way to make industrial property rights effective and claim, on the other hand, application of reciprocity to Congolese nationals living abroad as a way to force DRC to quickly conform with its obligation related to industrial property rights (even if prohibited by the Paris convention) As a recommendation, DRC's authority have to make legal effort to comply with these requirements for the good of Congolese citizens and as a way to avoid any issue of international responsibility based on industrial property rights.

Keywords: Industrial property, principle of property rights, most favored nation, territoriality.

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Résumé

Cet article traite des principes clés du droit international qui régissent la protection des droits de propriété industrielle en RDC. Généralement contenus dans des instruments juridiques ayant des effets contraignants pour la RDC (Convention de Paris et Accords ADPIC) et qui fonctionnent dans un système de complémentarité, les principes auxquels il est fait référence sont le traitement national, la nation la plus favorisée, la territorialité, l'indépendance de l'État des droits de propriété industrielle et le principe des droits de priorité. Sur le fondement de leurs contenus, les États contractants ont l'obligation d'adopter des lois dans leurs systèmes juridiques nationaux respectifs pour mettre en œuvre ces principes généraux et stratégies de protection en termes de norme minimale de protection.

Afin de se conformer à cette obligation, la RDC a adopté une loi, jugée lacunaire, qui traite des questions liées aux droits de propriété industrielle. En dépit de la période transitoire accordée par l'OMPI à la RDC, cette dernière peine toujours à se conformer aux exigences des Accords ADPIC. A cet égard, certains chercheurs considèrent, d'une part, que la RDC ne fournit pas assez d'efforts pour rendre effectifs les droits de propriété industrielle et réclament, d'autre part, l'application de la réciprocité aux ressortissants congolais vivant à l'étranger comme moyen de la contraindre à se conformer à son obligation internationale découlant des instruments sus-évoqués.

Mots-clés: Propriété industrielle, principe des droits de propriété, nation la plus favorisée, territorialité.

1. Background to the study and research question

Industrial property law, in the era of international trade and globalization, is at the heart of several issues. Unfortunately, in DRC, many economic operators are unaware of the relevance and importance of this field of law. They are missing out the opportunity to exploit an intangible asset that enhances the company's heritage. The ignorance of this field of law and rights that derive from the industrial property has led to a perpetual infringement of laws and regulations related to in DRC. The issue becomes more pertinent when it moves to an international level. Such an attention drawn on the international level is justified by the fact that Congolese traders import goods and sell them in DRC.

While some of them have concluded franchising contracts, others involved in the production of goods of different natures that are sold beyond Congolese borders. As matter of the fact, it is worth inquiring about the protection of such industrial properties imported to DRC by taking into consideration existing franchising contracts understood here as "a method

of distributing products or services involving a franchisor, who establishes the brand's trademark or trade name and a business system, and a franchisee who pays a royalty and often an initial fee for the right to do business under the franchisor's name and system[5]."

The same goes for industrial products manufactured in DRC either by Congolese nationals or foreigners whose industries are implemented in DRC and submitted to Congolese law system as well as industrial properties produced by Congolese abroad. By and large, every owner of an invention or other intangible asset needs legal protection that grants him a monopoly grace to which they will be able to prevent any temptation of illegal act of copying. Thus, Eastaway writes "Being capable to stop copying is a desire of many businesses for the straight forward reason that it impels customers to look for the author for the product or service in need. Accordingly, intellectual property law has a major impact on the actual conduct of business across a very wide range of human endeavour. Therefore, it implies a legal protection at diverse levels of products' accessibility[6]."

In case law, the CJEU in its Judgement of 24 March 2022 C-433/20 (Austro-Mechana case) said: "Technological development has multiplied and diversified the vectors for creation, production, and exploitation. While no new concepts for the protection of intellectual property are needed, the current law on copyright and related rights should be adapted and supplemented to respond adequately to economic realities such as new forms of exploitation*."*

As matter of consequence, an inquiry about the protection of such products or services and derived rights, with the mixture and complexity of aspects it contains, reveals more than important. Therefore, at the starting point of this work, it is asked how does Congolese law organizes the protection of industrial property and derived rights at the international level. And as research question, it goes: "what are principles of

[5] N. BINCTIN, *Droit de la propriété intellectuelle : Droit d'auteur, brevet, droits voisins, marques, dessins et modèles*, Paris, 3ème édition, LGDJ, 2014, p. 30.
[6] N. EASTAWAY et al., *Intellectual property law and taxation*, 7th edition, Thomson Reuters, 2008, p.19.

international law that address specifically issues of industrial property in DRC?

2. Literature review and theory framework

The emergence of legal protection and legal remedies of industrial property sets limits by trying to define boundaries between what may legitimately be done and what is illegitimate between the new areas of development which are, for longer or shorter periods, fenced off and what then passes into the pool of common knowledge from which all may freely take[7].

Using a comparative approach, Leila Ghassemi Farreras writes that despite its gaps and deficiencies, the Paris convention for the protection of industrial property is a successful achievement in the field of intellectual property at the international level and provides the principal international vector of the union between States. She demonstrated that before the Paris union, the situation was more than complicated to obtain protection in foreign countries due to the fact that an invention patentable under the law of their country might be non-patentable in other countries. Even the filing of the application describing the inventions or the advertisement of the invention by administration was considered destroying the novelty of the invention in many countries[8].

Staying on the same line of ideas and using an exegetic-casuistic approach, Sam Ricketson opines that the contribution of the Paris convention to the international protection of industrial property tries to make a convergence and harmonization between legal systems of different States even if in some continents like Europe, the bar has reached a very high level of union and the protection granted to industrial property is getting more and more effective.[9] This is confirmed in case law by the Court of Justice of the European Union in cases of "Consten et Grundig vs

[7] N. EASTAWAY et al., *Op. Cit*., p.19.
[8] L. Gh. FARRERAS, *Utilisation of traditional Medicinal Knowledge in the Industry: Legal aspects and protection in international law*, Ph.D dissertation in Law of the Neuchatel University, defended on March, the 14th 2017, p. 85.
[9] S. RICKETSON, *The Paris convention for the protection of industrial property; A commentary*, Oxford University Press, 2015, p. 25.

Commission, joint-cases 56-64 and 58-64 of 13th July 1966" and in the "Deutsche Grammaphon" case when supporting that it results from the TFEU that a unique and community market in the field of intellectual property is an essential need of the EU.

As emerges from the extensive literature, in respect to the international protection of both industrial property and derived rights, two questions are commonly asked by authors. It is all about the acquisition of an industrial property right by foreigners and the recognition and enforcement of a right acquired abroad[10]. As a matter of substance, the rights above-referred to, are commonly protected by patents, registration of trademarks and trade names, utility models and designs; a process that goes from national legal basis.[11]

For Nigel Eastaway, there is a verified conclusion that granting a patent consist of a right of exclusive use of the invention for a limited time and involves a curtailment of the freedom of industry and commerce. During the term for which the patent is granted, no one except the patentee is allowed to manufacture, use or sell the new article or the new machine.[12] Thus, a question goes: "is such a protection automatically recognized beyond borders of the issuing patent authority"?

On his point of view, BOKEDER writes that principles set by the Paris convention and the TRIPS Agreement constitute minimum standards of protection of industrial property that any contracting party must respect.[13]"

P. Ladas write that the Paris convention as revised several times, substantively, aims at articulating national systems of State-parties with different standards of protection in the fields of patents and trade, service marks and establishing the obligation to protect some sorts of industrial property assets without, unfortunately, setting minimum standards. It is applied to industrial property in the widest sense, including patents,

[10] St. P. LADAS, *The international protection of industrial property*, Cambridge, Harvard University press, 1930, p. 3.
[11] Idem, p.15.
[12] *Ibidem.*
[13] BOKEDER, *A public health agenda for traditional complementarity and alternative medicine,* 2002, p.1586.

trademarks, industrial designs, utility models, service marks, trade names, geographical indications, and the repression of unfair competition[14].

According to a recent WIPO consultation paper, the TRIPS agreement, referring to industrial property rights enumerated in the Paris convention, goes beyond the mere fact of constituting an obligation upon State members and practically fixes standards of protection of industrial property rights expected from country members. This means that member States are required to respect the minimum standard of protection instituted by part II and III of the TRIPS agreements as a matter of international obligation. Nevertheless, member States are free to grant a more extensive protection to industrial property rights as cited by the aforesaid agreement unless it appears contrary to its objectives[15].

Sam Ricketson opines without contradicting the above-mentioned arguments, the Paris convention (1889) as amended later is accompanied by other legal instruments of international scope that work on the basis of principles such as the territoriality and independence of protection, the national treatment principle, the most-favoured treatment and so on.

Despite the existence of several conventions on the international protection of industrial property and different initiatives of the World Intellectual property Organization to which DRC is a State-party, it worth bearing in mind that, on the one hand, foreigners met with great and, sometimes, insurmountable obstacles to get the protection of their inventions in DRC and on the other hand, Congolese nationals face hardships in getting protection of their inventions abroad. According to Yav Katsung, such a drastic situation in DRC is due to lack of knowledge of intellectual property law by a great number of Congolese including some administrative authorities and becomes a nightmare when international legal aspects involved in[16]. Thus, it reveals more than important to check

[14] St. P. LADAS, *Op. Cit.*, p.3

[15] Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice. Article 1 of the TRIPS agreement.

[16] Y. KATSUNG, « Droit de la propriété intellectuelle congolais », in *Revue de droit des affaires OHADA*, disponible sur www.ohadata.com consulté le 7 février 2022 en 20h30.

out the way the Congolese legal system organizes the protection of industrial property at the international scale and propose a broadcasting mode of the scope of such protection.

Referring to the above-mentioned ideas**,** it is worth bearing in mind that those principles grant an international protection at a minimum level but requires the membership of a State for its nationals to be covered. However, on the current basis of Congolese law, it is noticed that DRC is a State-party to few of them. Besides, principles and strategies of protection offered by those few international legal instruments are known by a small group of persons. That is why Yav Katsung wrote that the international protection of industrial property in Congolese law is still an undiscovered domain which requires deep research from lawyers[17].

3. Methodology

The collection of data or information that concur to the formulation of answers to the present research questions requires the use of an appropriate methodological approach. The last, as an intellectual process, is a tool that allows testing theories by demonstrating the inevitable relation between facts and theory[18]. For bringing the most effective result, the present research is performed through a doctrinal legal and comparative method as privileged by Leila Ghassemi whose methodological approach revealed more attractive.

T. Mann describes a doctrinal approach as "*a synthesis of rules, principles, norms, interpretive guidelines and values which explains, makes coherence or justifies a segment of the law as a part of the larger system of law"*[19]. Since law, itself, is a doctrine put into application in a social circumstance[20], this work focuses on the way in which Congolese industrial property law evolves, operates and brings specific type of consequences in regard to the international protection.

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[17] Y. KATSUNG, *Art. Cit*., www.ohadata.com consulté le 7 février 2022 en 20h30.
[18] E. HESSEL YNTEMA, "Comparative legal research: some remarks on 'Looking out of the cave'", in *Michigan law review,* 1956, pp. 899-928. 903.
[19] T. MAN cited by L. GHASSEMI, *Op. Cit.*, p.91.
[20] P.M. BAKSHI, "Legal research and Law reform" in *SK Verma and M. Afzal Wani,* Indian Law Institutes, 2010, pp. 110-119.

From a teleological point of view, comparative method aims at drawing lessons from the approaches of different jurisdictions to the same or similar problems. It provides a much richer range of model solutions by considering similarities, identifying discrepancies and working on them. It widens the dimensions of a critical legal research and facilitates a contrast between specificities of different legal systems[21]. More precisely, it is micro-comparison that interested us as much as it is done between legal systems of the same law family, and focuses on specific rules particularly industrial property rules to resolve the issue of the international protection of industrial property rights in Congolese law.

Concretely, the above-mentioned methods are materialized by practical tools that are called techniques. As far as this work is concerned, documentary technique plays a key role in the collection, exploration, explanation, evaluation and treatment of information that concur to the construction of solutions hereby highlighted.

4. Presentation and discussion of results

A good appraisal of the way Congolese legal system organizes the international protection of industrial property rights requires a review of the content of different legal instruments related to which are the Paris convention and TRIPS Agreement. These two international legal instruments are the main ones related to industrial property to which DRC is a contracting party. They place obligations on DRC to adopt national laws that implement principles they set.

This means, on the one hand, principles such as the national treatment and most-favoured nation treatment (4.1), the territoriality and state independence in regard to intellectual property rights (4.2) are binding and have to be respected in DRC. On the other hand, as settled under TRIPS agreement as well as the Paris convention, a strategy of granting priority to any protection claim submitted in DRC and for which the inventor has been conferred an exclusive protection in another country party to the Paris

[21] E. HESSEL YNTEM, *Op. Cit.,* p. 900.

union has been incorporated in the national law regulating industrial property issues (4.3).

4.1. National and Most-favoured nation treatments

According to articles 2 and 3 of the Paris convention, each of the contracting State have to grant the same protection to nationals of other contracting states that it grants to its own nationals. The convention elects no room for discrimination between nationals and foreigners in industrial property matters. The same treatment is provided by the convention for nationals of non-contracting states who are domiciled or have an effective and real industrial or commercial establishment in a contracting state. National treatment does not elect room for policies of reciprocity in the field of industrial property protection except only the case of copyright where national treatment partly depends upon mutual accordance of national treatment. Such exceptions are referred to in Art.3 (1)TRIPS Agreement and corresponding rules are contained in Arts 6 (1) and 20 Berne Convention and Arts 13 (d)[22].

The Paris convention did not include the most-favoured nation treatment. The latter was perceived as a pure mechanism of international trade law and found room in the field of industrial property with the TRIPS agreement constituting a break with former states practice which linked the protection of industrial property to the national territory and settled the condition of reciprocity[23]. The prohibition of discrimination between national and foreigners is currently at the heart of international instruments that address industrial property issues; a state party cannot easily breach it without violating its international obligation. The national and most-favoured nation treatments pursue the same objective which is the struggle against discrimination, a principle of customary international law since a long period of time.

[22]Th. COTTIER, "Industrial Property, International Protection", in *Max Planck Encyclopedia of Public International Law*, available on www. Oxford Public International Law.com checked on the 4th of April 2022 at 13h33.

[23] S. BERGÉ, *Protection internationale et européenne du droit de la propriété intellectuelle : présentation-textes-jurisprudence-situations,* Bruxelles, Larcier, 2015.

For Thomas Cottier "Most-favoured-nation treatment is a second mainstay of non-discrimination in international trade and investment regulation. It is enshrined in Art. 4 TRIPS Agreement. Unlike national treatment, this cornerstone of the international trading system does not apply to intellectual property under the Paris Convention. Neither of them contains comparable rights and obligations[24]." In the same line of ideas, Carlos Maria Correa writes "In accordance with the MFN principle, as formulated in the TRIPS Agreement, 'any advantage, favour, privilege, or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members'. It is to be noted that the MFN principle applies in relation to benefits accorded to nationals of 'any other country.' Hence Members should be accorded the MFN treatment when benefits were granted to non-WTO Members. As incorporated, the MFN clause aims at ensuring that nationals of Members receive the best treatment accorded to a member to nationals of other countries[25]."

In case law, the identification of discriminatory acts of a state is not an easy task to deal with. Any allegation of the violation of national treatment principle should pass through three steps that have been established by the arbitration tribunal in the case of Saluka v.s Czech Republic and to which many other decisions have been referred. According to the decision taken in the aforesaid case, the three-step process of identifying the violation of national treatment principle includes: the existence of similar cases that should be treated differently without reasonable justification." This means that the process goes from the identification of a group of nationals with whom to compare the claimant and the comparison between treatments granted before assessing whether the treatment received by the claimant is less favourable than that granted to the group of nationals. At the end of the process, there should be an evaluation whether the two groups are in similar

24 Th. COTTIER, *Art. Cit*., p. 1.

25 C. MARIA CORREA, "Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement*",* in *Oxford Public International Law*, available on www. https://opil.ouplaw.com/ checked on 4th April 2022 at 14h00.

circumstances or whether certain factors exist which could justify any differential treatment[26].

On its own side, the MFN principle is guided by the rule of *ejusdem generis* that means that an MFN advantage claimed for patent cannot be extended to other kinds of industrial property rights. This rule has been more popular in arbitration practice before the ICSID that many other arbitration tribunals used it. Most of the time, the MFN principle is used to attract a better treatment. Since the case of Maffezini vs. Spain, the arbitration practice has favoured the possibility to use the MFN provision to avail a dispute settlement provision in another agreement considered more favourable[27].

Despite exceptions allowed by the TRIPS Agreement at its article 4 and 6, the exclusion of reciprocity and discrimination between nationals and foreigners is of obligatory effect under industrial property law. States parties are called to put the national and most-favoured-nation treatments into practice as a matter of international obligation which, combined with the territoriality and state independence principles, forms the cornerstone of the protection of industrial property rights at the regional and international scales.

4.2. Territoriality and state independence of industrial property rights

The principle of territoriality has been judged by several scholars as one of the fundamental principles of International Intellectual Property Law, in general and industrial property Law, in particular, considering its ability to allow countries to design their intellectual property laws in a manner that facilitates the achievement of specific societal goals[28].

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[26] See the case Suluka vs Republic Czec, under the arbitration rules of the United Nations commission on international trade law, 7th May 2004.

[27] See the Case Maffezini vs.Spain, ICSID Case No. ARB/97/7 (Decision on Jurisdiction), 9 November 2000.

[28] E. KOLAWOLE OKE, *Territoriality in Intellectual Property Law: Examining the Tension between Securing Societal Goals and Treating Intellectual Property as an Investment Asset*, Volume 15, Issue 2, October 2018, available on www.google.com checked on 4th April 2022 at 14h38.

Emmanuel Kolawole Oke writes "According to the principle of territoriality, intellectual property rights are limited to the territory of the country where they have been granted. The principle of territoriality permits states to tailor their national intellectual property laws to suit their level of technological and economic development[29]". The territoriality principle, as inspired by specialized doctrine finds true application in industrial property law grace to the intervention of state independence principle according to which a protection of industrial property granted on a territory is independent from another one granted by foreign states.

For S. Bergé, it is a principle substantially international that proposes specific solution to international situations. Its presence in great texts that govern the international protection of industrial property rights justifies the value it entails[30]. The territoriality of the protection of industrial property does not reject the conventional minimum of protection settled by the TRIPS Agreement through minimum standards of protection.

It means that each contracting party's protection is independent from the foreign one on the condition that it stays in conformity with minimum standards of protection settled by different international legal instruments such as TRIPS Agreement. These standards of protection bring closer national laws of different states parties and lead to the internationalization of the aforesaid protection. A special attention needs to be drawn towards the incorporation of intellectual property rights protection in the investment law system. For some scholars, such an incorporation constitutes a potential threat to the principle of territoriality.

According to E. K. Oke, "The incorporation of intellectual property into the international investment law system and the assetization of intellectual property can affect the principle of territoriality in at least two ways. Firstly, free trade agreements (especially where it is an agreement between a developed country and a developing country) typically include provisions requiring the parties to implement standards that are above and beyond the minimum requirements of the TRIPS Agreements or which eliminates a flexibility available to a WTO member under the TRIPS Agreement

[29] E. KOLAWOLE OKE, *Op. Cit.*, available on www.google.com checked on 4th April 2022 at 14h38.
[30] S. BERGE, *Op. Cit.*, p. 114.

(typically referred to as TRIPS-plus provisions). Where an agreement expressly contains such TRIPS-plus provisions, it can curtail the ability of a party to design its national intellectual property laws in a manner that allows it to achieve specific societal goals. It is however possible to incorporate specific provisions into a bilateral investment treaty or a free trade agreement that recognizes a country's policy space and preserves its regulatory powers with regard to intellectual property. Secondly, a number of these investment agreements empower corporations to challenge regulatory measures (implemented by host countries to achieve specific societal goals) before international arbitration tribunals via the Investor-State Dispute Settlement (ISDS) system. The threat and/or cost of litigation before an investment tribunal pursuant to an investment agreement can influence a country to decide not to implement certain regulatory measures (including measures relating to intellectual property rights) thus having a chilling effect on the regulatory powers of the country[31]".

As a commentary to the idea of E.K Oke above mentioned, it is better writing that the incorporation of intellectual property rights, in general and industrial property ones, in particular, as investment assets in bilateral investment treaties and investment articles of the free trade agreements, here called assetization process, gives to foreign investors the possibility to challenge, before an arbitration tribunal, regulatory measures taken by the host state.

Such a possibility constitutes a threat to the principle of independence of State and territoriality under the Paris Convention and the TRISP Agreement considering the fact a limitation or exception under industrial property law can be seen as an illegal expropriation under investment law. In other words, the incongruence between the object and purpose of assuring the protection of industrial property -that are mainly inciting creativity and allowing a state to achieve its societal goal- and the ones of investment agreements -that are focused on the protection of foreign investors and their investment abroad- leads to a tricky situation that have been object of debate in the legal doctrine related to the territoriality of industrial property.

[31] E. KALOWOLE OKE, *Op. Cit.*, p. 320.

Therefore, E. K. OKE points out that: "This incongruence between the object and purpose of intellectual property law and international investment law might impair the ability of a state to design its national intellectual property laws in a way that enables it to achieve specific societal goals[32]."

The Philip Morris'case, in which trademarks were both simultaneously intellectual property rights and investment assets, confirm the territoriality of industrial property law and points out that the mere fact that a trademark is included in an investment agreement does not prevent a host state to use its regulatory power especially when it aims at protecting public health. Thus, in its decision, the tribunal says: "…under Uruguayan law or international conventions to which Uruguay is a party the trademark holder does not enjoy an absolute right of use, free of regulation, but only an exclusive right to exclude third parties from the market so that only the trademark holder has the possibility to use the trademark in commerce, subject to the State's regulatory power[33]."

In the case of Eli Lilly v Canada, the arbitration tribunal took a similar decision that confirms once more the territoriality principle of industrial property despite the existence of a dissenting opinion that tried to support the investment side of the case. Anyway, the trend seems to be the same in arbitration practice except in very exceptional cases where regulatory measures of the host that violate the industrial property protection of the foreign investor are so severe in light of the agreement[34].

A part from principles above-presented, the Paris convention requires contracting parties to recognize a priority right to protection claim that have been granted previously in another state-party to the union. DRC's law related to industrial property has consecrated this principle in theory as well as in practice.

4.3. Priority right principle

Industrial property rights are governed by the territoriality principle. The latter means "that a patent, breeders' rights, a trademark, design or model

[32] E. KALOWOLE OKE, *Op. Cit.*, p. 320.
[33] See, Philip Morris case, para. 271.
[34] E.K.OKE, *Art. Cit*., p.329.

is only valid in the country in which protection was obtained. In concrete terms, these rights must be registered in countries in which you want to exercise them and prohibit third parties from using your invention, plant variety, trademark, or design or model[35]".

It means that a patent in a State party A to the Paris convention is not automatically recognized in State B even if party to the same convention. If the owner wants to get protection in State B for the same invention, they have to submit a new application in the new State. More particularly in case the owner of an invention already patented in another countries wants to get protection for the same invention in DRC, they should comply with legal formalities under Congolese law. Nevertheless, as a national of a State party to the Paris convention, they benefit from the priority rule offering them a privilege in the processing of the application. The application of the rule referred was confirmed by the Court of Justice of the EU in the case of KaiKai Company vs. the EU office for Intellectual property. At point 59 of its decision, the CJEU said: "(…) which grants a right of priority to anyone who has duly filed an application for registration […] in or for one of the States party to the Paris Convention or to the agreement establishing the World Trade Organization …"[36]

Despite the priority rule, an issue still arises under Congolese law that does not fully comply with minimum standards of protection settled by the TRIPS Agreement till today. Some scholars have written that such a situation can push other states to apply reciprocity to Congolese applicants abroad even if prohibited under the Paris convention and TRIPS Agreement.

Conclusion

The international protection of industrial property in Congolese law is assured via the Paris convention and TRIPS Agreement, international legal instruments to which DRC is a contracting party. These international legal

[35] S. BERGÉ, *Op. Cit.*, p. 114.
[36] The Court of Justice of the EU in the case of KaiKai Company vs. the EU office for Intellectual property, 14 April 2021.

instruments set minimum standards of protection and place obligations on State parties to integrate them in the national legal system.

By and large, each State-party to the aforesaid instruments must adopt a law that complies with minimum standards of protection settled under international industrial property law. As a State-party to the Paris convention and TRIPS agreement, DRC adopt the law n° 82001 of January, the 7th 1982 that regulates issues of industrial property law.

Under this law, some principles fixed by the Paris convention are respected. However, a series of other standards of protection are not guaranteed especially the ones set by the TRIPS Agreement. Much of the current work on industrial property law highly criticize the non-conformity to TRIPS Agreement by DRC despite the deadline given to it. For several scholars including Congolese ones, this is a serious negligence that should be sanctioned. Among sanctions invoked, the application of the reciprocity rule to Congolese national abroad should take place considering the low degree of protection granted by their national law to foreigners even if it is prohibited under the Paris convention. Of course, such non-conformity to TRIPS Agreement by DRC constitutes a violation of its international obligation. On my behalf, it could be better to hold DRC internationally responsible and sue it before a competent international authority instead of apply reciprocity to Congolese national abroad because the initiative to conform to TRIPS Agreement does not practically depend on them. Such an action would make more sense than activating a prohibited rule.

In conclusion, key principles of international law that regulate the protection of industrial property rights are applicable in DRC despite its non-conformity to TRIPS Agreement requirements. As a recommendation, DRC's authority have to make legal effort to comply with these requirements for the good of Congolese nationals and as a way to avoid any issue of international responsibility before any competent international authority.

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