

LEGAL PRINCIPLES IN THE ORGANIZATION OF SCIENTIFIC RESEARCH

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Problem. Scientific research is known as the process of understanding of scientific knowledge and specific kind of scientific activity. General requirements of research include objectivity, evidence, accuracy, reproducibility of results. Implementation of these requirements depends on many factors, not the least of which is right.

Analysis of recent research and publications. Native and foreign scholars, lawyers and philosophers of science P. P. Andrushko, Yu.V. Baranyuk, Yu. L. Boshyt-sky, M. V. Venetska, V. P. Vorobyov, V. S. Zelenetzky, Yu. M. Kapitza, H. O. Murashyn, V. O. Rassudovskyy, S. K. Stupak, N. M. Khutoryan, Yu. S. Shem-shuchenko, etc. fruitfully engaged in researching legal principles in the organization of scientific research.

The purpose of the article is to highlight legal principles in the organization of research set out in the Law of Ukraine «On the scientific and scientific technical activities» as well as in those regulations that solve the problem of copyright, rights to invention and discovery, prevent plagiarism in scientific study. The article is written in English in order English readers learn about the content of it.

Key research findings. Legal principles in the organization of research laid primarily in the Law of Ukraine «On Scientific and Scientific Technical Activities» (from 13.12.1991 № 1977-XII) as amended by the relevant resolutions of the Parliament of Ukraine, Decrees, Laws, decisions of the Constitutional Court of Ukraine (edition of 05.08.2012) [4]. This law defines the legal, organizational and financial bases of operation and development of scientific and technical areas, creating conditions for scientific and technical activities, satisfies the needs of society and the state in technological development.

The law states that the development of science and technology is a determining factor in social progress and welfare of its subjects, the spiritual and intellectual progress and an integral part of national culture and education, etc.

In the first part, «General Regulations» of the Law defines the content of the main concepts (terms), which are used by legal system in matters of science and technology, as well as scientists in the organization of scientific activity in general, the purpose and task of scientific activity. In the second part, «The legal status of the subjects of scientific and scientific technical activities» subjects of scientific and scientific technical activities and their legal status are defined.

The main concepts (terms) are:

Research – is an intellectual creative activity directed to obtain and use new knowledge. Its main forms are «fundamental and applied research» (Article 1) [4]. The part defines scientific and technical activities as they are which are aimed to obtain and use new knowledge in all areas of engineering and technology. Its main forms (species) are research, experimental design, design and engineering, search and retrieval of design, fabrication of prototypes or batches of scientific and technical products as well as other work associated with bringing scientific, scientific technical knowledge to the stage of their practical use (Article 1) [4].

The law also defines the research and teaching activities as pedagogical activities in educational and postgraduate educational institutions of III-IV accreditation levels associated with the scientific and (or) scientific and technical studies, scientific and organizational activity aimed at methodological organizational support and coordination of scientific, scientific and technical, scientific and educational activities (Article 1) [4].

Fundamental research – is a scientific theoretical or experimental activity directed at obtaining new knowledge about the laws of nature, society and human, their relationship. Applied research – is a research activity focused on the acquisition and use of knowledge for practical purposes (Article 1) [4].

Scientist – is an «individual (a citizen of Ukraine, foreigner or stateless person) who conducts basic and applied research and receive new scientific, scientific and technical results». Young scientist – is a «scientist for up to 35 years» (Article 1) [4].

Researcher – is a scientist at the main place of work according to the labor agreement (contract), professionally engaged in scientific, scientific and technical, educational, scientific and organizational activities and has an appropriate qualification, confirmed the results of the appraisal. «Research and teaching employee – is a scientist who at the main job professionally engaged in teaching or science and technology activities in higher education and postgraduate educational institutions of III-IV accreditation levels» (Article 1) [4].

Research institutions – is a «legal person, regardless of ownership, which is established in accordance with legislation, for which scientific or scientific and technological research activity is a major and sums more than 70 percent of the total annual volume of work performed» (Article 1) [4]

Scientific research – is a «research to obtain scientific results» (Article 1) [4].

Research results – are a «new knowledge obtained during basic or applied research, and recorded in carriers of scientific information in the form of reports, scientific papers, research reports, scientific reports of research work, monographic studies, scientific discovery, etc.» (Article 1) [4].

Applied research results – are a «new constructive and technological solutions, experimental design, completed test development, which is implemented or may be implemented in social practice. Research results can be applied in the form of a report, preliminary design, design and technological documentation on scientific and technical products, specimens, etc.» (Article 1) [4].

Rounding out the first article, the term «scientific and technical (experimental development)», «scientific (scientific and technical) products», «grant».

The second article of the Law «Goals and Objectives» declares that the purpose of the law is to regulate relations related to scientific, scientific and technical activity determine the legal status of the subjects of scientific and scientific-technical activity «to create conditions for increasing the efficiency of research and use outcomes for development in all spheres of social life» (Article 2) [4].

The objective of the law is to define «legal status of subjects of scientific, scientific and technical activities...; economic, social and legal guarantees of scientific, scientific and technological activities, freedom of scientific creativity, the main objectives, directions and principles of state policy in the field of scientific and scientific-technical activity» (Article 2) [4].

The subjects of scientific and scientific-technical activities are scientists, researchers, scholars, educators, academic institutions, research organizations, and higher education institutions of III-IV accreditation levels, public institutions involved in scientific and scientific-technical activities.

The main subject of scientific research is a scientist. The law defines its rights:

- «Choose the form, direction and means of scientific and scientific-technical activities according to their interests, creative opportunities and universal values;
- unite with other scientists in permanent or temporary research teams to conduct joint scientific and scientific-technical activities;
- participate in competitions for the research funded by the state budget of Ukraine and other sources in accordance with the laws of Ukraine;
- gain recognition of authorship on scientific and scientific-technical results of their activities;
- publish the results of their research or publish them in another way, in accordance with the laws of Ukraine;
- eligibility for vacancies scientific and teaching staff;
- receive, transmit and distribute scientific information;
- obtain state and civil recognition through the award of degrees, academic titles, awards, honors for his contribution to the development of science, technology, implementation of scientific, technical results in the production and training of scientific personnel» (Article 5) [4].

Ethical component of the research activity gets of particular importance. The law states that «a scientist during scientific, scientific and technical, scientific and educational activity must: do not harm to human health, life and environment; follow ethical standards of scientific cooperation, respect intellectual property rights» (Article 5) [4].

Law attaches particular importance to the interpretation of the term «scientist». Scientist carries out «research, scientific, educational, experimental design, research and technology, design, engineering and technological research and technology, research, design and exploration and (or) arrange to perform this work in scientific institutions and organizations higher educational institutions of III-IV accreditation, enterprise's laboratories» (Article 6) [4].

The law defines researcher's rights. Scientific employee has a right: «to unite in trade unions, to engage in activities of public associations and political parties;

for a reasoned refusal to participate in scientific (scientific and technical activities), the results of which may have adverse consequences for human, society and the environment;

for a financial support for performed researches by the State Budget of Ukraine and other sources of funding in accordance with the laws of Ukraine;

for nominal or other scholarships and awards, established by the state, corporations and individuals;

for an objective assessment of their activities and receive material rewards according to qualifications, research results, quality and complexity of the work...;

for engaging in teaching, provide advice and be an expert in accordance with the laws of Ukraine, to do business in accordance with the laws of Ukraine» (Article 6) [4].

The law defines the responsibilities of a researcher which lie to «conduct researches according to the concluded agreements (contracts); represent the results of scientific and scientific-technical activity through scientific reports, publications and dissertation defense, and undergo certification for compliance with the position in the prescribed manner, constantly improve their skills» (Article 6) [4].

According to the law, «scientist cannot be forced to conduct researches if the researches and their results cause or may cause harmful to human health, life and environmental effects, and cannot be held liable for refusing to participate in such researches» (Article 6) [4].

Article 7 of the Law defines the legal basis of the scientific establishment. «The scientific establishment operates on the basis of the statute (regulations) approved in due course. Managing of scientific institution carries its head...» [4].

Article 8 of the Law defines the meaning of the term «State Scientific Institution»: «state scientific institutions are academic institutions based on state ownership. State scientific institutions are created, reorganized according the procedure established by the Cabinet of Ministers of Ukraine...» [4]. Article 9 of the Law defines the rights and obligations of a head of research institute. Article 10 is addressed to academic activities (scientific, scientific and technical, technical) scientific Council of an institution, «Academic (scientific, scientific and technical, technical) Council of a research institution is a collegial advisory body of the scientific, scientific and technological activity of scientific institutions...» [4].

Academic (scientific, scientific and technical, technical) Council of research institution performs the following tasks:

«Identifies promising directions of scientific and scientific-technical activity, provides scientific and scientific-technical evaluation of topics and results of

research considers and approves the current plans for research, approves the dissertations topic of applicants and graduate students and their supervisors (consultants); solves other problems of scientific establishment defined by its charter (provision). Specialized Academic councils can be created in scientific institution to defend dissertations on the relevant specialties in the manner provided by the laws of Ukraine» (Article 10) [4].

Law «On the scientific and scientific technical activity» defines the position of the National Academy of Sciences of Ukraine and Academy branch (Article 15), scientific and scientific technical activities in higher education (Article 16), public research organizations (Article 17), the interaction of government and public research organizations (Article 18).

Part III of the Law «State Guarantees of scientists' and researchers' activities» determines the forms of academic training, academic degrees and academic titles, the procedures for certification of researchers, their positions, guarantees of scientists and researchers (defining experience of scientific work, payment and incentives, pensions and social security) (Articles 19-24). Part IV «The powers of state regulation and management in the field of scientific and scientific-technical activities» defines the powers of the Verkhovna Rada of Ukraine, President of Ukraine, the Cabinet of Ministers of Ukraine and other entities of state regulation and management in the field of scientific and scientific technical activities.

These principles particularly are «organic unity of scientific, technical, economic, social and spiritual development of society, the combination of centralization and decentralization of management of scientific activities, compliance with the requirements of environmental safety, the recognition of freedom of creative activity; balanced development of basic and applied research, the use of international research, opportunities to international scientific cooperation, and freedom of scientific and technical information, openness to international scientific and technical cooperation, ensuring the integration of Ukrainian science in the world combined with the protection of national security interests» (Article 32) [4].

Act provides special attention to protection of intellectual property rights. Article 42 considers the protection of intellectual property rights. The law emphasizes that «...in a case of violation of one's intellectual property rights protection carries out in the order prescribed by administrative, civil and criminal law. Mandatory conditions of the agreement (contract) under which research and development work are performed by the state budget of Ukraine is to identify the subject of intellectual property rights, obligations of the parties to ensure the protection on intellectual property created under the laws of Ukraine» [4].

The right to scientific discovery. In Ukraine the basic positions regarding the interpretation of scientific discovery are regulated by the current Civil Code of Ukraine (from 16.01.2003, № 435-IV, amended on 19.11.2012). The fourth book «Intellectual Property Right» includes general provisions about intellectual property right (Chapter 35) and defines the intellectual property right on scientific discovery, the notion of Scientific Discovery. «A scientific discovery shall be

establishment of previously unknown but objectively existing patterns, properties and phenomena of the material world which makes fundamental changes in the level of scientific knowledge» (Article 457) [9]. The essential features of discovery are its objectivity, the scientific community is perceived as a qualitative novelty (new objective truth).

Scientific discoveries reflect a phenomenon, properties and laws of the material world. Discovery – is a previously unknown, objectively existing form of reflection of essence of the object of the material world (nature). During discovering phenomena (objects and processes) of objective reality are described in the organic unity of essence and phenomenon, revealed by the process of formation and development, causation and reasonableness.

Object of discovery – is previously unknown, a new piece of the objective world, which causes fundamental changes to the process of scientific knowledge. Properties of the investigated objects depend on its interaction with other objects. Therefore, previously grounded signs become elements of the new system of knowledge (content of invention). It should be noted that the new feature requires interpretation of the conditions of appearance of this property. In a scientific study essential properties of the object and its regular discovering characteristics are being proved. Patterns of the material world also can be subjected to discovery. They represent a previously unknown objective essential relationship that is sustainable and reflects a relationship in which a change of some phenomena causing the change others. This relationship has a universal character and meets the requirements of logical operation of generalization.

Theoretically grounded discovery usually confirmed by the practice (experimental). Thus, solving mathematical problems, bringing a variety of mathematical theorems, finding astronomical objects, creating new technologies, etc. to the category of discovery does not belong.

The right to scientific discovery means the right of the author of a scientific discovery to assign his name or a specific name to this scientific discovery (article 458) [9]. The right to a scientific discovery certified by the diploma and shall be protected per the procedure established by the law. «However, the author does not have a monopoly on their discovery, as recognition for anyone monopoly on new knowledge can have practical applications, and is essentially impossible. Scientific discoveries since their publication are in the public domain and can be freely used by each interested party» [1, p. 520].

Rights scientific discovery after the author's death pass to his heirs according to the general rules. Moral rights terminated with the death of the author. Disputes authorship of scientific discovery is considered in court.

The purpose of the legal protection of the right to discovery is «regulation of relations arising in connection with its installation, examination, registration and use of the formation and accumulation of scientific and intellectual potential, increase their competitiveness, protection of the rights of authors of scientific discovery, creating a system of state registration taking into account the interests of the state» [1, p. 520].

General Law of Ukraine on the legal protection of scientific discovery is based on the Constitution of Ukraine (Article 54), the above mentioned Civil Code of Ukraine, laws and regulations regarding the protection of intellectual property. Among international legal acts, which are taken into account the legal system of Ukraine is the Convention which established the World Intellectual Property Organization [6].

The right to an invention. Legal issues relating to the invention shall be governed by the Law of Ukraine «On Protection of Rights to Inventions and Utility Models» (from 15.12.1993 №3687-XII, amended on 07.07.2009). Article 1 defines the meaning of the term «invention (utility model) – the result of human intellectual activity in any field of technology» [5]. The invention as essentially is a new technical solution to the problem of any sector of the economy, social and cultural development, etc. Features pronounced positive effect is the result of human intellectual activity. The object of the present invention may be a new device (device), a new agent, a new method (or process) to use them, as well as a new destination.

Since the invention as technological (technical) solution must meet the patentability requirements for its recognition is necessary application to the State Department of Intellectual Property of Ukraine [7]. The legal protection provided by the patent invention, which reflects the priority of the invention, the inventor of authorship and its ownership. Term of Patent of Ukraine is 20 years from the filing date of the patent invention to public institutions (declarative patent – 6 years) (Article 6) [5].

Claim determines the amount of necessary legal protection «interpretation of formulas should be done within the description of the invention (utility model) and corresponding drawings. Action declarative patent granted for a method of producing the product, apply to the product directly obtained in this way» (Article 6) [5].

The legislation establishes certain restrictions on the use of the invention, as well as establishes the steps that are not considered infringement of the patent. A patent may be recognized as invalid, or its effect may be terminated early. Patent rights are protected in court.

Copyright. Copyright is determined by the Law of Ukraine «On Copyright and Related Rights» dated on 23.12.1993, № 3792-XII (supplemented, amended on 19.11.2012) and the Civil Code of Ukraine.

The term «copyright» is ambiguous. Objective – it is the set of laws and regulations that form the process of creating and publishing the results of scientific research, art, literature and more. Subjectively – copyright is the right of the author – «an individual who created a work by his creative effort» (Article 1), to publish work under his own name, the right to inviolability of the work, the right to publish the work, the right to use the work (exercise or allow its reproduction by any means – in the press, public performance, means television, radio and others. hardware, translation, processing work, distributing copies), the right to receive remuneration for permission to use a work created by him to others [3].

Copyright applies to the following works in the fields of science, literature and art, i.e.: written works of a literary, journalistic, scientific, technical or other nature (books, brochures, articles, etc.); speeches, lectures, addresses, sermons and other, etc. (Article 8).

Copyright does not apply to discoveries, inventions, innovations. Also, copyright does not apply to material objects – media copyright because copyright – it is not right (ownership) to a manuscript copy of the book, painting, etc., and their own right to the authorship of certain works. Action of copyright does not apply to work which has an objective form. It is not subject to copyright the idea (the idea) of the author. Works are no longer protected by copyright works for which expired term of copyright.

Copyright may belong to the individual (the author or co-author), legal entity (public or other organizations). Copyright may belong to the state in the event of voluntary or compulsory purchase of copyright from the author or his descendants. The author also may transfer the right to use his work as in his country and abroad to any individuals and legal entities, including foreign.

The authors of scientific works produced off-plan research organization where they are in staffing receive compensation (royalties) in accordance with established procedures. For routine scientific work fee, usually do not pay as scientists work paid salary. An exception is the payment of writing textbooks (textbooks), which takes the form of royalties. Textbook authors also provide free author copies of his scientific work.

Usually the publication of works that are performed routinely carried out with the permission of the organization, the task is carried out scientific work. The right to reproduce the author of scholarly work, which served as the official task can be used at their discretion. For example, the publication of a scientific report or notification reprint previously published monograph (manual, etc.).

Copyright in a work that is a result of joint work of two or more authors, belongs to collaborators. Defining characteristic of co-authoring is a personal creative contribution. Co-authors are not persons providing technical assistance to the author (pick material, draw diagrams, charts, etc.). Co-Authorship takes place when the authors taking part in the formulation of the problem, methodological and methodical guidance, and personally perform some of the planned work. Co-Authorship occurs during the processing of work by another person with the consent of the authors. Relationship of collaborators may be determined by agreement between them. Each of the authors retains copyright of the part he created, which has independent significance, and has the right to use such portion of the work on your own. Compiled collections of works that are under selection or arrangement of their contents, creative work, the copyright for collection, subject to the rights of authors of each of the works included in the distribution. Authors of the works included in the distribution, remain copyright to each of their work and can use their works regardless of the distribution as a whole.

September 6, 1952 was adopted by the World Copyright Convention. The Convention entered into force on 16 June 1955 and had great success. May 27, 1973 (the date of accession to the Convention USSR) it took 64 states. 81 countries

participated in 1988, the World Convention. World Convention launched a special copyright protection sign. Copyright protection sign refers to publications that are planned for sale. It consists of the following elements: a circled Latin letter «C», ©; the copyright holder's name; the year of first publication of the work in the world.

The term of the author's rights, according to Ukrainian legislation, acts from the day on which the work is created and shall remain in effect throughout the author's lifetime and for 70 years after his death; copyright in works created in co authorship shall remain in effect throughout the coauthors' lifetimes and for 70 years after the death of the last coauthor (Article 28 of the Law on Copyright and Related rights) [3]. «The right of authorship, the right name and the right to resist distortion, mutilation or other modification of the work or any other derogatory action in a work that could harm the honor or reputation of the author protected indefinitely (art. 14)» [10, p. 32].

The use of a work without the author's consent and without payment of royalties, but with mandatory locking author, whose contribution is used from a source is allowed in the case of creating a new, independent work, in the case of reproduction in scientific and critical writings in educational publications in the form of quotations. Copyright protection is an administrative, criminal and civil code.

Plagiarism and avoidance of it. The scientific research must exclude plagiarism (copyright infringement) in any of its form. The term «plagiarism» (Latin *plagio* – steal) means the misappropriation of another's authorship of the work (research results). According to the Law of Ukraine «On Copyright and Related Rights» plagiarism – is a disclosure (publication), in full or in part, of another person's work under the name of a person who is not the author of the work (Article 50) [3]. Ethics of science considers plagiarism one of the most obscene violations of moral principles scientist.

It is known that any scientific research based on the results of previous research (writings of other scholars). These loans are of two types: fair and unfair. Fair borrowing (citation) means using the author of the scientific achievements of other scholars with mandatory indication in the scientific text output cited papers (surname and initials of the author, name and year of publication, the page from which borrowed text). Unfair borrowing means intentional misappropriation (theft) of foreign ideas, materials, etc.

The term «plagiarism» focuses on the appropriation of another's authorship when someone else works (or results of scientific research) published as their own. In practice, research plagiarism is not only use of verbatim text of others, but any of his paraphrases, in which content (scientific idea) this text is stored and published as personal. The reasons are diverse academic plagiarism: Plagiarism is partly the result of low creativity researcher, may be due to reluctance to make reasonable efforts to obtain significant scientific results, etc.

Avoiding plagiarism in all kinds of research is required, but that does not mean avoiding compulsory examination (analysis) of scientific concepts developed by other researchers. Conversely, a wide critical review of scientific information on

the chosen topic of research – is a required element for realization of scientific work. It is primarily about the correct citation.

With the correct (direct and indirect) are mandatory quoting the following requirements: to indicate the source reference (according to bibliographic descriptions indicate name of the author, title of work, year and place of publication, page); citation should not be excessive in volume; provisions that are cited must necessarily be selected quotes, the quoted text should be given literally (without cuts that can distort its content) in the allocation of single words in quotation must indicate authorship of this allocation («emphasis added» or «emphasis») [2, p. 157-158].

To make one's own interpretation of the main ideas with maximum accuracy is permitted when indirect quoting of scientific position of another author. Use of quotation marks in this case is not required, but the main requirement is unchanged – a clear reference to the author's name, title of work and the source of the mandatory indication of pages.

Failure to comply with these requirements is incorrect citation, and therefore qualifies as an infringement of copyright (plagiarism) and punishable by law (plagiarism is subject to criminal and civil penalties). «The victim of plagiarism author, according to the law of Ukraine «On Copyright and Related Rights» has the right to claim damages, including lost profits, extraction and direction in his favor profits plagiarist or compensation, which is determined by the court» [11, p. 566].

To avoid plagiarism researchers must additionally follow these rules: be sure to check the results of their research on autonomy and priority expose own research expertise of specialists, study journals scientific surveys, reports on the results of other studies, process the special literature to create a sense of situation research, the front edge of science and scientific understanding of fashion, to participate actively in scientific communications [8, p. 265-266].

Conclusion. The current legal framework of Ukraine about the organization of scientific research is incorporated in the Constitution of Ukraine (1996) (Article 54, which guarantees freedom of scientific creativity, copyright, etc.). Civil Code (2003) defines and guarantees intellectual property right of scientific discovery, etc.; Law of Ukraine «On the scientific and scientific technical activities» (from 13.12.1991 №1997-XII with changes and additions), which determine the legal, organizational and financial aspects of functional and development of scientific and technical areas, and create the conditions for scientific and scientific technical activities; the Law of Ukraine «On Protection of Rights to Inventions and Utility Models» (from 15.12.1993 №3687-XII with changes and additions) that in determining rights on inventions, providing the progressive development of innovative technologies, the Law of Ukraine «On Copyright and Related Rights» (from 23.12.1993 №3792-XII with changes and additions), which define copyright and related rights, regulate relations related to their implementation, and prevent infringement of copyright and related rights – plagiarism.

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Prysykhin S. Legal principles in the organization of scientific research

The article is devoted to the legal principles of scientific research set out in the Law of Ukraine «On the scientific and scientific technical activities» as well as in those regulations that solve the problem of copyright, rights in invention and discovery, prevent plagiarism in scientific research. The article is written in English in order English readers learn about the content of it.

Keywords: *legal principles of scientific activity, research, basic research, the subject of scientific activities, research worker, scientist, the right to scientific discovery, the right to an invention, copyright, plagiarism.*

Присухін С. І. Правові засади в організації наукового дослідження

Стаття присвячена висвітленню правових засад наукового дослідження, викладених у Законі України «Про наукову і науково-технічну діяльність», а також у тих нормативно-правових актах, які вирішують проблеми авторського права, права

на винахід і відкриття, попереджають плагіат у науковому дослідженні. Стаття написана англійською мовою з метою ознайомлення з її змістом англомовних читачів.

Ключові слова: правові засади наукової діяльності, наукова діяльність, фундаментальні наукові дослідження, суб'єкт наукової діяльності, науковий працівник, вчений, право на наукове відкриття, право на винахід, авторське право, плагіат.

Присухин С. И. Правовые основания в организации научного исследования

Статья освещает правовые основания в организации научного исследования, изложенные в Законе Украины «О научной и научно-технической деятельности», а также в тех нормативно-правовых актах, которые решают проблемы авторского права, права на изобретение и открытие, предупреждения плагата в научном исследовании. Статья написана на английском языке с целью ознакомления с ее содержанием англоязычных читателей.

Ключевые слова: правовые основания научной деятельности, научная деятельность, фундаментальные научные исследования, субъект научной деятельности, научный работник, ученый, право на научное открытие, право на изобретение, авторское право, плагат.

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