

# АВТОРСЬКЕ ПРАВО. ІНФОРМАЦІЙНЕ ЗАБЕЗПЕЧЕННЯ НАУКОВОЇ ДІЯЛЬНОСТІ

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UDC 001.89

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## RESEARCH AS THE MAIN FORM OF THE RESEARCH AND SCIENTIFIC-TECHNICAL ACTIVITIES

*In the paper it is considered an administrative and legal support of the scientific and technical activities, including the research.*

**Keywords:** *scientific work, scientific and technical activities, research and development work.*

The priority direction of the development of each state is to provide scientific and scientific-technical activities, the development of design products, creation of new technologies, materials and substances. It is advisable to consider an administrative and legal support of the scientific and scientific-technical activity, including the main form of an implementation of such activities – the research work. This issue is also actual because in Ukraine the research and scientific-technical activities are mainly financed by the state budget. Clear legal regulation of these areas is the basis of a rational use of funds and reaching necessary results for the society. But the above mentioned regulation should never restrain researches or affect them, it just should be aimed at the establishing of the organizational standards and norms concerning the interaction of the research that will improve the process of the research support.

Law regulation in the field of science and scientific-technical activity is realized on the basis of the Bill of Ukraine “About Research and Scientific-Technical Activities” [1]. According to the Bill of Ukraine “About Research and Scientific-Technical activities” [1] the research is an intellectual creative activity aimed at the obtaining and use of new knowledge. Its main forms are the fundamental and applied scientific research. Research and technical activities are intellectual creative activities aimed at the obtaining and use of a new knowledge in all the areas of engineering and technology. Its main forms (species) are the research, development, design, technology, search and retrieval, making prototypes or parties for scientific-technical products, as well as other works related to the final concentration of the scientific and technical knowledge to the stage of practical use.

I. P. Golosnmchenko, M. F. Stakhursky, N. I. Zolotaryova argue that the development of science and technology is a determining factor in the progress of society, the welfare of

its members, their spiritual and intellectual growth [2, 164]. Embracing the thoughts of scientists, V. B. Averyanov considers the scientific activity as a component of the socio-cultural sphere. So he states that socio-cultural foundation that is structurally divided into the field of education, science, culture, health and social protection, physical culture and sports, is an important part of the multifaceted activity of the Ukrainian State. Characteristic feature of the socio-cultural sphere is that it is associated not only with material values, but also with a considerable extent of the spiritual needs of citizens. Legislation in this field must ensure moral and aesthetic education, health, pleasure, socio-cultural needs. Common areas of legislation in the sphere of socio-cultural construction is shown in unity of purpose, principles, techniques of legal regulation, their business role in the community [3].

Conscious of the importance of scientific activity in the State and its legal regulation let's consider the procedure for carrying out research work. So the research is regulated by the State Standard of Ukraine 3973-2000, which came into force on June 1, 2001. Of course, research papers are regulated by a range of the state standards of Ukraine, but the above mentioned standard is fundamental in this sphere. According to the first chapter [4] it sets general rules for the performance of the research works, including rules for the submission of applications for the execution of the research works, the development of technical specifications on the research work and its constituent parts, features members of the research works, the content of stages of their implementation and acceptance, registration of the research works and the implementation of their results.

The statements of this standard are mandatory for the research, fully or partially financed by the State budget. For the research, payed by the capital or own funds of institutions, enterprises, organizations and other entities, the provisions of the standard are recommended. The standard does not apply to the research work, that run in the system development and demand for the production of military equipment [4]. Analyzing the first section of the Standard it should be noted that it does not apply to the researches on the development of military technology, but given the fact, for example, that the Ministry of Internal Affairs of Ukraine, as well as other subjects of law enforcement, carries out the work on the designing special equipment but not the military one, this standard is the basic for use when carrying out the research works.

The norms established in the standard [4] are regulated by other State standards of Ukraine, creating a system of the researches. Such standards are in accordance with the second partition of the following standards: No 3008-95 "Documentation. Reports in the field of science and technology. Structure and rules"[5]; No 3278-95 "System Development and Queuing Products on the Production. Basic Terms and Definitions"[6]; No 3396.0-96 "The Protection of Information. Technical Protection of Information. The Main Statements"[7]; No 3575-97 "Patent Research. The Main Statements and the Procedure for Carrying Out"[8]; No 2.105-95 "The United System of the Constructive Documentation. General requirements to the text documents" [9]; etc.

So we see that the established clear regulatory system with a series of standards, which regulates the conduct, termination, adoption and implementation of scientific-research work is established. To the research works belong according to clause 5.1.2 [4] fundamental, search and applied researches. General Statements of this standard apply to perform the applied research. For the fundamental search the statements of

the standard are recommended and distributed in the proper part. Analysis of p. 5.1.2 of the Standard [4] indicates that the standard for the research work covers the implementation of fundamental and applied research, a search engine. But, as it is stated above in accordance with the Bill of Ukraine “About Research and Scientific-Technical Activities” [1] fundamental and applied scientific research is the basic form of the scientific activity, rather than of the scientific-technical activity, then, as research work is the primary form of scientific-technical activity. So Standard 3973-2000 [4], and the Bill of Ukraine “About Research and Scientific-Technical Activity” [1] have a certain inconsistency regarding the basic forms of the scientific and scientific-technical activities.

According to the Clause 5.1.3 of the Standard [4] the main objectives that define the content and nature of the researches are the creations of scientific and technical studies on the basis of an effective research for decision-making with the respect to: the use of scientific and experimental achievements when creating new products or upgrades to one that already exists; following development (research and technology); development of standards, projects, installation, normative and prediction-analytical documents; the appropriateness of further research and development or their termination as such do not have prospects.

Analyzing p. 5.1.2 and 5.1.3 of the Standard [4] we should note that the action of the standard applies only to the applied scientific research, the norms regarding fundamental and prospecting are not detailed. In our opinion, it will be necessary [4] to put the Standard 3973-2000 in such a wording, which would have ensured the distribution of established norms and the fundamental and search works, or create the appropriate standards for the fundamental research and search, because the normative standards normalize the process of conducting the work, establish rules on the preparation of standardized documents, including reports on the work done. This provides a more sophisticated process of organizing and carrying out research works in all their forms as the fundamental and search and applied scientific research. In addition to Cl. 5.1.3 [4] in its content suggests this definition as a “scientific study”, but if the standard applies only to the scientific and technical sphere and takes into account the fact that according to the Bill of Ukraine “About Scientific and Scientific-Technical Activity” [1] scientific and scientific-technical activity are separated and have their definitions it should be reasonable in the standard to apply only to the definition of the “scientific and technical justification”.

According to the Cl. 5.1.5 [4] the results of the researches, the scientific products convey to the customer in accordance with the contract and the acts of the current legislation on intellectual property rights and objects: inventions, industrial designs, utility models and trademarks for goods and services, which received documents exclusive right; copyright regarding the consequences of the creative activity of the researches, which obtained a certificate of registration. During the transfer of scientific materials contractor customer reports about the researches used the objects of intellectual property. Paragraph 5.1.5 of the Standard [4] establishes the links between the results of the research and created objects of intellectual property, provides the application of intellectual property rights according to the law. Basic norms established in the standard are the rules concerning the functions of the research works, their actions and relationships.

So according to the clause 5.2.1 [4] organizations, institutions and businesses depending on the nature of participation in the researches (orders, research, performance, etc.) share the customers (consumers) and develop. Central and local executive authorities perform functions of the state or of the customer if they finance the researches. In addition to central and local executive bodies in accordance with 15.001 [11] customer may perform the functions of the research: consumer, who will be supplied with products or organization, which is mandated to represent the interests of the consumer. Depending on the nature, complexity and volume of work to the research are involved one or more organizations (enterprises). If in the research are involved several organizations or performers, among them is determined the main performer. The rest of the performers-organizations parts the functions of the research (co-operators). Analysis of Cl. 5.2.1 of the Standard [4] shows that, for example, the Ministry of Internal Affairs is a central body of the executive power, which finances research works, serving the role of the State as the main customer.

Works of the research in the system of internal affairs bodies are carried out by the services and divisions (departments) of the Ministry of Internal Affairs. Customer of the research according to Cl. 5.2.2 [4] performs the following major tasks: initiates the research with regard to certain problems, and submits a recommended form application of the research or establishes its own application form; publishes original requirements for the development of technical specifications on the research; organizes, as it's necessary, the examination of the applications for the execution of the research, examines the results of the examination, determines the main performer of the research; on the proposal by the research examines and approves technical task and assigns the research cipher; decision concerning the conclusion of the contract and the contract for the execution of the research with the main contractor; organizes support and control over the execution of the research at all stages; accepts the individual stages of works and completes the work as a whole, as well as the decisions regarding the further use of the results of the research, residual materials and other material assets that are purchased in accordance with the contract at the expense of the customer; determines the list of information about the subjects protection, as well as entities of intellectual authorities and requirements for the implementation of measures for their protection; organizes the implementation of the results of the research in accordance with section 7.3 of this standard [4].

The main performers in the system MIA of Ukraine are research institutes, higher education institutions and enterprises of the Ministry of Internal Affairs, which include: the State Research Institute of the Ministry of Internal Affairs of Ukraine, the State Research Expert Crime Investigation; scientific production association "Fort", higher educational establishments of the third and fourth level of accreditation. The main performer of the research in accordance to Clause 5.2.3 of the Standard [4] carries out the following work: applying for the execution of the research; on behalf of and on the basis of the original requirements of the customer develops the draft proposal in the research, contacts with the concerned organizations and submits them for approval to the customer; together with performers of the research determines the content of the draft proposal on the components and performs for them the functions of the customer; prepares and submits to the customer for the agreement on the implementation of the research; contracts for the implementation of the components of the research with their performers; makes and approves the plan

for the implementation of the compatible work performers components; coordinates the work of the performers, components of the research; carries out the research in accordance with tasks and deadlines established by the contract; performs the required analysis of the scientific, technical and regulatory documentation regarding the topic researches and examines possible areas of research; defines the methods of research; carries out theoretical studies, calculations, mathematical modeling and patent research; creates, if it's necessary, models, replicas or experimental samples of future products and conducting experimental work; compares the results of an experimental work with the results of theoretical studies; defines the prospects of further research and provides recommendations for an application of the results of the researches; developing, by the necessity, the instruction of technical protection of information with restricted access; issues the patent protection of intellectual property objects and develops measures for saving "know-how"; accepts the individual stages in the performing of the components of the research and the work as a whole; is the reporting documentation; is liable to the customer for the scientific level of the research, for recommendations, the timing and quality of performed works; submits proposals to the selection Committee and lets work to the customer; prepares and submits to the authority of the State Registration the registration and the discount card of the research and the final report for registration.

The researches can be carried out by the research institutes, higher education institutions and enterprises of the Ministry of Internal Affairs (when they are held single-handedly or on contractual basis). According to the Cl. 5.2.4 [4] a performer as an integral part of the research performs the appropriate work in accordance with clause 5.2.3 [4] and additionally the following work: on behalf of the performer develops and submits it for approval; carries out work in accordance with the approved master performer; reports to the main contractor under the terms of the contract.

Reciprocal obligations between the customer, the main contractor and doers of the components of the research in accordance to the clause 5.2.5 [4] in addition to the requirements of this standard are determined in the agreement on the implementation of the research, and the contradictions between the participants of the research view are agreed on matching meetings. During the research in accordance with clause 5.3.3 [4], if it's necessary it is carried out patent research according to the Standard 3575 [8], study and analysis of domestic and foreign technical decisions protected patents, which is an important condition to ensure research quality and high scientific and technical level of the results of the research.

Analysis of Cl. 5.3.3 of the Standard [4] shows that it establishes the possibility not to pursue patent research. In our opinion, in carrying out the applied research on the creation of scientific-technical products for public funds of the patent researches according to the Standard 3575 [8] is obligatory, because patent studies give an information about the performed scientific and technical development and are protected by intellectual property rights in this area. So, without carrying out patent research it is possible to start research works on the subjects, which are already held, and also violates the rights of the created objects of an intellectual property. In addition, the repeated creation of the scientific-technical products will be useless spent state funds. Summing up the above mentioned we propose to state the clause 5.3.3 [4] in the following wording: "During the research, patent researches according to the Standard 3575 [8] are held, the study and analysis of domestic and foreign technical decisions

of the protected patents, which is an important condition to ensure research quality and high scientific and technical level of the results of the research, the obligatory patent researches in accordance with the requirements of Standard 3575 [8] are performed fully or partly with public funds within the area of the creation of the scientific and technical production”.

The State registration and accounting of the researches and dissertations are carried out in accordance with the clause 1.3 of Order [13] for the purpose of creating the necessary conditions for the information support: of the creative work of scientists, scientific, scientific-pedagogical, engineering and technical workers, graduate students, doctoral candidates and postdocs research degrees; reasonable planning and an avoidance of a duplication of the subjects and theses; carrying out the scientific and technical expertise of the subject and the results of the research and theses; accelerating the practical implementation of the results of scientific and scientific-technical activity; control of the end-use and efficiency use of the State budget funds for the scientific and scientific-technical activity. Obligatory State registration and accounting of the subject according to Cl. 1.4. of the Order [13] for open (unclassified) research, is performed in scientific institutions, higher educational institutions of the III and IV levels of accreditation, at enterprises and organizations of Ukraine, which financing is fully or partially at the expense of the State budget, as well as an obligatory State registration shall be reserved at the meetings of the specialized academic.

So regulations, fixed in Order [13], require the State registration as the research technical and humanitarian directions. Then the question arises – why the research work may not be the main form of scientific activities, as well as fundamental and applied ones may not be the forms of scientific and technical activity? Considering the above mentioned and in order to eliminate the detected differences of normative-legal documents it is proposed to make appropriate amendments to the Bill of Ukraine “About Scientific and Scientific-Technical Activity” [1] to include in addition to the basic forms of the scientific activities of research work, and the main forms of scientific-technical activity the fundamental and applied scientific researches. In addition, for the purpose of proper organization of the scientific research in the humanitarian sphere we offer to ensure the development of appropriate standards regarding an execution of research works of humanitarian direction, or to distribute properly the existing standards for the research of the technical direction and the direction of the humanities.

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Отримано 20.02.2014