



Research Article

ANALYSIS AND COMPARISON OF THE PECULIARITIES OF ENHANCING THE LEGAL FRAMEWORK FOR THE ORGANIZATION OF RESEARCH WORK

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ABSTRACT

Extra attention is being paid to the protection of intellectual property rights as a result of the fundamental reforms carried out in our country in recent years.

KEYWORDS

Commercialization of intellectual property rights, organization of research activity, contractual and legal basis of research activity.

INTRODUCTION

The Resolution of the President of the Republic of Uzbekistan “On additional measures to improve the efficacy of commercialization of the products of scientific and scientific-technical activity” (dated July 14, 2019) has been of great importance in assuring the rapid implementation of local scientific-practical and

innovative projects and developments, increasing science's contribution to the country's economic competitiveness, as well as developing effective mechanisms to promote potential local scientific and technological achievements.



A number of actions and duties to be implemented to commercialize the products of scientific and scientific-technical activities have been specified, according to the Resolution, in particular, in order to boost the competitiveness of the economy in the republic even more, priorities such as focusing on the rapid development of products and technologies with a high degree of commercialization have been identified, as well as accelerated and widespread implementation of the results of scientific and scientific-technical activities, research that meets modern requirements for the country's sustainable development.

As you may be aware, research means theoretical and experimental work which is carried out over time in order to determine the technical feasibility of a new technique. Research work is separated into two categories: fundamental (the acquisition of new knowledge) and practical (application of new knowledge to solve specific problems)¹.

The fundamental stipulation of the contract for research work is an identifiable object. However, the degree of precision varies depending on the type of activity: - research is more abstract in nature; - experimental design and technological work are more precise (focused on certain technical solutions, the creation of specific models of products used in the economy)².

The creation of fresh outcomes is one of the key purposes of implementing a research contract. New scientific studies, new technology, and so on are examples of them. The contract, like in other fields of

economic activity, is the most common kind of contact between participants in innovative activities.

However, the Civil Code of the Republic of Uzbekistan (Article 631) defines the contractual and legal basis of research work as a contract.

In today's legislation, there is no concept of an innovation contract. The innovation contract has sparked a lot of debate in the scientific literature. Not all lawyers, however, agree that such a concept exists. For instance, according to M.V. Volykina, within the framework of Russian economic legislation and, first of all, in the Civil Code of the Russian Federation, "innovation relations can be called very conditional and general, so there are no innovation contracts". T.V. Efimtseva, on the other hand, combines contracts that represent innovative activity based on two factors: 1) the unique legal characteristics of the object in which the legal relationship is evolving; and 2) special needs to the process of object creation, distribution, and use³. The concept of "innovation contracts" is, in fact, conditional, it includes contracts concluded in the process of implementation, regulation and promotion of innovations.

The first type of innovation contract is one that scientists typically enter into for research, development, or technological labor. Because technological innovation is one of the trademarks of innovation, such contracts are primarily seen as innovative.

As M.V.Volykina highlights, whatever the definition of the concept of "innovation" in the literature, its main and leading feature remains associated with the

¹ Pisenko K.A. Protection of objects of exclusive rights by public law means of antimonopoly legislation and legislation on intellectual property as a mechanism for stimulating innovative activity // Russian Justice, 2010, No. 1, p.83.

² Koval D.V. Intellectual property: constitutional and legal aspect // Constitutional and municipal law, 2013, No. 8, p. 28.

³ Efimtseva T.V. Innovative activity as an object of legal regulation. M., 2008. p. 171–172.

creation and implementation of new knowledge, regardless of the scope of its implementation⁴.

The second type of innovation contracts can usually be considered contracts that transfer certain rights to the results of intellectual activity.

Innovative contracts of this type applies only to the results of intellectual activity such as agreements aimed at granting exclusive rights in the form of inventions, utility models, industrial designs, selection achievements, topologies of integrated circuits, databases, know-how, computer programs.

The third group of innovation contracts includes:

- Contracts for the creation of scientific and technical products;
- Contracts for the delivery of innovative products, as specified in scientific literature, for the provision of engineering services in a specific area, which will be introduced for use in the manufacturing process;
- Contracts for the provision of marketing services related to the release of innovations on the market.

The concept of innovative contracts is not provided for in the current civil legislation of the Republic of Uzbekistan, such contracts are a new type of construction of the legal framework of research.

The Civil Code of Russian Federation establishes a distinct contract as the legal basis for research, development, and technology.

Similarly, the contractual-legal basis of research, development and technology works is not defined as a

contract in the Civil Code of the Republic of Belarus and Ukraine.

Research work is supplied for the performance of scientific research defined in the assignment given by the contractor (executor) client under the contract, according to Article 693 of the Civil Code. Under the terms of an experimental design and technological work contract, the contractor will create a sample of a new product, necessary design documentation, new technology development, or a copy of the sample. In this situation, the customer agrees to provide the contractor (executor) a technical assignment, accept the work, and pay for it.

The contractor shall comply with the criteria connected to the legal protection of intellectual property under the contract of research work, experimental design, and technological work, according to Article 698 of the Civil Code of the Republic of Uzbekistan.

Intellectual activity, which is a sort of intellectual property, is the result of the performance of works that have an intangible object as a result of the special nature of the contract's subject.

The Ministry of Innovative Development of the Republic of Uzbekistan (hereinafter referred to as the Ministry) is responsible for the comprehensive development of public and state life in the field of innovation and scientific and technological development in the Republic of Uzbekistan. As a public administration body, the Ministry is responsible for implementing a unified state policy aimed at increasing the country's intellectual and technological potential. It holds a competition for practical projects and new advancements, as well as topical research, all of which

⁴ Volynkina M.V. Russian innovation legislation: problems and prospects // Legislation. 2005. No. 10.



are carried out under state scientific and technical programs.

Following the Ministry's announcement of the relevant competition, companies intending to participate must submit documentation for participation in the competition.

State scientific and technical programs are developed based on proposals from state and economic authorities, large industrial enterprises, and local governments, taking into account science and technology priorities, the country's innovative development, practical and thematic research, as well as problems of innovation selection.

Research projects are funded from the state budget.

Applications for consideration of scientific and scientific-technical programs and projects, as well as the conditions of competitive selection of scientific, scientific-technical programs and projects, are subject to preliminary and basic examination in accordance with the applicable documents for consideration of scientific and scientific-technical programs and projects.

The Scientific and Technical Councils formed by the Ministry will review the competition's findings. The outcomes of the competition are authorized by a Council of Ministers decision. Within ten days, the competition's results will be posted on the Ministry's website.

The text of the contract will be given to the winning party for signing and execution through the information analysis system within 15 days of the competition results being confirmed, in accordance with the relevant instructions.

The research shall begin in the stipulated manner, as per the agreement signed and formalized between the Ministry and the competition winner.

According to the findings, there are numerous issues with the conclusion, execution, and revision of these agreements. First, the question of the contract's subjects must be clarified. In practice, the contract involves three parties: the customer, the Ministry of Innovative Development, the project manager, and the executor, the relevant research institution. The other party, in our opinion, should be the project team, and the contract should be signed on behalf of the team by the project team leader.

Clause 3.1 of the contract did not fully cover the obligations of the customer. This paragraph, in our opinion, should include the customer's obligation to accept the results of the work conducted and pay for it within the contract time, as well as the customer's obligation to give the executor with the required information to perform the service. Similarly, clause 3.2 of the contract should be amended with the executor's responsibility to guarantee that the money allocated under the contract are used for wages and other expenses in a timely way.

As a result, the project team of authors receives a timely salary and acceptable working conditions, ensuring the project's prompt and high-quality completion.

Furthermore, clause 3.2.13 of the contract requires the executor to direct the budget money allotted under the project in the prescribed method and quantity to develop the executing organization's scientific laboratory base. This provision permits the misappropriation of public funds provided to the project. After all, the project team of authors includes "Executor" organization personnel as well as



international experts. The director of the “Executor” organization will be able to use the project funding to improve the institution’s material and technical base. As a result, the project authors’ material interest is lost, and the project is jeopardized.

Clause 7.5 of the contract stipulates that the equipment purchased for the implementation of the project under the contract will be left on the balance of the “Executor” after the completion of the work.

In turn, this rule was introduced contrary to the rights of project participants’ rights and interests. This is because initiatives funded by state scientific and technological programs are paid for with state funds, and the equipment and gadgets needed for the project is purchased with these funds.

Therefore, the equipment and devices received under the project should be distributed among the project authors or reimbursed if they are left in kind to the “Executor”.

Furthermore, the project agreement provides for the negotiation of any problems that arise during the implementation of the agreement. If no mutual agreement can be achieved, the matter will be resolved in the applicable court in the plaintiff’s jurisdiction.

However, if it is determined that this provision of the contract is not fulfilled by the “Executor” in accordance with the terms of reference and the schedule agreed with the “Customer” in the section on the order of submission and acceptance of works, if the intermediate stage documents and reports are not formalized at the level of established requirements and if not submitted timely, in such cases, funding is suspended and the contract is terminated by the decision of the “Customer” (contrary to the rule).

This clause in the contract gives the “Customer” complete control over the contract's termination. This, in turn, runs counter to the interests of the other contracting party, as well as the requirements of Article 382 of the Civil Code of the Republic of Uzbekistan.

At the same time, the contract does not explicitly specify the parties’ responsibilities, removing the potential of pursuing the guilty party in the event of contract non-performance or improper performance. Therefore, Section 5 of the contract should include the following clause: “In accordance with the laws of the Republic of Uzbekistan, the customer, executor, and project team will be held accountable for non-performance or improper performance of responsibilities under this contract”.

In addition, the inclusion of a provision in this section providing for accountability (penalty) for the executor’s late fulfillment of obligations and the customer’s late payment of the contract is critical in ensuring the obligations are met.

Based on the foregoing, the following conclusions were drawn in order to strengthen the legal framework of research:

First, in order to establish new constructions on the legal basis of research work organization, the kind and concept of an innovative contract should be reflected in the Civil Code of the Republic of Uzbekistan.

It is proposed that the primary goal of this form of contract be the creation of new products and the export of manufactured products to world markets.

Second, according to the Civil Code of the Republic of Uzbekistan, contracts for research, development and technology are defined as contracts.



In fact, intellectual property intellectual property activities, which are a sort of intellectual property subject matter, result in such contracts.

Therefore, it is proposed that contracts for research, development, and technology be separated from contract work and defined as a distinct type of contract in the Civil Code of the Republic of Uzbekistan (based on the experience of the Russian Federation, Belarus and Ukraine).

Third, taking into account the fact that the development of research in our country, required a modern approach to its development, establishment of research organizations (centers) engaged in research in all state and government bodies, responsible for the creation of new technologies (using the experience of the United States and other advanced foreign countries).

Fourth, development and adoption of the relevant draft law (based on the experience of the legislation of the Russian Federation and the Republic of Kazakhstan) is necessary in order to clearly define the science and research policy of the state, to create an effective mechanism for the commercialization of the results of scientific and technological activities, as well as to commercialize the results of scientific and (or) scientific and technical activities in this area, which includes the contractual and legal basis of research work.

Fifth, it is proposed to exempt from all types of taxes levied on contracts for the implementation of practical and innovative, research and development work (based on the experience of Article 149 of the Tax Code of the Russian Federation) in order to improve the effectiveness of commercialization of the results of scientific and scientific-technical activities, as well as to

further strengthen the work incentives of organizations engaged in such activities.

Sixth, it is necessary to improve the legal framework for contracts concluded in the context of state scientific and technical programs, define the role, status, rights and obligations of the parties in them, increase the interest of participants in the final result of the work performed, strengthen the responsibility of the parties for non-performance or improper performance of the contract, as well as to improve the basis for concluding, executing and amending the contract.

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