

Issues of the Realization and Protection of Academic Freedom

In the modern conditions of Ukraine's economy, it is more than ever necessary to ensure the implementation of fundamental human rights, to respect European standards of human rights and freedoms, in particular, to fully guarantee and protect intellectual property rights. The constituent of intellectual property among academics is academic freedom, which has received legal protection in many leading countries of the world. The article deals with the issue of observance of the freedom of scientific research in both educational institutions of higher education, research organizations and beyond, and the necessity of legislative provision of academic freedom for the purpose of legal protection and protection of intellectual property of scientists, in particular, the teaching staff of institutions of higher education, their independence and independence in the process of scientific and pedagogical activity, carrying out scientific researches and using their results.

Key words: intellectual property right, constitutional guarantees, legal protection, copyright law, academic freedom, research activity, university traditions, academic culture.

Formulation of scientific problem and its significance. The Constitution of Ukraine, which actually sets the tone of the most appropriate legal relations, involves securing rights and intellectual property for its implementation as well as legal protection and security. It is shown that the current legislation of Ukraine, which regulates the issue of intellectual property rights in terms of general characteristics is currently formed logically and consistently, although still being in the process of formation.

A number of normative acts provide protection of copyright and intellectual property, which can not be said about the implementation and protection of scientific research and its results. Today, the academic community does not fight academic freedom, which is the main principle of university life, and ensures the implementation of tasks imposed on higher education institutions in the training and education of highly skilled professionals.

The purpose and task of the study is to analyze the state of custody and protection of academic freedom in the leading countries of Europe, the USA and Ukraine.

Analysis of major researches and publications. In the legal science, the actual problems of intellectual property rights were investigated by a number of Ukrainian scholars, namely: Yu.L. Boshinsky, N.M. Mironenko, O.P. Orlyuk, O.A. Podoprighora, O.D. Svyatochek, O.I. Kharitonov and others. However, research on the protection of scientific results of scientific and pedagogical workers in higher education is insufficient.

The summary of the main material and the justification of the results. The rights, freedoms and responsibilities of man and citizen are devoted to Section II of the Constitution of Ukraine. In it, in particular, in part one of Article 56 is proclaimed the freedom of literary, artistic, scientific and technical creativity, protection of intellectual property, their copyright of moral and material interests arising in connection with various types of intellectual activity. Thus, the right to intellectual property can be considered as a guaranteed by the state at the constitutional level of a human right, which has its own special legal nature, its constitution is based on the Constitution of Ukraine. Part two of the article. 54 of the Basic Law, which is considered to be the pivot in the context of intellectual property rights, each citizen is guaranteed the right to the results of his intellectual, creative activity and no one can use or distribute them without the consent of the author, with the exceptions established by law [4].

Part of the first art. 41 of the Constitution of Ukraine stipulates that everyone has the right to own, use and dispose his property, the results of his intellectual and creative activity. Thus, at the constitutional level, not only the provisions on the provision of property rights, the guarantee of which is fundamental in the conditions of determination of the state as legal and democratic, is formally enshrined, as well as the inviolability of such a right is declared. In addition, the right is specifically focused on intellectual property, and not merely considered in the context of the Institute of property rights in the material sense (for example, ownership of the movement of home or real estate). It should be added, that in part four of Article 13 of the

Constitution of Ukraine it is indicated that the state provides protection of the rights of all subjects of property rights, which, in their turn, are equal before the law.

In the law on the protection of intellectual property rights, the view was expressed about the sufficiency of the reference to the norms of the Constitution of Ukraine in terms of guaranteeing the right of intellectual property. The author of the article «Enforcement of Intellectual Property Rights: Constitutional and Legal Analysis» notes the following: The Basic Law in Article 13 proclaims: «the state shall ensure the protection of the rights of all subjects of property rights and management ...». In accordance with the constitutional principle of ensuring the availability of judicial protection of human rights and freedoms (article 55 of the Constitution of Ukraine), each entity has the right to appeal in court decisions, actions or inactivity of state authorities, officials and officials. The norms of the Constitution of Ukraine are the rules of direct action, therefore, in protecting human rights in the field of intellectual property, one can apply to the court even directly, relying only on the norms of the Constitution of Ukraine [2].

Citizens have the same intellectual property rights on an equal footing with legal entities and the state. These rights are guaranteed by the fact that without the consent of the author (owner) nobody can use them, except for the exceptions specified by law. Thus, in accordance with the Law of Ukraine «On Protection of Rights to Inventions and Utility Models» of December 15, 1993, the inventor owns the right of authorship, which is an inalienable personal right and is protected indefinitely. Ownership of an invention (utility model) is certified by a patent. The Law «On Copyright and Related Rights» of December 23, 1993 protected works in the field of science, literature and art. The author or other person having the appropriate right shall own the exclusive rights to use the work in any form or by any means. Protection of intellectual property results is ensured by the Civil Code of Ukraine, as well as by the Laws «On the Protection of Rights to Industrial Designs» dated December 15, 1993, «On the Protection of the Rights to Plant Varieties» of April 21, 1993, «On Tribal Livestock» of December 15 1993, «On Scientific and Technical Information» dated December 25, 1993, etc. [3].

In order to protect its rights, a person who has the copyright or any right to work, for the purpose of certifying authorship of an unpublished or unpublished work during the period of copyright protection, may register him in official state registers. The certificate of registration of the rights of the author is issued. Disputes over intellectual property rights and intellectual property are resolved by courts.

The constitutional right of citizens to the results of their intellectual activity is realized through a number of legislative acts, which ensure the right to choose and engage in intellectual, creative activities, freedom of literary, artistic, scientific activity and creativity. The constitutional guarantees of citizens' rights to development and the results of intellectual activity appear in the care of the state to preserve historical monuments and other objects of cultural value in the protection of cultural heritage. Legal, economic, social and organizational principles of cultural development, main directions of the state's activities in the field of creation, distribution and use of cultural property, / taking measures for returning to Ukraine cultural values to people outside its borders defined in the Fundamentals of Legislation adopted by the Verkhovna Rada .

The right to own, use, dispose of its property, the results of scientific and creative activity , is enshrined in Article 17 of the Universal Declaration of Human Rights. The right to private property is a set of legal norms that establish the right of a person to own, and use and dispose of the property belonging to it, other material benefits and the results of intellectual activity. The subject of the right to private property may be «everyone», which means every person, an individual, which includes citizens of Ukraine, citizens of a foreign state, stateless persons, as well as a legal entity created by citizens. The object of property rights is property (things), natural resources that can be in civil circulation, as well as the results of intellectual, creative activity, including works of science, literature and art, inventions, other results of intellectual, creative activity.

In legal literature, intellectual property rights are classified as academic freedom. Article 1 of the Law «On Higher Education» provides for: academic freedom – independence and independence of participants in the educational process during the carrying out of pedagogical, scientific and pedagogical, scientific and / or innovative activities carried out on the principles of freedom of speech and creativity, the dissemination of knowledge and information, restrictions established by law [1].

Academic freedom is seen as a key principle of university life, which allows the university to successfully carry out its social functions. It is important because it is not permissiveness and not a certain privilege, but the means of existence of innovative thinking, the ability to constantly find new problems, solutions, and interpretations. Without the freedom, the process of learning loses a significant opportunity for him to choose, which leads to false constraints. Of course, here one should not forget about responsibility,

because it is one of the principles of building any human community. Academic freedom means that you personally identify the problems that you are trying to solve. You also personally choose research methods and defend your personal vision of the research program. Sometimes colleagues do not understand you, the management reminds of responsibility and tries to interfere with the process, to control it, they are as if deaf on your arguments, but to submit to this pressure means to become a false, non-working way. By the way, in the Soviet era, the brake on economic and social development was not just a planned economy, but also limited possibilities for realizing creative potential, creative energy. And in this respect, the situation is changing for the better [4].

There is a position that it is also appropriate to introduce into the Constitution of Ukraine the provisions and legal protection of academic freedom as a component of intellectual property. Academic Freedom combines the principles, according to which the freedom of research of students, research staff and teaching staff of higher educational establishments and research organizations is necessary for the fulfillment of their mission. When educational institutions are able to control the flow of information, they are often subject to external pressure, for example, from the state. When scientists try to disseminate ideas or information about facts that are inconvenient for the authorities or some kind of political group, they can be subjected to public harassment, release, imprisonment, or even death penalty. For example, when in North Africa, the professor of medicine found that the statistics of infant mortality is actually higher than the government claims, he lost his job and went to jail [5].

International Association «Academy for Academic Freedoms» formulated two basic principles of such freedoms:

1) Both inside and outside the educational institution or research organization is allowed full freedom to ask any questions and seek truth, including controversial and unpopular views, regardless of whether anyone or any other person affects them view.

2) Educational institutions and research organizations have no right to restrict academic freedoms for their staff members, nor use their public statements as a reason for disciplinary action or dismissal.

The concept of academic freedom (*Lehrfreiheit* in Germany) – an integral part of academic culture in Germany, France, the United Kingdom and the United States. In all these countries, the teaching staff can conduct research and publish their results without any restrictions, but there are some national peculiarities regarding teaching.

According to German academic tradition, professors can promote the students their personal views and philosophical view. However, they can't spread their views outside the campus, because it is undesirable or even prohibited. In teaching activities, the professor is not limited and is not associated with any officially approved program or schedule [8].

In France, as all civil servants, a university professor or a researcher at a research laboratory should hold a neutral point of view while performing his official duties and should not show any political or religious views. However, the academic freedom of a university professor is confirmed by the law and the Constitutional Council of France: «The research and teaching staff (university professors and their assistants) during their research and teaching activities are completely independent and enjoy freedom of speech with the condition that they respect university traditions, the requirements of the law and the principles of tolerance and objectivity» [7]. Advancement in the promotional ladder in France mainly requires a review and is not limited to ordinary administrative decisions.

In the United States, the basic principles of academic freedom are set out in the Statement of Principles of Academic Freedoms and Academic Careers of the year 1940, jointly accepted by the «American Association of University Professors» and the «Association of American Colleges» (now the «American Association of Colleges and Universities»). According to these principles, «the faculty members, while exercising their duties, use the freedom to express their views on the subject». The «Statement» allows the administration to impose «restrictions on academic freedoms on religious and other matters», which should be clearly stated in writing during recruitment. Six regional appointees, working in all US colleges and universities, including private and religious educational institutions, follow this agreement. All detected violations are subjects to publicity in the media.

Conclusions. Academic freedom provides higher education with the availability of innovative thinking, solving new problems and solutions for the successful implementation of its social function and the formation of academic culture.

Academic freedom ensures freedom in the research and teaching activity to express their views on the subject, observing the requirements of the law and moral principles.

The value of such freedom lies not only in the possibility of its actual realization, but also in the proper legal protection and protection of the current political and economic situation in the country, the

formation of a new national mentality. The scientific community needs such freedom and its proper protection.

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Самчук-Колодяжна З., Скібіцький Р. Питання реалізації та захисту академічної свободи.

У сучасних умовах розвитку економіки України більш ніж будь-коли раніше необхідно забезпечити реалізацію фундаментальних прав людини, поважати європейські стандарти прав і свобод людини, зокрема, всебічно гарантувати і захищати права інтелектуальної власності. Складовою частиною інтелектуальної власності серед науковців є академічна свобода, яка отримала правовий захист у багатьох провідних країнах світу. Стаття присвячена питанню дотримання свободи наукових досліджень як у вищих навчальних закладах, так і в наукових організаціях та за їх межами. Обґрунтовується необхідність законодавчого забезпечення академічної свободи з метою правового захисту інтелектуальної власності вчених, зокрема, викладачів вищих навчальних закладів, їх особистої незалежності в науково-педагогічній діяльності, проведенні наукових досліджень та використання їх результатів.

Ключові слова: право інтелектуальної власності, конституційні гарантії, правовий захист, авторське право, академічна свобода, наукова діяльність, університетські традиції, академічна культура.

Самчук-Колодяжная З., Скибицкий Р. Вопросы реализации и защиты академической свободы.

В современных условиях развития экономики Украины более чем когда-либо прежде необходимо обеспечить реализацию фундаментальных прав человека, уважать европейские стандарты прав и свобод человека, в частности, всесторонне гарантировать и защищать права интеллектуальной собственности. Составной частью интеллектуальной собственности среди ученых есть академическая свобода, которая получила правовую защиту во многих ведущих странах мира. Статья посвящена вопросу соблюдения свободы научных исследований как в высших учебных заведениях, так и в научных организациях и за их пределами. Обосновывается необходимость законодательного обеспечения академической свободы с целью правовой защиты интеллектуальной собственности ученых, в частности, преподавателей высших учебных заведений, их личной независимости в научно-педагогической деятельности, проведении научных исследований и использования их результатов.

Ключевые слова: право интеллектуальной собственности, конституционные гарантии, правовая защита, авторское право, академическая свобода, научная деятельность, университетские традиции, академическая культура.