

# The Role of Regulatory Legal Acts and Positions of the EAEU Court in the Formation of the EAEU Single R&D Market

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## ABSTRACT

The article analyzes the structure of the national legislation of the member states and the legislation of the Eurasian Economic Union, which regulate the implementation of research activities. The author reveals the reasons for the difference between the legal regulation of research activities in Russia and the member countries of the Eurasian Economic Union. The author also analyzes the jurisprudence of the Court of the Eurasian Economic Union on ensuring uniform legal regulation of the market in the field of scientific research activities. The author concludes that the existing legal positions of the Court of the Eurasian Economic Union can be extended to the process of carrying out research activities within the framework of the Eurasian Economic Union.

**Keywords:** R&D, research activities, EAEU countries legislation, legal impact, legal regulation, EAEU law

## 1. INTRODUCTION

For all states of the Eurasian Economic Union (EAEU) are characterized by normative mediation of public relations in the field of scientific research [1]. The primary source of the legal establishment, including public relations in the field of scientific research, are normative legal acts [2].

An analysis of the structure of the set of regulatory legal acts on the implementation of scientific research work in the EAEU member states will highlight some of the features.

Each EAEU state has adopted at least one main regulatory legal act establishing the foundations for regulating the scientific sphere: Federal Law No. 127-FZ dated 23.08.1996 "On Science and State Scientific and Technical Policy" (Russia), Laws of the Republic of Belarus dated January 19, 1993 No. 2105-XII "On the foundations of state scientific and technical policy" and dated October 21, 1996, No. 708-XIII "On scientific activity" (Republic of Belarus), Law of the Republic of Kazakhstan dated February 18, 2011, No. 407-IV ZPK "On science" (Republic of Kazakhstan), Law of the Kyrgyz Republic dated June 16, 2017 No. 103 "On Science and the Foundations of State Scientific and Technical Policy" (Kyrgyz Republic), Law of the Republic of Armenia dated December 26, 2000, No. ZR-119 "On Scientific and Scientific and Technical activities" (Republic of Armenia). Basic national normative legal acts of the EAEU states on science and scientific activity determine the conceptual apparatus of this area, the legal status of subjects of scientific activity, principles of regulation of scientific

activity, the foundations of state scientific policy and state support for innovation activity, material, technical and informational conditions of scientific activity, directions of international cooperation [3].

Other regulatory legal acts of the legislation of the EAEU states on science and scientific activity regulate more specific aspects of the organization and implementation of scientific activities, namely, the issues of control and licensing procedures, taxation, contractual registration, budget financing, the use of electronic platforms, as well as the specifics of the implementation of scientific research work in certain industries and sectors of economic activity and particular conditions of fiscal and administrative regulation (for example, the Free Economic Zone, innovation parks) [4].

## 2. RESULTS

The approaches of the EAEU states to the structure of the legislation on the implementation of scientific research work cannot be called uniform. This tendency can be traced in the legislation on science and scientific activity is differentiated in the system of legislation of the EAEU states. The legislation of the Republic of Belarus, the Republic of Kazakhstan and the Republic of Armenia provides for the regulation of relations of scientific activity by any legal acts [5-7]. Thus, formally, the branch of legislation on science and scientific activity in these EAEU states is not isolated [8, 9].

The Russian Federation and the Kyrgyz Republic distinguish from the entire array of legislative sources an independent branch of legislation on science and state

scientific and technical policy and determine the range of laws that form this branch of legislation [10]. Following Article 1 of the Federal Law of 23.08.1996 No. 127-FZ "On Science and State Scientific and Technical Policy", the legislation on science and state scientific and technical policy consists of this Federal Law and laws adopted following it and other regulatory legal acts of the Russian Federation, as well as laws and other regulatory legal acts of the constituent entities of the Russian Federation. According to Article 3 of the Law of the Kyrgyz Republic dated June 16, 2017 No. 103 "On Science and on the Foundations of State Scientific and Technical Policy", the legislation of the Kyrgyz Republic on science and the foundations of state scientific and technical policy consists of this Law and other laws adopted following it and regulatory legal acts of the Kyrgyz Republic.

Thus, in further research, it should be borne in mind that clearly expressed sectoral laws on scientific activity can be distinguished in the legislation of the Russian Federation and the Kyrgyz Republic. While in other EAEU states, the legal impact on this area is "blurred" among an unlimited number of regulatory legal acts. This circumstance introduces some difficulties in working with the regulatory material of these states.

The legislation of the Republic of Kazakhstan does not formally distinguish the branch of legislation on science and scientific activity. Nevertheless, the legislation of the Republic of Kazakhstan provides for some features of determining the range of legislative acts that do not mediate the sphere of public relations in the field of scientific research.

In particular, paragraph 2 of Article 2 of the Law of the Republic of Kazakhstan dated February 18, 2011, No. 407-IV 3PK "On Science" states that the legal relations established by this Law, in terms of scientific research carried out from the funds of the grant, program-targeted funding, are not the legislation of the Republic of Kazakhstan applies to the requirements for the procedure for making purchases, including state ones.

There are no similar provisions in the legislation of other EAEU states. However, for this study, these features of procurement regulation in the field of research and development will not be critical, since the subject of this study does not cover the scope of state (municipal) procurement.

The Liberalization Plans understudy for the R&D and implementation services sector in the social and human sciences and the R&D and development services sector in the natural sciences will not apply to government (municipal) procurement and government support measures.

The basis is the provisions of paragraph 2 of Article 65 of the Treaty on the EAEU and Appendix No. 2 to Appendix No. 16 to the Treaty on the EAEU. This position is also supported by the Working Group of the Eurasian Economic Commission in the field of scientific research (see the last paragraph of paragraph 1.4. Of the minutes of the meeting of the working group in the field of scientific research dated October 27, 2017 No. 10-38 / pr) [11].

Members of this Working Group develop legal, organizational, scientific and methodological conditions for further improvement of the legal framework of the EAEU and the legislation of the EAEU member states. necessary for the formation and functioning of a single market for services in the field of scientific research in the Eurasian space.

Many working meetings and legal examinations preceded the meeting of the Working Group. At this meeting, it was decided to recognize the existence in the legislation of the EAEU member states as a whole of substantive equivalence in the regulation of services related to research and development.

The Russian Federation emphasizes that the structure of Russian legislation on science and state science and technology policy is a two-tier structure. This point is the difference between the position of the Russian Federation and the views of the other EAEU states. For the Russian Federation, legislation on science includes the normative legal acts of the Russian Federation and the normative legal acts of the constituent entities of the Russian Federation.

This circumstance is explained by the fact that all the EAEU states (except Russia), following their Constitutions, are unitary, not federal states in the form of government. The form of state structure is not directly enshrined in the Constitution of the Republic of Armenia. However, it follows from the meaning of the legislation, in particular, the RA Law of 04.12.1995 No. 3P-18 "On the administrative-territorial division of the Republic of Armenia" [12].

We consider it necessary to note that a significant part of the EAEU law is made up of provisions aimed at organizing scientific cooperation (and cooperation in the field of innovations) of the united states in specific sectors (types) of activity.

Thus, the Protocol on Trade in Services, Establishment, Activities and Investment (Appendix No. 16 to the Treaty on the EAEU) establishes a general legal regime for the services market in the research and development sector.

Following this Protocol, the market for services in individual sectors must comply with all the characteristics of a single market, which are formulated in paragraph 38 of the Protocol. The Member States shall endeavour to extend, on a reciprocal basis, the rules of the single market for services to the maximum number of service sectors, including by phasing out the exemptions and restrictions provided for in national lists.

Also, the foundations for the implementation of scientific research in general and in individual sectors of the EAEU economy are governed by a variety of multilateral and bilateral agreements concluded between the EAEU states. Such agreements can be concluded even before the signing of the Treaty on the EAEU. Thus, these agreements are integrated into the already formed contractual legal framework of the EAEU and are applied, as a rule, in the part that does not contradict the Treaty on the EAEU, and complement the regulation of those issues that are not yet directly or indirectly covered by the contractual legal framework of the EAEU.

Among the multilateral agreements concluded by the EAEU states, one should especially note the Agreement between the Government of the Republic of Belarus, the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic, the Government of the Russian Federation and the Government of the Republic of Tajikistan dated November 24, 1998 "On Mutual Recognition and Equivalence of Education Documents, Academic Degrees and Titles".

This Agreement was also adopted long before the signing of the Treaty on the EAEU, and after the establishment of the EAEU, the Republic of Armenia did not join this Agreement. Nevertheless, it is subject to application insofar as it does not contradict the Treaty on the EAEU.

On the other hand, some exemptions from the general regulation of the scientific research market in the Eurasian space can be provided for by bilateral agreements between the EAEU states.

We want to emphasize that judicial acts adopted by the EAEU Court have legal significance concerning the field of scientific research in the EAEU legal system. According to Chapter VII of the Statute of the Court, it makes a decision based on the results of the consideration of the dispute, and upon application for clarification provides an advisory opinion. The statute of the Court rather carefully establishes the legal nature and significance of judicial acts. Thus, according to paragraph 98 of the statute, an advisory opinion on a request for clarification is recommendatory [13].

In turn, the decisions of the Court will be binding on the parties to the dispute or the EEU Commission (paragraphs 99, 100). At the same time, the decision of the Court cannot go beyond the scope of the issues specified in the application (paragraph 101) and does not change and (or) does not cancel the existing norms of Union law, the legislation of the member states and does not create new ones (paragraph 102).

For the purposes of this article, attention should be paid to the advisory opinion of the EAEU Court of December 7, 2018 "On a clarification of the application of paragraph 2 of Article 97 of the Treaty on the EAEU concerning the exercise of labor activity by professional athletes who are citizens of the EAEU member states, and the possibility of establishing quantitative restrictions in national legislation to this category of persons in the course of labor activity".

The issue resolved by the court is not directly related to the implementation of scientific research. However, the legal provisions of the court are of universal significance and, in order to form a single market for services, can be applied to overcome some barriers in the market for services in the field of research and development.

So, the EAEU Court, in the said opinion, gave clarifications on the application of paragraph 2 of Article 97 of the Treaty with professional athletes who are citizens of the Union member states, as well as the possibility of establishing quantitative restrictions in national legislation for this category of persons in the course of their labor activity.

The EAEU Court indicated that as one of the main goals of the Union, Article 4 of the Treaty on the EAEU establishes

the desire to form a single market for goods, services, capital and labor resources within the Union, and according to Article 2 of the Treaty, the "common (single) market" economic relations within the Union, which ensure the freedom of movement of goods, services, capital and labor.

The systemic interpretation of the said norms of the Treaty allowed the Court to conclude that the free movement of persons is one of the elements of the functioning of the internal market. Thus, the Court stated that the applicable law should be interpreted in the light of the Treaty's goal of creating a single internal market, i.e. subjected to teleological interpretation [14].

Moving on to the heart of the matter, the EAEU Court established that, following paragraph 1 of Article 97 of the Treaty, employers of a member state of the EAEU have the right to engage workers of the Union member states in labor activities without taking into account existing restrictions on the protection of the national labor market. At the same time, workers of the member states of the Union are not required to obtain a permit to carry out labor activities in the state of employment. Besides, the above paragraph 2 of Article 97 of the Treaty prohibits the EAEU member states from setting restrictions in their legislation to protect the national labor market. Exceptions are the restrictions described above when such restrictions are justified by considerations of national security and public order.

At the same time, the EAEU Court put forward an important thesis that "regardless of the position that professional athletes have following the legislation of each of the Union member states, they are workers within the meaning of Union law, have a single status within the Union and enjoy the rights and legitimate interests".

This position can be applied to the R&D market. Recall that, within the meaning of the EAEU integration law, it is necessary to take into account at least three understandings of research activities: 1) as an activity carried out in the framework of providing services to third parties – customers 2) as a creative activity carried out alone, or 3) as a professional activity, carried out based on participation in the activities of educational and scientific institutions.

The last two mentioned values of research activities are not covered by the Liberalization Plan, since they do not characterize this activity for market relations and have only an indirect relationship to the service market.

Moreover, not every execution of research work on the instructions of the customer is covered by the Liberalization Plan: based on the provisions of paragraph 2 of Article 65 of the Agreement and Appendix No. 2 to the Protocol, state (municipal) procurement and state support measures are directly excluded from the scope of the Liberalization Plan.

However, the Agreement proceeds from a broad understanding of the term "labor activity" – this is an activity based on an employment contract or an activity to perform work (provide services) based on a civil contract, carried out in the territory of the state of employment

following the legislation of this state (paragraph 5 of Article 96 Of the Agreement) [15].

Consequently, the implementation of research and development work for a private customer can also be qualified as labor activity, which means that the status of subjects of scientific activity involved in the implementation of these research projects should be uniform within the EAEU.

This thesis is entirely correlated with the liberalization processes by service sectors in the field of research and development (and other sectors) and can be used for defining (1) a single market regime in this service sector; (2) rights, legitimate interests and a single (equal) legal status of subjects of scientific activity carrying out research and development in different jurisdictions of the EAEU for private customers; (3) the legal regime of research and development in the absence of unreasonable barriers and obstacles in this service market [16].

Further, as a result of the interpretation of paragraph 2 of Article 97 of the Treaty on the merits, the EAEU Court came to a conclusion that, within the meaning of this rule, the establishment or application of three types of restrictions is prohibited.

First, restrictions on the work performed are prohibited. These are restrictions that relate to the conditions for the implementation of the labor function in the presence of labor or civil law relations between the worker of the Member State and the employer/customer of work (services), for example, with working conditions, wages.

Secondly, the prohibition concerns the type of occupation, that is, the restrictions imposed on access to a particular profession. An example of such restrictions is the reservation of certain types of activity for the citizens of the respective state, the establishment of quotas, proportional ratios of citizens and non-citizens, or the presentation of additional requirements for non-citizens to access a specific type of labor activity.

Thirdly, restrictions on the territory of stay are prohibited, that is, barriers to access to work, due to the compulsory residence in a specific area. Such requirements are a limitation since they are more comfortable for citizens of the respective state to fulfil. The fact that such a requirement may be a restriction concerning a part of its population [17-19] does not question this conclusion.

Thus, the rule of the Treaty applies to any restrictions established or applied in a member state in order to protect the national labor market, intending to prohibit (restricting) the inflow of workers into such a market with citizenship of other member states of the Union.

The indicated legal provisions of the EAEU Court, in our opinion, can serve as an additional means of overcoming barriers in the market for R&D services.

### 3. CONCLUSION

Thus, public relations in the field of scientific research in the EAEU states are mediated not only by intra-national but also by supranational acts [20]. In the future, the sphere of legal impact on public relations in the field of

research and development will inevitably include the rules of "soft law" adopted by the EAEU bodies and member states [21].

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