

# **Mind the Gaps**

## **Economical Aspects in the Legal Thinking**

editors

**Tomasz Bekrycht**

**Sergiy Glibko**

**Bartosz Wojciechowski**

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editors  
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## **Introduction**

We are presenting to Readers the work which is a result of co-operation between Polish and Ukrainian specialists in jurisprudence. The texts which are presented in this monography are an example of pursuing a postulate of external and internal integration of jurisprudence. In our opinion, the theses presented in it have a chance of becoming an important voice in discussions on various forms of law violation and use of loopholes in law (law avoidance, abuse of law, tax avoidance etc). Undoubtedly, the theses also constitute an interesting view from the perspective of an analysis of the legal transformation process in the countries of Central and Eastern Europe (especially Poland and Ukraine).

The presented work is an episodic description of firstly, relationships between law and other fields of knowledge (especially economics), which is supported by broad empirical documentation. Secondly, the texts contained in the monography, indicate that an assertion about a systemic and autonomous character of law is a counterfactual assumption. This can be proven by possible ways of instrumentalization of law and use of law against many postulated in it values. So, it can be claimed that the joint thread which could link individual texts is a problem of an autonomous against instrumental character of law.

In the whole work, the Reader may find various methodological approaches in analyses of many problems tackled in jurisprudence. The Reader can notice that in a part of the work a theoretical approach prevails, aiming for exposure of the raised issues in the axiological and historical perspectives. In turn, in other works a dogmatic method prevails. To our minds, the strength of the whole work is exposure of legal changes in the economic dimension and illustration of made conclusions in a form of normative material.

*Tomasz Bekrycht  
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# **PART I**

## **The Ukrainian Technological Parks: from Establishment till Nowadays**

*Yuliya Atamanova, Victoriya Maloivan\**

The transition of technological and social structures on information, electronic platform has changed the nature of communication, management and production worldwide. The sound inventions and updating traditional means of life and communication, consumption of goods and production require constant monitoring and updating of tasks by both business entities and state. The planning for the long term reduces the timeframe; what that required a five-year term for implementation, in modern conditions is carried out in two or maximum three years. Accordingly, the preservation of the competitiveness of the state and its producers requires a permanent and fast gaining and processing of information as to the recent results concerning the state and trends of the markets, continuous inner response with adapting their systems to changing challenges of the time.

The reorientation of the domestic economy to the innovative vector of development in which knowledge and information are the fundamental resource of economic growth has been actively discussed during the last two decades. Ukraine is purposefully making efforts to build a national innovation system (hereinafter – NIS), the elements of which determine the level of economic development of the state.

Historically, the domestic model of NIS cannot be characterized as “receptive”, repeating the NIS model of a certain country or group of countries, though constantly having the foreign experience as an example. The NIS of Ukraine is formed mainly under the influence of political forces and financial

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situation, depending on which the revitalization of its subjects, or, conversely, slowing can be observed.

It is worth mentioning that the Ukrainian NIS does demonstrate a gradual complication: from science and manufacturers of innovative products in Ukraine a number of “connecting links” between them in the form of an innovative infrastructure have been created, i.e. a network of interrelated service structures, which constitute or ensure the basis for problem solving (Жилінська 2005). The park organizational structures (scientific, technological, and industrial), incubators of innovative business, innovation centers, venture funds etc. may be considered as such. They have been created with the aim of facilitating of organization of scientific researches, pilot projects, testing and serial production of the new products on markets, assisting in attraction of new customers and investors, and entering the new markets.

The technological parks, which have demonstrated the sound results in the sphere of science and production, foundation of which began in the year 1996 by the adoption of the order of the President of Ukraine “The Issues of Technological Parks and Innovative Structures of other Types Foundation” which was supplemented and elaborated in the Resolution of the Cabinet of Ministers of Ukraine “The Regulation on the Order of Foundation and Functioning of Technological Parks and Innovative Structures of other Types” № 549 dated 22.05.1996, are considered to be the subjects of innovative activity.

However, the real implementation of the technological parks model occurred only in the year 2000, when the first technological parks were created, was regulated by the Law of Ukraine “On the Special Regime of Innovative and Investment Activity of Technological Parks” dated 16.07.1999 № 991-XIV. It envisaged the establishment of three technological parks: “Semiconductor Technologies and Materials, Optoelectronics and Sensor Technology” (Kyiv), “Ye. O. Paton Electric Welding Institute of NAS of Ukraine” (Kyiv) as well as the «Institute for Single Crystals» (Kharkiv).

The lot of this law was complicated: after a number of amendments to the law № 2505-IV dated 25.03.2005 and some other legislative acts of Ukraine the special regime of technological parks innovative activity was in fact liquidated and only since the 1<sup>st</sup> of February its validity was resumed by the adoption of the amendments of the Law of Ukraine “On the Special Regime of Innovative Activity of Technological Parks”.

Unlike the foreign industrial parks, which were designed for creating and attracting the innovative projects of new firms and companies, venture funds under the overall guidance of leading scientific institution, the founding of the first technology parks in Ukraine were carried out on the basis of leading research centers, having a high reputation in the scientific world, with attraction to realization of their projects of well-known enterprises, which have been reliable partners for them for a long time. Then some business structures obtained such

status, those which needed preferential terms of activities to produce products using new technologies, as well as ones which were interesting on the regional level in view of strengthening of economic and innovative development of the respective territory. Only since 2000 there have been registered 16 technological parks, among which industrial enterprises and even unions of enterprises.

The activity of technological parks is based on the number of basic principles, such as coordination of activity and cooperation between science, high school, state production sector, private companies, local and regional authorities; support of small science intensive business; concentration and use of risk capital (Милейко 2005).

Their combination represents the basic idea of the creation of technological parks – an integrated organization of high-tech industry and maximum assistance to the emergence and adoption of new technologies. However, the main thing is the careful attention that is to be paid to the concentration of all elements of the innovation process, and, preferably, the creative potential of people (Марченко 2007). That's why when establishing technological parks, as a general rule, the territorial approach is used – they are established on the basis of leading universities and in a certain territory unite under their leadership various scientific institutions, enterprises, marketing, servicing, information centres to ensure rapid implementation of research inventions and innovations. Such kind of specific concentration makes targeted support from the state, either directly, through budgetary financing, tax benefits, etc., or indirectly, through stimulating the participation of banks, corporations and other business representatives, easier. Besides, the localization facilitates governmental control over the observance by entities of the zone of the established regime, prevents the use of benefits by firms that have ties with zones, but not among the directly involved participants (Беляневич 2006).

The beginning of the European technological parks movement took place till the 70-ies of the XX century. Inspired by the America's experience, scientific institutions of Europe created the first scientific parks "Trinity College" in Cambridge (the Great Britain), "Laban-de-Neuve" in Belgium and "Sophia Antipolice" in Nice (France); on the territory of the later in 10 years after the establishment of the first technology park, 10 similar institutions were acting. In the 80-ies the technological parks occurred in Canada, Singapore, Australia, Brazil and countries of the Asian Region, the so called "second generation of technological parks" (Краснокутська 2003). It should be mentioned that progressive character of the activity and current organization of scientific parks of India (Kerala), China (Hainan) and Japan (Tsukuba), which became equal with the leading innovation institutions of the world is also worth attention.

It should be mentioned that the efforts to establish the scientific structures of that kind were made even in the USSR, particularly, academic towns (akademmistechka) can be actually considered as analogues to modern

technological parks. By the way, the first one was established in Novosibirsk, nearly at the same time as the “Park of High-Tech Industry” in Stanford. However, it should be mentioned, that the academic town couldn’t claim to the world leadership in conditions of noncompetitive, planned economy of the USSR. It’s demonstrative that the technological park of the Novosibirsk Academic Town still exists and is one of the leading ones in the Russian Federation.

Russia was the first to catch the idea of establishment of technological parks on its territory on the post-soviet area and it should be mentioned that it has implemented it extremely successfully, because currently it has the fifth place by the number of acting technology parks on its territory (approximately 70 of the same institutions are acting in its 35 regions) (Лазарев, Демещик 2004). However, the significant position belongs to the Tomsk Technological Park, which was founded in the year 1990 and is still operating, although not leading. The first technological park of Belarus was established in 1993 in Mogilev.

It should be pointed out, that despite of the effectiveness of the world technological parks experience that can be observed in the last 30–40 years, the national model of technological parks significantly differs from the foreign ones. The explanation is that there are different approaches in Ukrainian legislation for the determination of a technological park which contradict each other.

The legislation of Ukraine contains the following approaches to determine the technological park: a) innovative enterprise (Art. 1 of the Law of Ukraine “On Innovative Activity”); b) subjects of innovative infrastructure (Art. 1 of the Law of Ukraine “On Special Regime of Investment and Innovation Activity of Technological Parks”); c) special (free) economic zone (Art. 3 of the Law of Ukraine “On General Principles of Creation and Functioning of Special (Free) Economic Zones”).

The definition of technological park as an innovative enterprise goes beyond the classical approach to understanding its legal nature, because the latter is considered to be the direct subject of innovative activity.<sup>1</sup> Such a statement is a result of legislative definition of it (the innovative enterprise is defined as

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<sup>1</sup> The legal definition of the subjects of innovation activity is adopted by the Art. 5 of the Law of Ukraine “On Innovation Activity” which states that they can be either natural persons or legal entities of Ukraine, natural persons or legal entities of foreign countries, stateless persons, union of these persons who conduct the innovation activity in Ukraine and (or) engage material and intellectual values, by investing of their own or borrowed capital into the realization of innovation project in Ukraine. This approach was criticized in the scientific literature because the legislator interprets the definition of the subjects of innovation activity in a wide manner and include to them not only those who directly conduct the innovation activity to be targeted at the citation of innovational product, but also the subjects who execute investment or middle-person activity that has non-innovational character itself that makes impossible the union to provide the innovation activity. The author agrees with the expressed point of view and defines „the subjects of innovation activity” as those who execute the commercial activity the main result of which is creation of innovation product and its distribution, delivering of innovation services, use (application)

an enterprise (union of enterprises) that develops, produces and sells innovative products and (or) products or services, which in monetary terms exceeds 70 percent of its total volume of goods and (or) services) (Art. 1 of the Law of Ukraine “On Innovative Activity”). At the same time, the technological park as an element of innovative infrastructure is targeted to maintain the innovative activity, aimed at the use and commercialization of results of scientific research and development and determines the release to market of new competitive goods and services, using different kinds of instruments (organizational, technical and financial) according to the worldwide approach (Art. 1 of the Law of Ukraine “On Innovative Activity”). However, as it was noted, Ukraine has not fully embodied the classic technopark model, according to which the technological park performs infrastructure functions. The domestic technopark is implementing the stages of the innovation cycle from idea to its commercialization independently, on its own behalf, and therefore, belongs to the subjects of innovation activity.

The infrastructural approach to definition of a technological park is included into the Art. 1 of the Law of Ukraine “On Special Regime of Investment and Innovation Activity of Technological Parks” which states that a technological park aims to provide an organizational basis for the implementation of projects of the technological park and to provide industrial production of globally competitive products. However, this Law has not laid down a territorial basis for the organization and operation of technological parks, they are actually equal subjects of innovative activity that differs from others by the special regime of economic activity applied to their activities.

The definition of a technopark on a territorial basis can be given indirectly in connection with their assignment to the one of the functional types of special (free) economic zones (hereinafter – FEZ) (Art. 3 of the Law of Ukraine “On General Principles of Creation and Functioning of Special (Free) Economic Zones”), where the special legal regime of economic activity and the procedure for application and action of legislation of Ukraine operate. The preferential customs, monetary, tax and other conditions for economic activities of national and foreign legal entities are imposed on such kind of territory<sup>2</sup> (para 1 of the mentioned Law). It follows from the above-mentioned rule that the feature of

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of innovational technologies on the basis of innovations realization. The activity with the engagement of property and or money into the innovation projects is defined as infrastructure.

<sup>2</sup> We pay attention that the Art. 401 of the Commercial Code of Ukraine contains different FEZ definition, in particular, a FEZ is considered to be “the part of Ukrainian territory on which a special legal regime of commercial activity and special order of application of legislation of Ukraine are established. The preferential customs, tax, monetary and other conditions of entrepreneurship of national and foreign investors may be established on the FEZ territory”. This definition seems to be better because of application in it the definition of commercial activity (not economic) regarding the activity to be executed on the FEZ territory, however, the article contains a justified limitation on non-commercial investment (because it is stated that the preferential regime may be valid only for the commercial activity of domestic and foreign investors).

the territorial organization of technopark within the framework of this approach is enshrined in law and, therefore, technological parks, which don't have designated territory, cannot be recognized as SEZ, what, in fact, is stated by some scientists (Федчук 2007).

With regard to these provisions, we'd like to mention that the first approach defines a technology park as a subject of innovation activities that develops, manufactures and sells innovative products and (or) products or services, that is a subject of innovative activity per se. The other two highlight the infrastructure approach to defining its nature, but the difference lies in the fact that the territorial principle of organization of activity of technoparks (as such, which the world practice of organization of technology parks is based on) is fixed only in the Law of Ukraine "On general principles of creation and functioning of special (free) economic zones").

At the same time the special Law of Ukraine "On Special Regime of Investment and Innovation Activity of Technological Parks", which establishes the rules for technological parks functioning in Ukraine, has stated and regulated their activity as the subjects of research and innovation. According to it the special features to characterize the organization of the activities of Ukrainian technoparks should include the following:

- a) the subjective principle of organization (in contrast to the classical territorial one) – the vast majority of national industrial parks, established on the basis of high schools and scientific institutions that do not have separate office premises, and what is more the land especially designated for its needs, and just use the material and technical base of the institution in which they are established;
- b) the self-realization of scientific and innovation activities – technological parks of our country are not aimed exclusively at promotion of scientific research and new developments by third parties or independently, but also at our own research and production forces to implement the innovative projects;
- c) providing favorable conditions of activity only for realization of registered innovation projects, and not of the technopark in a whole;
- d) the "self-sustaining" mechanism of financing of innovative projects of technological parks through special tax treatment.

In this context and for the purpose of comparison it is important to name those common features that are characteristic of American, European and Asian models of technological parks. In our point of view, they include:

- a) territorial and organizational unity of all the subjects-participants of the technological park (technopolis) aimed at their unification on one "special" territory to facilitate the implementation of their research and production activity;
- b) the concentration on this territory of knowledge, in particular by attracting the scientists to technological parks as founders and participants of legal entities established beyond of the high school, but in cooperation with it for conducting researches;