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GENERAL LEGAL DESCRIPTION OF FEATURES AND ESSENCE OF A COMMERCIAL SECRET

Abstract. The *purpose of the article* is the general legal description of the features and essence of a commercial secret. The object of the article is public relations in the field of a commercial secret. The subject matter of the study is the essence and features of a commercial secret from the general legal perspective.

Results. The article provides general legal description of the features and essence of a commercial secret, the main legal arguments regarding the presence of certain elements and characteristics in its structure. It is proved that a commercial secret should be considered as derived from the basic concepts and categories, considering information as a social phenomenon, which in turn determines the need for its proper preservation, transfer and ensuring effective dissemination. These categories enable to sum up that the legal regime of a commercial secret is a specific legal status of a certain type of information that is privately protected by means of regulatory instruments provided by the state mechanism.

Conclusions. It is established that the essence of a commercial secret as a specific legal information regime is, first of all, is attribution to it of a number of important facts and circumstances that are important in the process of managing an enterprise, institution, organisation, as well as significant in its efficiency, effectiveness and competitiveness. The author proves that the key characteristic features of a commercial secret, among others, are: specificity of information of this category; limited range of participants in these legal relations; mandatory presence of “commerciality” of the employer carrying out a certain type of activity; measures taken by the enterprise, institution, organisation (its authorised representatives) to preserve certain commercial information, which in their opinion and in accordance with the legislation of Ukraine and internal labour procedure is a secret. In addition, it is summarised that further scientific research in the relevant area of legal support for the proper functioning of the institution of a commercial secret should focus on the study of the mechanism of its provision from a practical perspective.

Key words: commercial secret, enterprise, institution, organisation, features, essence of secret, legal regime of information.

1. Introduction

Ensuring human and civil rights and freedoms in Ukraine in various sectors and spheres is an important element of the state's democracy in the world arena, as well as a fundamental internal regulator of social relations. The importance of economic security of the state through the formation of a proper system of market economy gives grounds for systematic and systematic improvement of the relevant institution, which in turn is ensured by a number of well-known and specially created concepts and methods.

For example, the functioning of enterprises, institutions and organisations engaged in a certain type of activity and responsible for the functioning of a particular sector of the state economy is primarily associated with the rules

of the market economy, among which a fundamental one is the systemic progress and competitiveness in the market relative to other entities.

Considering some important complex categories that directly affect the competitiveness and systemic development of a particular enterprise, institution or organisation, the preservation (observance) of a commercial secret actually constitutes the specifics of any activity and may affect the performance (effectiveness) of a particular activity.

Meanwhile, the concept of a commercial secret, both in the general legal sense and within the labour law study, has repeatedly become the subject of analysis and scientific research in the works by: H. Bohorodchenko, L. Voronova, Yu. Vashchenko, I. Zaverukha, E. Karmanov, L. Kasianenko, L. Kolbov, I. Kolesnikova,

V. Klymeko, H. Nechai, N. Pryshva, H. Reznikov, A. Syrota, A. Selivanov, O. Orliuk, and others. However, we believe that the present, built on dynamic social relations, significantly negative impact of the aggressor state of Russia on the defined order of functioning of all mechanisms and elements of the market economy as an inter-institutional and international category determine the relevancy of the topic that requires additional research.

The purpose of the article is the general legal description of the features and essence of a commercial secret. This purpose, in our opinion, requires the solution of the following research tasks: 1) determination of the essence and legal framework for the existence of a commercial secret in Ukraine; 2) the study of a commercial secret as an inter-institutional phenomenon with a view to highlighting its characteristic features and essence.

The object of the article is public relations in the field of a commercial secret. The subject matter of the study is the essence and features of a commercial secret from the general legal perspective.

2. A commercial secret as a concept of law

In our opinion, a commercial secret as a concept of law and regulator of labour relations is the most crucial in the context of ensuring the continuous progress of the enterprise, institution, organisation. In addition, the existence of certain specifics in the activities of each institution enables to effectively implement some managerial processes, bring the level of development of their own business to the apogee, and affect the competitiveness in general and in a certain segment in particular.

H. Reznikov emphasises that, unfortunately, in Ukraine no special legal regulation regulates the use and protection of a commercial secret, which negatively affects the legal relations. It is possible to determine the legal mechanism for the protection of a commercial secret within the legal framework of Ukraine, using such legal regulations in aggregate (Reznikov, 2013). However, in our opinion, the expediency of adopting a special legal regulation contradicts the principles and ultimate goals, as well as the principles of a market economy, since such standards, first of all, provide for variety in application, which cannot be combined with clarity and legislative certainty.

For example, one of the most effective instruments, in our opinion, is to indicate what is not a commercial secret. For example, the Resolution of the Cabinet of Ministers of Ukraine № 611 as of August 9, 1993 stipulates that a commercial secret does not imply the following: constituent documents, documents allowing to engage in entrepreneurial or economic

activity and its individual types; information on all established forms of state reporting; data necessary for verification of calculation and payment of taxes and other obligatory payments; information on the number and composition of employees, their salaries in general and by professions and positions, as well as the availability of vacant jobs; information on environmental pollution, non-compliance with safe working conditions, sale of products harmful to health, as well as other violations of the legislation of Ukraine and the amount of damage caused; documents on solvency; information on participation of the company's officials in cooperatives, small enterprises, unions, associations and other organisations engaged in entrepreneurial activity; information that is subject to disclosure in accordance with the current legislation (Cabinet of Ministers of Ukraine, 1993). Such an approach enables to effectively regulate in this field and provides an opportunity for business entities, managers and owners of institutions and organisations of various forms of ownership to effectively manage the conceptual content of certain phenomena that, in their opinion, should be classified as a commercial secret and which do not contradict the legislation of Ukraine.

It should be underlined that the general provisions of part two of Article 505 of the Civil Code of Ukraine stipulates that a commercial secret is information that is secret in the sense that it, as entirely or in a certain form and aggregate of its components, is unknown and not easily accessible to persons who usually deal with the type of information to which it belongs, in this regard has commercial value and is subject to measures adequate to the existing circumstances to preserve its secrecy taken by the person, who legally controls this information, as well as that a commercial secret may include technical, organisational, commercial, production information, except for such that, according to the law, cannot be classified as a commercial secret (Verkhovna Rada of Ukraine, 2003). In our opinion, such mutually exclusive construction effectively establishes the legal regime for the protection of a commercial secret and enables its flexible and effective management in the context of the real time and technological and intellectual progress rapidly developing all sectors of social life.

3. Features and the essence of a commercial secret

L. Kolbov and I. Kolesnikova underline that an enterprise as the owner of information that is a commercial secret has the right to appoint a person (persons) who will possess, use and dispose of such information, determine the rules for processing information and access to it, as well

as establish other conditions for access to a commercial secret. Nevertheless, it should be noted that not all information can be given the status of a commercial secret by an enterprise, thus restricting access to it by third parties and, above all, by regulatory authorities (Kolbov, Kolesnikova, 2016), which, in our opinion, significantly affects the formation of an understanding of the essence of a commercial secret as a multidisciplinary phenomenon and a preventive mechanism in a market economy.

In addition, the final formation of a number of features of a commercial secret requires, in our opinion, the focus on the provisions of the Law of Ukraine "On Protection of Unfair Competition", which regulates one of the main institutions of a commercial secret – its protection, which determines the circumstances of bringing to liability and determines the content and essence of violation of a commercial secret in real conditions (Verkhovna Rada of Ukraine, 1996). It should be noted that this element of the legislation is not an isolated phenomenon, and the state is making efforts to protect certain elements and types of commercial information considered secret in the understanding of the employer, in particular in the Law of Ukraine "On Scientific and Technical Information", which defines that "Information about all the results of scientific and technical activities registered in Ukraine, indicating the location of the reporting documentation and the conditions of their transfer, shall be disseminated at the request of interested persons and organisations by the bodies and services of scientific and technical information responsible for the registration of these results, except for cases of restrictions related to state or commercial secrets" (Verkhovna Rada of Ukraine, 2015). The above opinions of researchers and provisions of the legislation of Ukraine indicate that the essence of a commercial secret as a multidisciplinary preventive phenomenon is the ability of actors of economic, commercial and other activities regulated by the legislation of Ukraine to determine the boundaries of secrecy (specificity) of their own activities (production and other forms) in the part that does not contradict the legal regulations and is clearly communicated to employees. For violation of the relevant rules and regulations, liability may arise.

O. Voronova identifies certain features of a commercial secret, which include: 1) secrecy of information that is a commercial secret, implying that it is unknown and not easily accessible to persons who usually deal with this type of information; 2) information recognised as a commercial secret has commercial value, i. e. a certain price certainty (cost);

3) it is the amount of information determined by the business entity or authorised body; 4) the owner of the information takes measures to protect the information that is a commercial secret; 5) the term of legal protection of a commercial secret is limited by the duration of a combination of factors, when such information: has commercial value, is unknown to third parties and is not freely accessible to other persons on legal grounds, and the owner of the information takes appropriate measures for its safety and others (Voronova, 2011, p. 86).

Therefore, the author has formed a general idea of the features of a commercial secret as a concept of law, which in turn serves as a regulator of the internal and external economic situation of an enterprise, institution or organisation. In our opinion, the range of characteristic features of a commercial secret should be supplemented by elements indicating the specificity of information belonging to this category, the importance of clearly establishing not just the status of information and its "commerciality", but the appropriate legal status of the enterprise or institution.

4. Conclusions

Thus, relying on the review of legal regulations, perspectives and opinions of scientists and researchers in the relevant field of law, it is proved that the understanding of a commercial secret derives from the basic concepts and categories, the consideration of information as a social phenomenon, which in turn determines the need for its proper preservation, transfer and effective dissemination. The legal regime of a commercial secret is a specific legal status of a certain type of information that is privately protected by means of regulatory instruments provided by the state mechanism.

The essence of a commercial secret as a specific legal information regime is, first of all, is attribution to it of a number of important facts and circumstances that are essential in the process of managing an enterprise, institution, organisation, as well as significant in its efficiency, effectiveness and competitiveness.

The key characteristic features of a commercial secret, among others, are: specificity of information of this category; limited range of participants in these legal relations; mandatory presence of "commerciality" of the employer carrying out a certain type of activity; measures taken by the enterprise, institution, organisation (its authorised representatives) to preserve certain commercial information, which in their opinion and in accordance with the legislation of Ukraine and internal labour procedure is a secret. In addition, the list of such features is not exhausted and requires further elaboration at a higher scientific level allowing for current trends.

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ЗАГАЛЬНОПРАВОВА ХАРАКТЕРИСТИКА ОЗНАК ТА СУТНОСТІ КОМЕРЦІЙНОЇ ТАЄМНИЦІ

Анотація. *Метою статті* є загальноправова характеристика ознак і сутності комерційної таємниці. Об'єктом статті є суспільні відносини у сфері забезпечення комерційної таємниці. Предметом дослідження є сутність та ознаки комерційної таємниці в загальноправовому розумінні.

Результати. У статті надано загальноправову характеристику ознак і сутності комерційної таємниці, наведено основні юридичні аргументи щодо наявності в її структурі тих чи інших елементів та характерних рис. Доведена позиція, згідно з якою розуміння комерційної таємниці виходить із базових понять і категорій, розуміння інформації як соціального явища, що своєю чергою зумовлює потребу в її належному збереженні, переданні та забезпеченні ефективного обігу. З огляду на ці категорії узагальнено розуміння того, що правовий режим комерційної таємниці є специфічним юридичним статусом певного типу інформації, що охороняється у приватному порядку за допомогою нормативно-правових інструментів, наданих державним механізмом.

Висновки. Встановлено, що сутність комерційної таємниці як специфічного правового інформаційного режиму полягає насамперед у віднесенні до неї низки важливих фактів та обставин, що мають значення у процесі управління підприємством, установою, організацією, а також відіграють вагомий роль у його ефективності, результативності роботи та суттєво впливають на конкурентоспроможність. Автором обґрунтовується, що основними характерними ознаками комерційної таємниці є, зокрема, такі риси: специфічність інформації, що належить до цієї категорії; обмеженість кола суб'єктів, які беруть участь у вказаних правовідносинах; обов'язкова наявність «комерційності» роботодавця, що здійснює певний вид діяльності; вжиття підприємством, установою, організацією (її представниками, уповноваженими на це) заходів зі збереження тієї чи іншої комерційної інформації, яка, на їх думку та відповідно до законодавства України й внутрішнього трудового порядку, становить таємницю. Крім цього, узагальнено, що перспективи подальших наукових пошуків у відповідному напрямі правового забезпечення належного функціонування інституту комерційної таємниці полягають у необхідності вивчення механізму її забезпечення з практичної позиції.

Ключові слова: комерційна таємниця, підприємство, установа, організація, ознаки, сутність таємниці, правовий режим інформації.

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