

Economic Development and Objective Signs of Illegal Receipt and Disclosure of Trade, Tax and Bank Secrets

Yulia Igorevna Selivanovskaya¹, Mariya Vyacheslavovna Talan², Irina Mikhailovna Sboeva³

¹*Candidate of Law, Associate Professor of the Department of Economic Security and Taxation of the Institute of Management, Economics and Finance of the Kazan Federal University, ORSID: 0000-0001-7118-2372, Id scopus: 56177864100,*

²*Doctor of Law, Head of the Department of Criminal Law, Faculty of Law, KFU, ORSID: 0000-0002-9852-5133, Id scopus: 55369541700,*

³*Senior Lecturer of the Department of Economic Security and Taxation of the Institute of Management, Economics and Finance of the Kazan Federal University, ORSID: 0000-0002-3427-5016, Id scopus: 234275016,*

¹ *Kazan Federal University, Kremlyovskaya Street, 18, Kazan, 420008*

Corresponding author: Yu.I. Selivanovskaya,

Abstract

Economic development is always associated with information that needs regular protection from unfair competitors who want to take possession of it for their own purposes. The value of confidential information in the business, banking, and tax spheres lies in the fact that it is unknown to a wide range of people. However, with the increase in the amount of important information, breaches of the confidential treatment occur and valuable data pass into the third hands, most often to competitors, thereby causing serious damage to both owners of classified data, and the economy as a whole. One of the most effective ways to protect commercial, tax and bank secrets is to establish criminal liability for the illegal collection and disclosure of such information. The paper analyses the object and the objective side of the illegal receipt and disclosure of information constituting trade, tax or bank secrets; it also gives recommendations for improving the criminal legislation of the Russian Federation.

Keywords: criminal liability, trade secret, tax secret, bank secret, disclosure of commercial, tax, and bank secrets

I. INTRODUCTION

The rapid development of the economy and business in Russia needs reliable legal protection of information constituting commercial, tax and bank secrets. Any information that is not accessible to third parties and is not widely publicized should be secured and protected. In many areas of business, the loss of classified information can lead to huge material losses. The development of market economic relations in the Russian Federation is accompanied by an increase in the number of crimes in the field of economic activity. Criminal liability for the collection and disclosure of secret bank, tax or commercial information is regulated by Art. 183 of the Criminal Code of the Russian Federation [6]. Also in this regard, there are many studies such as Konyakhin and Aslanyan, who have studied in the field of economic activities and studied the Information as a subject of committing offences [2]. Beside this work, problems of competency and verification of an offence

provided for in Article 183 of the Russian Federation Criminal Code have been considered by Novikova through the year of 2017 [3].

II. METHODS

The framework of the investigation is formed by the Civil Code of the Russian Federation, the Criminal Code of the Russian Federation, the Tax Code, and other legislation of the Russian Federation. The following methods of investigation have been used in the course of the study: historical and legal method, formal and logical method, systematic and structural method, specific sociological method, statistical method, and the method of comparative law.

III. RESULTS

In the Russian Federation, there are many types of secrets and legislative acts protecting certain types of them. For example, state secrets are regulated by the law of the Russian Federation "On state secrets" [9]; confidentiality is guaranteed by the Federal law "On the principles of protecting the health of citizens in the Russian Federation" [7] and the law of the Russian Federation No. 3185-1 "On psychiatric care and guarantees of the rights of citizens upon its rendering" [10]. Moreover, the legislation of the Russian Federation does not contain a general definition of the concept of "secret" or "secret information", which negatively affects law enforcement practice. I.A. Yakovleva offers the following definition of this concept: "With regard to information-related relations, a secret is a special legal treatment of confidential information provided by law and characterized by a procedure for its use, organization of access, a circle of obligated persons, and measures of responsibility for its violation" [13].

Commercial, tax and bank secrets are an important segment for the country's economy and are regulated by civil and tax laws. Trade secrets are classified information that allows their owners to benefit for their enterprises, as well as reduce costs, increase revenues and maintain market demand for their

goods. In accordance with the Federal Law dated July 29, 2004 No. 98-FZ "On Commercial Secrets," commercial secrets are "information of any nature (production, technical, economic, organizational and others), including the results of intellectual activity in the scientific and technical field, as well as information about the methods of carrying out professional activities that have actual or potential commercial value due to their obscurity to their third parties, to which third parties do not have free access legally and in respect of which the owner of such information introduced a trade secret regime" [1]. According to Art. 102 of the Tax Code of the Russian Federation, "tax secret is any information about a taxpayer owned by tax, investigative and customs authorities, as well as internal affairs bodies and bodies of the state extra-budgetary fund" [11]. Banking secrecy is regulated by Federal Law dd. 02.12.1990 No. 395-1 "On Banks and Banking Activities" and Art. 857 of the Civil Code of the Russian Federation. So, according to paragraph 1, Art. 857 of the Civil Code of the Russian Federation "the bank guarantees the confidentiality of the bank deposit and bank account, as well as account transactions and customer information" [8]. Art. 26 of the Federal Law "On Banks and Banking" stipulates that "a credit institution, the Bank of Russia, an organization that performs the functions of compulsory deposit insurance, guarantees secrecy about the operations, accounts and deposits of its customers and correspondents" [5].

Objective signs of an offence include the object of the offence and the objective side of the offence.

The object of an offence is public relations that are harmed when committing the offence. The main and direct object of the offence under Article 183 of the Criminal Code of the Russian Federation are social relations that develop during the implementation of economic activity on the basis of free and fair competition, which is ensured by maintaining information constituting a trade, tax or bank secret. An additional direct object of these offences is the procedure established by law for the circulation of information constituting trade, tax or bank secrets. E.A. Valova determines the object of the offence under Article 183 of the Criminal Code as "the established procedure for handling information constituting a commercial secret. It should be borne in mind that information in respect of which a commercial secret has not been established is not considered confidential. Confirmation of the establishment of a commercial secret regime can serve as local regulations issued by the owner of the information (orders, directives, regulations, etc.), as well as documents regulating the legal relations of the owner of information with third parties or containing requirements for the protection of trade secrets" [12].

The subject of unlawful receipt and disclosure of information constituting a trade, tax or bank secret is information constituting the trade, tax or bank secret. Moreover, these can be documents, as well as other objects of the material world, in which trade, tax or bank secrets are reflected in the form of symbols, images, signals, technical solutions, processes, etc. V.P. Konyakhin notes that "information as a subject of economic offences is information expressed in a certain form that acts as an object of regulatory legal relations in the field of economic activity, in some cases having a special form and

economic value as necessary conditions for their criminal legal protection. Obligatory signs of information as a subject of offences in the field of economic activity are the veracity of the information and their ability to be the subject of regulatory and legal relations in the field of economic activity" [2].

The objective side of an offence characterizes the manifestation of criminal activity in the outside world. The objective side of an offence under Part 1 of Article 183 of the Criminal Code is expressed in the action: a collection of information constituting a trade, tax or bank secret, and Part 2 of Article 183 of the Criminal Code talks about their disclosure, without the consent of their owner.

Part 1, Article 183 of the Criminal Code of the Russian Federation provides for criminal liability for the collection of information constituting tax, commercial or bank secrets in the specified ways: by stealing documents, by bribery, by threats, or by other illegal means.

The collection of information is its search, discovery or accumulation of it at a person who is not allowed to possess trade, tax or bank secrets, and in illegal ways. Actions related to the use of violence and personal injury to a person must be further qualified according to the relevant articles of the Criminal Code of the Russian Federation.

The theft of documents involves unlawful, gratuitous seizure and (or) circulation of information carriers. The form of misappropriation is theft, robbery, banditry, fraud; it can be any and does not affect its qualification. If the medium containing confidential information, in addition, has the sign of an official document, then the offence made can be qualified in conjunction with Part 1 of Article 183 and Article 325 of the Criminal Code (theft or damage to documents, stamps, seals or theft of excise stamps, special stamps or conformity marks). If the storage medium of computer information (CD-ROM, hard drive, flash drive, floppy disk, etc.) is stolen, then the offence is qualified in the aggregate of Part 1 of Article 183 and parts of Article 272 of the Criminal Code (illegal access to computer information).

Bribery refers to the transfer of property to a person or the provision of property-related services for him/her to seize relevant information in connection with his/her official position. Bribery carried out in relation to an official or a person performing managerial functions in a commercial or other organization is qualified in conjunction with Article 291 of the Criminal Code (bribery) and, accordingly, Article 204 of the Criminal Code (commercial bribery).

Threats as a way of committing an offence under Part 1 of Article 183 of the Criminal Code of the Russian Federation constitute a psychological impact aimed at intimidating the holder of information constituting a trade, tax or bank secret, or a person with legal access to this information, as well as their relatives in order to provide this information.

Other illegal methods of collecting information may be, for example, the use of listening tools.

Illegal disclosure of information constituting a trade, tax or bank secret is an action or inaction, as a result of which this information becomes known to third parties who do not have

legal access to it, without the consent of the holder of such information or contrary to the requirements of the law or labour, as well as a civil legal contract. For example, the operator of a credit institution told a familiar entrepreneur how much money is in the bank's accounts with his/her competitor. The illegal use of information constituting a trade, tax or bank secret means their use in any form and field (business, household). For example, a tax inspector with customer data for a trading company registers an organization for similar activities.

Qualifying and especially qualifying signs of illegal receipt and disclosure of information constituting a trade, tax or bank secret are: causing major damage or committed out of mercenary interest (part 3 of Article 183 of the Criminal Code of the Russian Federation); grave consequences (part 4 of Article 183 of the Criminal Code of the Russian Federation).

A large number of scholars draw attention to the insufficiently successful wording of Part 3 of Article 183 of the Criminal Code. Firstly, it seems unreasonable to place two different qualifying attributes in one part of the article without dividing them into paragraphs, which complicates the correct differentiation of criminal liability, and the convenience of perception and qualification of an act. Secondly, the literal interpretation of part 3, Article 183 of the Criminal Code of the Russian Federation causes particular difficulties in practice; it states: "the same acts that caused major damage or committed out of mercenary interest" (The Criminal Code of the Russian Federation dated June 13, 1996). It should be agreed with M.M. Novikova, that "it is completely unclear whether the phrase "the same acts" refers to part one and two of this article, or only to part two" [3].

There is no consensus on this issue in the theory of criminal law. Some scientists refer qualifying features contained in part 3 of Article 183 of the Criminal Code only to the acts described in part 2, others refer to part 1 and part 2. For example, S.D. Petrochenkov believes that "the content of the norm in its current form was not the result of the intention of the legislator, but only of legal and technical shortcomings made when editing the new text of the criminal law prohibition" [4].

As noted earlier, Part 3, Article 183 of the Criminal Code of the Russian Federation contains two qualifying characteristics: causing major damage, and selfish interest. As for the "major damage", it can be caused both in the case of collecting information constituting a trade, tax or bank secret, and in the event of their disclosure, that is, the qualifying sign "causing major damage" can definitely be extended to part 1, and to part 2 of Article 183 of the Criminal Code. The qualifying attribute "selfish interest" is without a doubt applicable to Part 2 of Article 183 of the Criminal Code: to the disclosure and use of secret information. With regard to the collection of secret information, illegally collected secret information is subsequently used in most cases by guilty persons to fight competitors, commit theft, that is, a mercenary motive can be traced in this case. Therefore, in our opinion, part 3 of Article 183 of the Criminal Code applies to part 1 and part 2 of this article. The same conclusion follows from the logic of constructing articles in criminal law. Since

the legislator has not specifically indicated, to which part of the article qualifying the attributes it is applied, therefore, they apply to all previous parts of the article.

IV. CONCLUSIONS

Nowadays information regular protection from all the antagonists has become as a critical point in the economic world. In this work after investigation of all the purposes of the illegal receipt and disclosure of information constituting trade, tax or bank secrets, finding a way in order to improve the criminal legislation of the Russian Federation has been considered.

For the correct differentiation of criminal liability, ease of perception and qualification of the act, we consider it necessary to state Part 3 of Article 183 of the Criminal Code as follows:

The acts provided for by part one and two of this article:

- a) Causing major damage;
- b) Committed out of selfish interest.

ACKNOWLEDGEMENT

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

REFERENCES

- [1] Federal Law dated July 29, 2004 No. 98-FZ (as amended on April 18, 2018) "On Trade Secrets". Collected Legislation of the Russian Federation 32. - Article 3283.
- [2] Konyakhin VP, Aslanyan RG. Information as a subject and means of committing offences in the field of economic activity. Russian Investigator. 2016;8:24 - 27.
- [3] Novikova MM. Problems of qualification and investigation of an offence provided for in Article 183 of the Criminal Code of the Russian Federation. Proceedings of the 5th International Scientific Youth Conference "Rights of the Young. Edited by M.S. Trofimova. – Stavropol.2017:220-223.
- [4] Petrochenkov SD. Self-interest as a qualifying symptom of an offence under Article 183 of the Criminal Code. Criminal law.2017;1:76 - 78.
- [5] The Civil Code of the Russian Federation (part two) dated 01/26/1996 No. 14-FZ (as amended on 07/29/2018) // Collection of Legislative Acts of the Russian Federation, 01/29/1996. - No. 5. - Article 410.
- [6] The Criminal Code of the Russian Federation dated June 13, 1996 No. 63-FZ (as amended on April 23, 2019) // Collection of Legislative Acts of the Russian Federation, June 17, 1996. - No. 25. - Article 2954.

- [7] The Federal Law "On Banks and Banking Activities" dated 02.12.1990 No. 395-1 (as amended on 12.28.2018) "On Banks and Banking Activities". Collection of Legislative Acts of the Russian Federation, 05.02.1996. - No. 6. - Article 492.
- [8] The Federal Law "On the Basics of Protecting the Health of Citizens in the Russian Federation" dated November 21, 2011 No. 323-FZ (as amended on March 6, 2019) // Collection of Legislative Acts of the Russian Federation, November 28, 2011. - No. 48. - Article 6724.
- [9] The law of the Russian Federation "On state secrets" dated 07/21/1993 No. 5485-1 (as amended on 07/29/2018) // Collection of Legislative Acts of the Russian Federation, 10/13/1997. - No. 41. - Article 8220-8235.
- [10] The law of the Russian Federation dated 02.07.1992 No. 3185-1 "On psychiatric care and guarantees of the rights of citizens in its provision" (as amended on 07/19/2018) // Proceedings of SND and the Supreme Court of the Russian Federation, 08.20.1992. - No. 33. - Article 1913.
- [11] The tax code of the Russian Federation (part one) dated July 31, 1988, No. 146-FZ // Collection of Legislative Acts of the Russian Federation, August 3, 1998. - No. 31. - Article 3824.
- [12] Valova EA, Kuznetsov FV. Illegal receipt and disclosure of information constituting a trade secret. Legality.2018;4:43 - 46.
- [13] Yakovleva IA. Theoretical and practical problems of legal regulation of bank, tax and trade secrets in entrepreneurial activity. Business in Law. 2014;5:326-331.

Yulia Igorevna Selivanovskaya was born in 1981 in Kazan, in 1998 she entered the law faculty of the Kazan State University. IN AND. Ulyanova-Lenin, in 2003 she graduated with a specialty "Jurisprudence". In 2005, at the Kazan State University. IN AND. Ulyanova-Lenina defended her thesis on the topic "Crimes in the field of financial activities committed by organized groups." From 2006 to the present day he has been working at the Kazan Federal University. Research interests - crimes in the field of economic activity, crimes that violate the foundations of economic security.

Mariya Vyacheslavovna Talan was born in 1964 in Kazan. In 1986 she graduated from the law faculty of Kazan State University. In 1990. She defended her Ph.D. thesis on the topic "Social and pedagogical complexes and the prevention of juvenile crime at the place of residence." In 2002, at the Kazan State University. IN AND. Ulyanova-Lenina defended her doctoral dissertation on "Crimes in the Sphere of Economic Activity: Questions of Theory, Legislative Regulation and Judicial Practice." Currently he is the head of the department of criminal law at Kazan Federal University. Research interests - crimes in the field of economic activity, crime prevention, criminal law of foreign countries.

Irina Mikhailovna Sboeva was born in 1984 in Kazan. In 2007 she graduated from the Kazan State Financial and Economic Institute with a degree in Organization Management, and in 2014 graduated from the Institute of Economics, Management and Law (Kazan) with a degree in Jurisprudence. He currently works at the Kazan Federal University. Research interests - protection of intellectual property, crimes in the field of economic activity.