

THE SECRET AS AN OBJECT OF LEGAL RELATIONS IN THE INFORMATIONAL SPHERE

Paper is devoted to the mystery as one of the varieties of the legal regime of information, its classification, structure and types.

Keywords: *information, mystery, the mystery of a private nature, the mystery of public legal nature's privacy, family secret, commercial secret.*

Within the problems of legal regulation of relations in the information sphere special place belongs to the legal terminology. As true notes I. Bachilo: an important area is the development of terminology. The accuracy and clarity of terms and concepts allows the most concrete to formulate the contents of one or another of the Institute and ensure a culture of legal regulation in a specific field of legal relations". [3] One of such areas is to identify the correlation between different legal regimes of information, including secret. Problems of legal regulation of relations in the information sphere are in the writings of such domestic scientists as I. Bachilo, A. Vengêrov, V. Monakhov, M. Brahin, V. Savich, A. Sherstobitov, V. Lopatin, O. Gavrilov, V. Dozortsev and others. The main purpose of the paper is to research the mysteries as one of the varieties of the legal regime of information, its classification, structure and types. About the mystery as a phenomenon of legal reality can be carried out in three aspects: the mystery of how specific information of an advisor, about which there are certain legal relations; the mystery of how the views of the legal regime of information; the mystery of how a set of legal norms that regulate certain relationships in the information sphere (institution of state secrets in administrative law, Institution of commercial secrets in the civil law).

It is known that the starting point in the study of mystery as one of a variety

of legal information regime should become fundamental origins that pervade all the domestic legal system. Two components of any legal system that belongs to the Romano-Germanic family, there are private and public law. If you follow the induction – from the General to the particular, then logically be assumed that this dichotomy has value and information sphere. So, a particular phenomenon of the objective world, which is the object of legal relations, not always equally affected all branches of the law without exception. A specific phenomenon of reality can have a legal regime, secured mainly (or exclusively) by private or public law norms.

In our opinion, this statement can be applied to information, and we can talk about a predominantly private law and mainly public-legal modes of information. This fact suggests that the classification of the public law-private law "can be spread on mysteries, forming a dichotomy: 1) secrets of the privatnopravovogo character (private law mysteries); 2) mysteries of public-legal nature (public-legal mysteries). So, in the Civil Code of Ukraine directly referred to business and trade secret, personal and family secrets, bank secrecy, mystery of insurance.[7] in addition, the business and trade secret, personal and family mystery legislator directly recognized objects of civil rights. These secrets are present in the legal relations which arise on the basis of autonomy, freedom, legal equality and property independence parties, i.e. civil (private) relations. This gives grounds to mark these types of information as the mysteries of privacy law.

At the same time there is a second element dichotomy are the mysteries of public-legal character. They are the objects of legal relations which arise on the basis of power and subordination, one side of which is always a government body, i.e. public relations. For example, there is no doubt that the State secret is publicly-legal nature. Comprehension of legal regulation in this sphere plays a very important role in shaping a holistic scientific picture of the relations in the sphere of information, the development of the principles and methods of legal arrangement. Consider a more aggregate privacy law secrets. Many scholars that explore commercial, banking secrecy, mystery and others, considering them as

similar, homogeneous objects. The answer to the question as to its legal nature, homogeneous or patchy private law, also lies in the analysis of the relevant issues. You need to compare the legal relations which arise concerning personal, family and commercial secrets. The criterion on the basis of which we here consider them together, is the identity of the theoretical model of relations.

We'll not stop a detailed consideration of the legal regime of commercial secrets, it is only the fact that a subjective right to commercial secret researchers recognized the exceptional and, therefore, an absolute civil law. Legal relations arising between the Commissioner and other persons regarding the information that constitutes trade secrets, are absolute civil legal relations. From the above it follows that personal and family secrets, trade secret are set in the private interest of any person or entity. They mediate affiliation of a particular property or non-property benefits-related information-geezer. Therefore, these secrets can be marked as "mystery object". Ownership of this information establishes presence in their owner's absolute subjective rights regarding such information. This right is realized by an authorized entity, within the framework of the absolute civil legal relations, parties which are authorized and indefinite circle of persons. On the other side of the legal-undefined circle of persons entrusted with the duty to refrain from attacks on the information component of the kind of mystery (i.e. of committing illegal activities from obtaining such information without the consent of the owner). Thus, we can say that the mystery objects determine the occurrence of absolute relationships, legal protection of the mysteries of the legal law character is carried out within the framework of the absolute civil legal relations. Mystery objects-this is the first group However, the legal law secrets also include and expressly specified in civil code of banking secrecy and mystery. They are the kind of a different legal regime information mode of professional secrets.[7] We'll note that regarding professional secrecy having civil (private) relative relationship. The subjects of these relations there are two legally equal sides: a) a person who professionally carries out specific activities (e.g., bank, notary, lawyer) b) client that person. Legal content issues that arise regarding the professional secrecy, lies

in the fact that a person who has received the appropriate information (bank, insurance company), is in the interest of protecting the rights and legitimate interests of persons, which appealed to her to keep in secret the information. This obligation is contained mainly in civil legal relations (contract deposit, contract medical services), accompanying and providing his tribute to the leaks. Authorized entity has the right to require performance of the obligation not to disclose data, while the right is implemented through action shall face.

Because the essence of professional secrets are expressed through the duty to preserve "someone else's information, then we can them be marked as secret-duties. Thus, you can call the second group of secrets *privatnopravovogo* character-secrecy-duty. The issue of terminology in the regulations must be based on clear and unambiguous imagination about the essence of each of the legal regimes of information about its purpose and features of realization of this legal regime within the specific legal relations. In general, the present status of legal doctrine on systematizing legal regimes of information is absolutely unsatisfactory. In particular, the lack of clear and consistent criteria for classification legal law secrets is the reason ambiguous approach to the question of the ratio of banking and commercial secrets. So, according to A. Sergeyeva, banking, insurance, and other special types of mysteries are varieties of commercial secrets.

To the supporters of unity of the commercial and banking secrecy can be referred to L. Yefimov [4, 5]. Bank secrecy, in her opinion, is a special kind of commercial secrets, and on the basis of this banking secrecy should spread the effect of regulations on commercial secret (in particular, the resolution of the Government No. 5 dated December 5, 1991. "On the list of information that may not be commercial secret»).

In the literature there is the opposite point of view. For example, O. Oleynik thinks the banking and commercial secrecy of different objects. According to our beliefs, trade secret be distinguish from banking secrecy. This should agree with the second point of view. However, the problem lies elsewhere: unsatisfactory argumentation, brought representatives of both points of view, since it doesn't

actually allows you to differentiate these two different legal regimes. Bank secrecy is different from the commercial secrets not competencies, the principle of bank secrecy is a trade secret, but in the sphere of banking activities, as well as distinguished banking secrecy (as indeed other professional) of trade secrets is not the level of classification of the information to the mystery

On the basis of similar signs indicated legal modes of information cannot be discerned because discussions with such argumentation are underproductive. In fact the difference is much deeper in the different legal nature of banking and commercial secrets, the differences of subject composition and type of legal relations, which specifies these legal regimes. This confirms the importance of studying the problems of information relations. One type of legal regime of information differs significantly from the other client who posed by order or other form of information. Therefore, exploring relationships in the information sphere, we not only gain knowledge about these relationships, but to create a solid foundation for systematizing the various legal regimes. The lack of features of the relations that arises with regard to one or another of the legal regime of information leads to the fact that both researchers and the legislator may not correlate the various kinds of legal regimes. Today extremely relevant same problem ordering legal regimes of information, improvement of legislation in many ways prevents clear, internally agreed nomenclature types of information. You need to identify the nature and type of relations on various kinds of information and, most importantly, compare between these relationships. Will then be clearly presented system of legal regimes, the features of each.

For differentiation and systematization of the totality of the legal regimes of information of particular importance is consideration of the features of this or other type (the legal regime) information as object relations. In scientific literature can be found examples where one or the other, the author accurately describes a specific type of legal regime for information, but later contradicts himself, considering the ratio of this regime with another regime. This is due to the fact that the analysis is only text, the definition of the legal regime of information (for

example, banking secrecy), but it does not compare legal objects which are the types of information that are mapped. If banking secrecy to take the kind of commercial secrets, then this presupposes that their legal nature is the same, but the trade secret is the duty not to disclose the information. For example, a commercial organization in the course of its activities has created the information that became her trade secret. The question arises: who will be bound by in relative pravovidnošennì, if the information has not transferred to its owner? Is it possible to impose on any third person the duty not to disclose the information if it does not have the information? Who then is considered committed side in relative pravovidnošennì? The Organization-owner information? What is the meaning of laying such an obligation on the owner of the information, if it is economically beneficial to the preservation of privacy. And can you then generally considered trade secret object of civil rights if its legitimate owner of this object is expressed not through the law but through duty.

Thus, you should conclude that its legitimate owner of the trade secret by nature can be expressed only through the subjective right, but not a duty. Protection of commercial secrets is based on absolute, not relative legal relations. A thought experiment, as the evidence demonstrates the impossibility of combining commercial and banking secrets. At the same time the essence of the legal regime of banking secrecy, and other professional secrets, expressed primarily through the legal duty. When it comes to the relative relationships between specific subjects (for example, the relationships that arise on the basis of the account agreement), then the protection of confidential information is organized according to this principle. Confidential information is transmitted by the client of the Bank or is in the process of implementation of this agreement (transactions on the account), so such information may be precisely determined (i.e., it is known that it was required to defend). Therefore, it is easy to all other obligations of the Bank to add the obligation to keep confidential the confidential information of its clients. By their nature, such a duty will be similar to other duties by civil contract. Thus, it is worth noting that private law the mystery is rather

heterogeneous collection. The most significant differences of information that are protected are the type and nature of the issues that arise regarding them.

On this basis, private law secrets are classified as follows: mystery-objects that mediate affiliation of a particular good (information) a particular person. The mystery object refers to personal, family and commercial secrets; mystery-duties mediate legislature limiting social movement actually existing information, legal record of finding this information in a certain person (group of people). The mysteries-duties include professional secrets. It makes sense to use the following classification of private law secrets for evaluating two objectives that pursues public-legal regime safeguarding secrets. In those cases when it is aimed at providing a public (State) of interest, business, mystery is a mystery object. Here, limiting access to information provided by the State, represented by the appropriate body, in their own interests. Because the State domination of the State over "their" information is expressed through a subjective right to limit access to information, to use it and dispose of it (including by removing restrictions on access). An example is the military secret, which is a kind of proprietary secrets.

If the installation mode of the proprietary secrets is in the interests of natural and legal persons, you should talk about official secrecy-duty. Because the condition of possession of State agency such information is expressed through the legal duty to limit access to "alien" information and to avoid its disclosure without the consent of the persons who had received this information. The fundamental difference of official secrecy-duty of proprietary mystery object lies in the fact that the secret service-the duty of the State (State Agency) has no right to dispose of because it is a "stranger". And, conversely, with accessory mystery object, the State has the right to act at its own discretion and in their interests, including stop limiting access. Example of proprietary secrets-the duty tax is a mystery. Duty to keep secret information about the taxpayer relies on tax authority.

Therefore, the applied value of the theoretical construction of legal relations in the information sphere is, in particular, because it is the foundation for systematizing legal regimes. It is needed a meaningful differentiation of public-

legal and private law modes. In addition, you should clearly distinguish the mystery objects and mystery-duties. Once again emphasize that figuring out the essence of the legal regimes of information is impossible without research is essentially legal relations that arise with regard to such information.

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