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**DISCLOSURE OF COMMERCIAL OR BANKING SECRECY:
CRIMINAL LIABILITY IN THE LEGISLATION OF UKRAINE
AND EUROPEAN COUNTRIES**

Key words: *Disclosure of commercial or banking secrecy, criminal liability in the legislation of Ukraine and European countries.*

In modern life, we still have to deal with violent types of crimes such as murder, theft, robbery, and rape, but from time to time there are tendencies to increase or decrease them, depending on how the conditions of that or that another historical epoch. In addition, in the 21st century new, no less dangerous types of encounters arise. Information from year to year becomes meaningful, and its loss or blockage can create not only a threat to material goods, but also life and health of people. In particular, this refers to information about the person's activities in the field of finance, its financial position, etc., as public confidence in banks is growing, the services of remote control of funds are gaining in popularity, and consequently the number of attacks on such data is increasing. In order to effectively counteract and prevent an offense from the state, appropriate measures are required. The urgency of this work is determined by the urgent need to investigate the liability for disclosure of commercial and banking secrecy in Ukraine, to verify its effectiveness and to compare these measures with those used in well-known successful experience of European countries.

Thus, domestic legislation provides for only criminal liability for disclosure of banking or commercial secrets. According to Art. 232 of the Criminal Code of Ukraine, commercial secret means information related to production, technological information, management, finances and other activities of an enterprise or other economic entity whose disclosure may harm its interests. At the same time, it should be noted that for the bank the relevant information is information not about their own activities, but about outsiders. Therefore, the concept of banking secrecy should not be equated with the notion of commercial secrets [2, c. 723-724].

As regards the objective aspect of the crime in question, it consists in actions in the process of which the commercial secret is exposed to disclosure, thereby communicating with unauthorized persons, and the consequences that are expressed in the form of causing substantial harm to the subject of economic activity. It should be noted that the domestic

legislator points out precisely to causing damage to a business entity, and not to a particular individual – that is, the owner (or owners). The same disclosure can be made in any way. Important for the qualification of an act is the exact definition of the moment of the end of the crime, which coincides with the moment when the owner of the commercial secret of causing material damage is caused.

The subject of this crime may be a person:

- which commercial secret became known due to its special relationship with the owner of the secret;
- which is a representative of the counterparty or partner of the relevant business entity and received information that is commercial secret, subject to its non-disclosure;
- who is an official of the state authority and received relevant information on the basis of the law while performing his official duties.

From the subjective side, the crime is characterized solely by direct intent and mercenary or other personal motive, which in practice is considered a favor or, conversely, an aversion to a certain person, a desire to harm the leaders, etc.

The responsibility for disclosure of commercial or banking secrecy is to impose a fine of 1-3 thousand non-taxable minimum incomes of citizens with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to 3 years.

These acts are often posted in the sections of criminal laws, which are aimed at protecting non-economic interests of the enterprise, and the personal secrets of the person, even if the latter has a direct commercial or banking significance.

Thus, in the Criminal Code of Switzerland, the legislator considered the crime envisaged in Articles 162 and 273 [6], which are interrelated. According to Art. 162, the one who discloses the industrial or commercial secret that he is obliged to keep as a result of lawful or contractual duties, who uses the disclosure for himself or another person, is punishable by a prison imprisonment or a fine. In this case, the legislator indicates both the obligation of a private prosecution and the subject subject to such liability. Art. 273 provides for the liability of a person who sees the industrial or commercial secret to make it available to a foreign service organ, or a foreign organization, or a private enterprise, or their agents, who makes available to another official agency, or a foreign organization, or a private enterprise, or their agents for industrial or commercial secrets. Under this norm, a guilty person is punishable by imprisonment, and in more severe cases, a convict prison. A fine may also be imposed with imprisonment.

Another approach is used by the legislator in Spain. Yes, according to Art. 278 of the Criminal Code of Spain [5], a person who, in order to disclose commercial secret, possesses in one way or another, information, written or electronic documents, information devices or other objects that are a commercial secret, is punishable by imprisonment for a term from 2 to 4 years and a fine of 12 to 24 monthly salaries. At the same time, according to Part 2 of Art. 278 of the Criminal Code of Spain, imprisonment for a term of

3-5 years and a fine of 12-24 month salaries, for similar acts, if disclosed secret will be distributed, issued or transferred to third parties. Separately, the legislator specifies the responsibility of specially authorized persons. According to Art. 279, distribution, extradition or commission of a commercial secret committed by a person who by law or by contractual obligation has a duty to protect it is punishable by imprisonment of 2 to 4 years and a fine of 12 to 24 monthly salaries. If the given secret is used guilty in his own interests, the punishment is imposed on him within the limits of the lower sanction. According to Art. 199, the one who disclosed someone else's secret information about which he learned due to his official position or employment relationship is punishable by imprisonment for a term of 1 to 3 years and a fine of 6-12 monthly salaries. In cases where the person whose professional duty is to protect the secrets of other persons discloses them, it is punishable by imprisonment for 1-4 years, a fine of 12-24 months' wages and a deprivation of the right to engage in certain activities for a term from 2 to 6 years old.

According to the provisions of Art. 273 of the Criminal Code of the Netherlands [4], a person who deliberately disclose specific information related to a commercial or industrial organization or service organization in which it operates or worked, which it was obliged to keep secret, or disclose or use for the purpose of material gain, data obtained through a criminal offense from a computer device or a system of a commercial or industrial organization or service organization, and which relate to such organizations, if these data are at the time of their opening The use or application was not well-known, and if such disclosure or use could be a loss, it is subject to a term of imprisonment of no more than 6 months or a fine of 4 categories.

Consequently, it is noticeable that the heterogeneity of the legislator's approaches in certain European countries has been traced to the criminalization of acts of disclosure of commercial or banking secrecy. In almost all European countries, the legislator does not distinguish between banking and commercial secrets. In the vast majority of cases this is due to the fact that the responsibility for the disclosure of bank secrecy obviously does not fall under criminal law, and in some cases covered by the notions of commercial information, or company information, etc. Thus, domestic legislators criminalize the disclosure of commercial or banking secrecy, and in a separate section – its use and collection, while European lawmakers criminalize acts aimed at obtaining such information (collection), even without their disclosure as a final result. An analysis of the location of the syllables of the analyzed crimes in most of the Criminal Code of foreign countries indicates that the greatest harm is caused not to relations in the sphere of economic activity, but to a particular individual (group of persons) who are the owners of commercial or banking secrets.

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