

OBSERVATIONS REGARDING THE DISCLOSURE OF THE ECONOMIC SECRET

Miheș Cristian D.

Ardeleanu – Popa Carmen Teodora

Universitatea din Oradea, Facultatea de Științe Juridice, b-dul Gen. Gh. Magheru, nr. 26, email: cristian.mihes@rdslink.ro, tel: 0259/479980; 0744-582293;

Although the criminal law is not the primary actor of the economic environment, its presence can be seen through provisions that criminalize certain acts. In the present many speak about the existence of Economic or Business Criminal Law. However it is important that we keep in mind the thought that the criminal law should be both in theory and in practice "ultima ratio". On the other hand, the offence of disclosure of the economic secret is one of the offences from title VII of Romanian Criminal Code. In short, the legislator criminalizes the act of disclosure certain information and data that are not of public nature. Through this paper we try to point out a few thoughts regarding the elements of the offence, by interpreting and analyzing the legal text from The Criminal Code.

Key words: economic offence, economic secret, disclosure, investigation

1. Introduction

The disclosure of the economic secret is one of the offences stipulated by The Romanian Criminal Code in title VIII – Offences related to the rules established for certain economical activities. Many considered that this offence was criminalized during the communist regime, in order for the government to have another method to control the citizens and the economic environment. Probably this was true at that time, but now days the protection of economic data is one of the basics requirement for a fair competition on the market.

The article 298 called "Disclosure of the economic secret" criminalizes the act of disclosure of data or information that are not to be revealed to the public, by the person who knows them because exercising his call of duty, if the act is in such nature to cause damages.

In the second paragraph of the same article the legislator criminalizes the act of disclosure of the economic secret by other person, irrespective the manner in which he became acquainted with the data or the information.

Although the provision emphasized previously are clear, the understanding and the investigation of this offence proves to be difficult. In this line of thoughts, the investigation of economic related offences raises serious problems such as²²⁸:

- a) The complexity of the criminal acts, as regarding both to the difficulty and the volume of the case
- b) The need to involve undercover investigators, in order to infiltrate the economic environment with the purpose of obtaining reliable information
- c) The "lack of enthusiasm" of the companies to cooperate with the judicial authorities, not to reveal other "weak points" of the company.

2. Pre-existing condition of the offence

a) *Juridical object.* The offence of disclosure of the economic secret has as a juridical object the safekeeping of economic data and information that are not to be revealed to the public²²⁹. It is obvious that the data and information we are speaking about, are not secrets protected by national security laws. More appropriate would be to refer them as commercial secrets²³⁰.

b) *Material object.* As a rule, this offence does not have any material object. Though, it was rightfully stated that when the secrets disclosed are connected to a written document or an electronic device²³¹, the material object of the offence will be exactly this document of electronic device²³².

c) *The subject of the offence.* In the hypothesis of the first paragraph of the article 298, the active subject has to be an member of staff of the offended company, because according to the law, the offence has to be carry out by a person

who becomes aware of the data and the information as a consequence of exercising his obligation in the line of work. If the perpetrator is not an member of staff of the offended company, then the lenient form of the offence, stipulated in the second paragraph, will be applied.

The offence can be performed also in participation, in all its forms. The only thing worth mentioning is that is case of co – author, each co-author has to be a an member of staff of the offended company in the moment of carrying out the offence.

3. The content of the typical form of the offence

From *objective* point of view, this offence has the following characteristics:

- a) The material element is realized through the act of disclosure of data or information. To disclose data or information means to reveal this data or information to persons that are not entitled to know them, or even to reveal them to general public. It has no importance whatsoever the practical method used to make public this data or information. The disclosure can be carried out through verbal communication, mass media, in writing, or even through Internet.
- b) The disclosure has to regard data or information of economic nature that are not to be made public. The regime of economic information and data that are to be legally of public nature is stipulate through fiscal regulations. By example, the information and data contained in the annual financial reports are public; they can be accessed through The Office of Register of Commerce. In other line of thoughts there are data that are not object of publicity regime, such as data related to sales of certain category of products, or related to sales in certain regions.
- c) The perpetrator knew the data and information because of his line of work; he was entitled to know them.
- d) The disclosure has to be of such nature to cause damages. It is not necessary that the damage to be produced, but it is necessary to create the state of risk that the damage might produce itself²³³.

As regarding *the result of the criminal act*, by interpreting the legal text, we can state that the outcome of the offence has to be a state of risk regarding the damage that might produce to the company by disclosing the economic secret.

The *causality rapport* between the act and its effect is implied by the legal text.

Although the attempt to disclose the economic secret is possible in practice, the law does not criminalize the attempt to disclose economic secrets.

It is our opinion that this circumstance is an unfortunate one. As a rule the risk offences such as the one we are speaking about are incompatible with the attempt. However, in cases when the disclosure of the economic secret has a material object, as seen above, the attempt is possible and it should have been criminalized.

The *end of criminal act* is considered to be the moment when the data and information have reached the third parties or the public and therefore it is created the risk to cause damage to the company that the secret belonged to.

From *subjective* point of view, the offence is carried out with intention that can be either direct or indirect one.

Concluding, the disclosure of the economic secret is not a very often trialed offence, but giving its nature we can estimate that in the following years we will have more judicial practice on this subject.

Bibliography:

1. E. Stancu, Forensic Science, 4th Edition, "Universul Juridic" Publishing House, Bucharest, 2007
2. O.Loghin, T.Toader, Criminal Law, special part, Bucharest, 2001
3. O.A.Stoica, Special Criminal Law, Bucharest, 1976