

Intellectual Property Rights: Criminal Protection of the Violation of Trade Secrets in Iran and United States Laws

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Abstract

Today trade secrets are among the important constituents of economic boom and interaction and play a striking role in the commercial competition. Moreover, one of the prominent challenges as regards violation of trade secrets is economic espionage. Accordingly, necessary and efficient Protection is required for reduction of the violation of rights of owners of trade secrets. The inefficiency of civil sanctions in legal systems has forced most states to resort to criminalization and exertion of criminal sanctions in order to prevent from criminal actions. The enactment of proper criminal codes was unavoidable due to the necessity of proportionate Protection of the rights of owners for the sake of encouragement of creative intellectuals and economic growth and boom.

Key words: Criminal sanctions, Criminalization, Industrial ownership, Intellectual property rights, Trade secrets

INTRODUCTION

In contemporary world, intellectual property is regarded as the most valuable property. When one speaks of property, our minds automatically turns to objective and tangible properties like land, money and the like, though in the new millennium intellectual properties, which are mostly intangible and nonobjective, outvalue the objective properties. Intellectual property rights are new parts of rights that have their origin in arts and innovations and human creativity. Despite its short life, this branch of legal studies has been unprecedentedly developed both in view of quality and quantity inasmuch as no other legal branch would be compared with it. Numerous codes and court procedures in national level and scores of regional and international documents in transnational level regarding this issue show its paramount importance.

Generally speaking, intellectual property rights are divided into two major branches: 1- literary and artistic property rights, 2- industrial property rights each one of which has its own particular extensions. In this essay, we will discuss trade secrets as an important extension of industrial property. Industrial property which is itself of various types and extensions and has been coined to Protection the inventions, trade brands and secrets and pave the ground for industrial growth and development. The important role and place of trade secrets in commercial development and socioeconomic relations add to the ever-increasing significance of this modern branch of law.

Trade secrets represent the vital information that is of strategic use in commerce. The serious threats that are posed against intellectual property, in general, and trade secrets, in particular, in the form of information theft and privacy violation have done irreparable damages to the owners and economic development of states. Accordingly, states have codified certain criminal rules so as to prevent from violation of these key rights and protect their privacy. This essay seeks to make sense of the notion of trade secrets and study criminalization and criminal sanctions in Iran and US legal systems.

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Then the study of this group of codes is of paramount significance due to the aforementioned reasons and the current essay struggles to take a step in this direction.

Terminology

Definition of property

Lexically speaking, property (as used in the expression intellectual property rights) refers to one's capital, estate, possession and holding (translation section Iran Claims Tribunal, Hague, 1993, p. 60). It has also been understood as "possession, attribute, characteristic, particular potentiality, capacity, quality, means, work tools, instrument and ownership right" (Aryanpur Kashani, 1984, p. 4348). Among the aforementioned meanings, possession and ownership are closer to intellectual property rights.

Some jurists believe that property is an item that can be used and is of economic value. Then, property is always of economic value and can be evaluated and its difference with an object lies in the fact that the latter may or may not be of economic value. But property is the thing that has economic value and this property is not necessarily a material object rather those rights that are of material value can be considered a property. Thus, inventor and author rights regarding their works are counted as properties and can be evaluated. As a result, despite the traditional division of rights into objective and religious rights a third branch can be added to it as intellectual rights. These rights cover intellectual and spiritual activities and allow the owner to use his/her rights as s/he wants (Safaei, 2000, pp. 123-124). Therefore, property consists of money and other forms of wealth including tangible and intangible properties like capital flows and spiritual properties that contain capitals that lack external existence and capital flows include properties that have tangible and material aspect the owner of which has certain rights that if are violated by other they can be vindicated in the court (Elliott and Quinn, 2006, P 188). According to one of the scholars, in contemporary era we can no longer confine property rights to objective and religious rights based on the classic definition rather there is another type of rights that is known as intellectual right that is exclusive like ownership rights but contrary to objective rights its subject is not a material object. An example of such a right is an author's rights as to his works. Then one can divide property rights into three types: objective, religious, and spiritual (Katoozian, 2000, pp. 263-264).

Ownership

"Ownership refers to one's right of use and transfer of one thing in any form unless in those cases that have been banned by the state" (Jafari Langroodi, 2001, p. 599). Accordingly, the content of articles 30 and 31 of civil law is in this direction.

To put it otherwise, "ownership is the most important objective right and consists of a relation between a man and the object that belongs to him and he has the right to own it and take any advantage that he expects from it. Ownership is an exclusive and absolute right; because it allows the owner to make all kinds of use of his own property and take every possible advantage of it except what has been excluded by the law (Article 30 of Civil Law). This is known as the principle of domination in Islamic jurisprudence" (Safaei, 2000, p. 168).

Ownership is a mentally-positing relationship between the individual and a material object and in legal parlance, ownership is a permanent right according to which one can make use and take advantage of a property that belong to him in every possible and desired way based on the conditions that have been stipulated the articles 30¹ and 132 of Civil Code² and principle 40³ of Constitution of Islamic Republic of Iran (Aqaei, 2003, p. 16). Law should protect individual rights of ownership in all possible ways. Here it is interesting to refer Jeremy Bentham's theory in this regard. "Property and Law are born together, and die together, Before laws were made there was no property, take laws, and property ceases." (Gopalakarishnan, 1988, P 8)

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Intellectual Property

Intellectual property rights concern objects that are the results of human intellectual activity. Although this branch of law deals with issues that are intangible but they are in fact the result of human knowledge and information and have economic value. Intellectual property is construed by Iranian scholars in most cases as spiritual property and this is not a correct notion of the term. Intellectual property is more than being simply spiritual.

Spiritual in English is derived from Spiritus that in Latin means breath. Spiritus in Latin translations of New Testament refers to a man whose life has been ordered by

- 1 Every owner has unlimited rights of Occupation and exploitation over his property in matters in which the law has made an exception.
- 2 A person cannot make use of this property in such a manner as necessarily to involve a neighbor in loss, except such use as is customary and is required in order to satisfy his needs or to avoid loss.
- 3 No person may exercise his own rights as a means of constraining others or violating the public interest.

the Holy Spirit or the Spirit of God and lives according to Divine Will. The abstract term *Spiritualitas* or *Spirituality* has been used in fifth century in this biblical sense.

Spirituality is breathing spirit into one's individual life and it is of a primordial and unique character for everyone and it leads people towards knowledge, love, meaning, serenity, transcendence and integrity (Hajati, pp. 84-85). On the other hand, ownership itself does not meet the requirements of intellectual property as stipulated in private law. For example, ownership denotes absolute and unlimited command while this type of command is by no means possible as regards intellectual property. Intellectual property is the outcome of human intellectual activity and it should not be mistaken with spirituality that is concerned with spiritual and internal matters. Then we have to use the term intellectual property instead of spiritual ownership.

Trade Secrets

One of the important branches of industrial property that is Protection ed by the legislative body is trade secrets. Trade secrets consist of technical information that are of vital importance of implementation of particular industrial projects and technological development (Mir Hosseini, 2014, p. 235).

Trade secrets as a form or type of trade information are of paramount importance and value and their owner has an intelligible reason for keeping them because they are of potential economic value and can play a decisive role in trade and this is why they are normally secured and protected (Jarrett and Chandler, opcit, P 8). Trade secrets include all types of information that are of economic value and their owner adopt certain policies for protecting it against the possible leakages. For example, trade secrets can be in the form of a food recipe or a chemical formula or even the list of costumers of a certain business, e.g. Coca Cola (Ibid, p. 8). Then every business has its particular trade secrets that have to beprotected against the public disclosure. Some of the owners of these businesses have recognized the vital significance of these secrets and adopted comprehensive and exact strategies to guarantee the protection of these information against the possible leakage threats. Others recognize the importance of these secrets only when they find out that their rivals are struggling to rob their list of costumers or research results or marketing plans or hire their trained and professional staff. These business owners immediately proceed to adopt certain strategies to protect their valuable information.

Thus, the scope of trade secrets can be wider than what is thought to be and can include form, design, formula, plan, process or data collection that are counted as comparative advantage for their owner (ibid, p. 182). Of course, trade

secrets extensions have a wide range and their enumeration is impossible due to their confidentiality. However, one can refer to technological and scientific information, business and trade, financial information, organization of ideas and computer data as examples of trade secrets (Rahbar, 2009, pp. 56-57). Generally speaking, we can include every single piece of confidential information regarding a business that can serve as a comparative advantage in certain commercial domain among the trade secrets. Illegal use of these information without the permission of the trade owners is an unfair action that violates the limits of commercial privacy and confidentiality. Every country's legal system contains certain codes that protects the confidentiality of trade secrets against possible unfair violations and offer special Protection to the business owners via a set of particular judiciary procedures and legislations.

Although deciding whether a certain piece of information or datum is a trade secret or not depends on case conditions, one should say that such actions as industrial and commercial espionage, contract and confidence violation are certainly among the unfair actions in relations to trade secrets that have to beprotected by law. Contrary to other examples of intellectual property like author rights or commercial brands that are profitable until the time when the public is interested in them, trade secrets are protected as long as they have not been revealed to the public. Then this type of secrets requires certain protection.

Legal works discuss this branch of intellectual property rights under various categories like trade secrets theft, industrial espionage and so on and so forth. Although Iranian code of electronic trade that was passed in Iranian parliament in 2003 speaks of violation of trade secrets we should say that violation itself is a behavior and concerns a thing's characteristic. Here the characteristic of trade secrets is their confidentiality that is violated not the secrets themselves. Secret revelation might be correct, but violation does not make sense in this context and this is why the legislator has used such titles as disclosure, theft or revelation regarding the possible intrusions into the confidential trade secrets.

Definition of Trade Secrets in US Code of Law

Of course, in the legal codes of some countries like United States all types of valuable information that are of commercial value for the owner and is not revealed to and used by the public are considered examples of trade secrets the violation of which is a crime and has criminal sanction; e.g. business records, engineering data, financial information and even costumers list. Accordingly, anyone who commits trade secrets theft as a representative of a foreign state and gets involved in an economic espionage must be sentenced to 15 years jail and 5 million

dollars fine under US Copyright Law of 1831. In other cases, s/he must be sentenced to 10 years jail term and 250000 dollars fine (Title Section 18 of Copyright Law of 1832; *ibid*: 8). An example of disclosure of costumers list of a commercial institute as a trade secrets theft is US claim against Martin in 2000 who had released the list of costumers of a tourist agency and the technology of building intraocular lenses as well as the names of doctors who mostly order them (*ibid*, p. 169). Then in US law this criminal action is considered a type of theft and if it is done by assistance of a foreign element it is regarded as economic espionage.

In American legal system, in the article (2) 1 of uniform law, under the definition of illegal usurp, mere access to trade secrets in an illegitimate form (economic espionage) has been regarded as the source of liability even if the convict has not used the information or revealed them. In other words, it does not matter if one's illegitimate access to trade secrets has done any damage to the owner or not because in all cases the convict is liable for the intrusion. It should be noted that if one reaches trade secrets via legitimate ways s/he is not considered liable (Danesh Nazi, Saatchi, Qabooli Derafshan, 2013, p. 117). Generally speaking, trade secrets theft has various divisions in the economic espionage law as follows:

- 1- Theft, illegal appropriation, hiding or reaching them via deception and fraud;
- 2- All types of illegal duplication, photographing, transference, destruction, and sending via email;
- 3- Buying while knowing that it belongs to another one;
- 4- Committing every single one of the aforementioned cases;
- 5- Collusion and conspiracy for committing every one of the three cases (*Ibid*, PP 158-159).

Then the examples of violation of trade secrets have been clearly stipulated in American criminal law. These secrets are protected when they are in the form of information that have economic value for the owner. Of course, they have to be hidden by the owner as secrets.

Considering the significance that has been attributed to trade secrets in US Law their violation is viewed as an absolute crime. This is to say, if one illegally breaks the confidentiality of an individual's trade secrets and disclose them regardless of whether this disclosure has done any damage to the owner or not, s/he is known as convict and is liable for the crime.

Conditions of Protection of Trade Secrets

A piece of information is regarded as a trade secret when the following conditions are met:

- 1- It is of value; trade secrets have to be valuable and counted as the comparative advantage of the owner in the competitive market. It should not also be easily recognized by the public.
- 2- It conveys a clear message; trade secrets are considered confidential and undisclosed if they have clear content and help their owner to compete with the rivals upon his comparative advantage. To put it otherwise, this data should not be ambiguous (Islami, 2009, p. 55).
- 3- It should not be unknown to others; if a piece of information is to be considered a trade secret it needs to be away from the public and the rivals and particularly it has to be regarded a commerce secret by the rivals.
- 4- Some intelligent actions have to be taken as regards the protection of its confidentiality; the owner is obliged to adopt certain policies to protect his trade secrets against possible espionage.

Iran Legal Codes

Although there are important acts for criminal protection of trade secrets in objective and real space, unfortunately the existing criminal codes in protection of industrial property are of certain deficiencies that have to be amended. This amendment is necessary for safeguarding the interests of owners of industrial properties as stipulated in the article 61 of invention registration and industrial ownership law. As long as we have such legal gaps there would be no hope for protection of the owners of trade secrets. Then we can use uncodified rules that speak of the protection of vocational secrets instead of trade secrets.

Penal Law of 1996

Unfortunately, due to the diversity of codes and rules regarding the protection of trade secrets and their heterogeneous nature there is always broad difference of ideas in judiciary centers. For example, article 648 of Penal Law of 1996 that uses the word secrets in its general sense and asserts: "If physicians, surgeons, midwives and pharmacists and all people who are of certain secrets because of their vocation and profession, reveal their patients or clients' secrets illegally, they will be sentenced to three months and one day to one year jail or be fined one million and five hundred to six million Rials". With regard to the limited scope of the violation of secrets that has been expressed in general terms, only those people would commit this crime who are in possession of certain confidential secrets due to the nature of their vocations and accordingly this is not applied to anyone who violates the confidential limits of some secrets in impertinent cases. Then judiciary authorities are confused regarding the content and implications of article 648 of penal law that only address those people who are of certain vocations that are exposed to individuals' secrets and illicitly

disclose their clients' confidential secrets and this does not include those who are revealing trade secrets without any vocational relevance and this is a major deficiency that has to be amended by the legislators.

Industrial Inventions Registration Law

Unfortunately, in industrial inventions registration and industrial ownership law there is no sign of a clear defense of the confidentiality of trade secrets. And only in article 61 of this law the criminalization of the rights resulting from the invention license in article 15 and the rights resulting from the registration of an industrial project in article 28 and rights resulting from the registration of commercial brand in article 40 has been stipulated. Although trade secrets are one of the important examples of industrial ownership, there is no mention of them in invention registration law. But in the article 62 of the aforementioned law it has been asserted that: "if the content of this law is in conflict with the rules that have been articulated in International Treaties of Industrial Ownership which have been or are ratified by Islamic Republic of Iran, the priority should be given to the treaties". It would be better if the legislator had stipulated the protection of trade secrets like other extensions of industrial ownership in the inventions registration and industrial projects law and spoke of its criminalization and criminal sanction in more coherent fashion.

Electronic Trade Law of 2003

And on the other hand, in articles 64 and 65 of electronic trade law of 2003 a number of clear codes have been enacted in defense of the legitimate and just competition in electronic transactions and the illegal acquisition of trade and economic secrets of businesses and institutes or their disclosure in electronic space have been criminalized and the domain of trade secrets has been extended to such cases as software, programs, tools and methods, and techniques and processes. Of course, if the legislator had used individuals instead of businesses and institutes the law would have been more comprehensive and could cover all violations by natural and legal entities.

Then the legislator has allowed judiciary authorities to sentence to jail and fine everyone who makes illicit efforts to have access to vocational secrets and discloses confidential trade secrets. Of course, the legislator should determine the amount of fine according to the economic value of the disclosed trade secrets and data and thus a minimum and maximum amount have been defined in the law and the maximum fine amounts to 50000000 Rials.

It should be noted that the aforementioned law is a special law and only concerns the violation of electronic trade secrets and it does not address the illicit revelation

of secrets of other types of trade. On the other hand, according to the article 75 of the aforementioned law, the violation of trade secrets in electronic transaction can done serious economic damages to commercial, economic and service businesses. Then if someone discloses trade secrets of an individual or a certain business without any intention of competition or commercial conspiracy he is not subjected to the punishments that have been stipulated in this law. The criminal sanctions of this law only address the servants of trades and businesses. The other feasible objection to this law is that it is only concerned with the acquisition and disclosure of trade secrets in electronic trades and it does not cover the violation of other crime categories regarding the trade secrets like secret theft or economic espionage.

The material principle of violation of confidentiality of trade secrets is what has been stipulated in the article 64. However, the article 75 has also addressed a particular type of violation of confidentiality. Thus, violation of confidentiality of trade secrets is of two types in electronic trade law:

General Confidentiality Violation

This crime category refers to the very act of illegal acquisition of trade and economic secrets of businesses and institutes for oneself or for disclosure in electronic space for a third person. The physical behavior of these two crimes is the same. One is acquisition in the sense of having access to something and the other is disclosure that implies helping the public to have access to a hidden thing. The inaccessibility in this context is a generic criterion and the public is not merely referring to the whole body of citizens rather it includes all people who are engaged in a certain vocation or trade (Javid Nia, 2008, p. 278). The physical behaviors of both are positive and momentary.

Special Confidentiality Violation

This type of violation as compared to the general confidentiality violation differs in respect of its conditions including the bad intention of the perpetrator. The physical behavior of this crime is exactly the same and one with the behaviors related with the previous crimes; i.e. acquisition and disclosure. The criminal context is also the same but here the perpetrator should have special intentions like competition, individual interests or doing damages to the commercial, industrial, economic and service businesses. Moreover, illegal acquisition or disclosure of trade secrets should violate the conditions that have been mentioned in employment contracts regarding the staff's commitment before the confidentiality of the vocational secrets.

Then, article 64 of electronic trade law shows that the legislator's central concern is protection of trade secrets of

the businesses and institutes and this law does not protect the rights of individual merchants and non-merchants who do not own a trade or business.

Cyber Crimes Law

The article 17 of this law reads: “Anyone who releases people’s private secrets without their permission in audio or video form via cyber or telecommunication systems for the public in a way that this may damage the fame and name of certain individuals, s/he will be sentenced to jail from 91 days to two years and be fined from five million Rials to four million Rials or both penalties”. It is needless to say that this law covers and protects the cyber and tele-communicative data and secrets. Then public releasement of trade secrets without the permission of their owner results in penalties that have been stipulated in the aforementioned article.

The Law of Implementation of the General Policies of Article 44 of Constitution

On the other hand, the legislator has codified a law that forces the state to implement the general policies of Article 44 which has been ratified and enacted by the Expediency Discernment Council of Regime. This law orders individuals to preserve the internal information of firms and businesses and stipulates certain penalties for the illegal disclosure of this information. In the clause H of article 45 of this law the legislator has banned the intervention in internal affairs or transactions of rival businesses or firms via encouragement, provocation or forcing one or more shareholders, investors, managers or staff of the rival business or firm to intervene in transactions by using their voting rights, transfer of shares, and disclosure of secrets. Moreover, in the clause K of the same article all types of manipulation of trade, financial and technological secrets for the interests of oneself or a third individual are banned. What is noteworthy in this law is that it sets bans for the manipulation of confidential secrets and information of commercial firms and businesses for the interest of oneself and third individuals. In the clauses 8 and 12 of article 61 of this law a cash penalty has been set the amount of which is decided according to the damages that are done by the breach of confidentiality of secrets to the owner. According to the aforementioned clauses of the article 61 the forbidden items in article 45 are fined by refunding the extra income and confiscation of the properties that have been bought by the money that has been made via anticompetitive processes. The articles 44 to 48 of the aforementioned law set cash penalties for the convicts who have committed the discussed offenses that range from ten million Rials to one million Rials. It would be better if the legislator had determined jail terms for the convicts because this would have increased the chance of deterrence.

It should be noted that in article 75 of this law some penalties have been forecasted for the breach of confidentiality and disclosure of trade secrets for the interest of a third individual by the staff and rival companies and business people and these penalties range from imprisonment for six months to two years and cash penalties from forty million Rials to four hundred million Rials. The basic flaw of this law is that it only addresses those who are directly obliged to protect the secrets against possible leakages and it does not cover the independent individuals and firms outside the business.

One of the other objections that are leveled against this law is that its article 45 sets certain bans against the illegal disclosure of trade secrets and illicit exploitation of internal information of trade rivals while the content of this law shows that it covers only the disclosure of trade secrets of companies and businesses not the damages that can be done to a business by individual merchants who are involved in this business via disclosure of secret data and information.

Iranian criminal laws are not also clear about trade secrets and their criminalization. Insofar as in the branch 31 of appeal court of Tehran province exonerated an employee of a medical and cyber firm who had released the firm’s data in a computer that was used in an exhibition against the conditions that were stipulated in his work contract based on the article 674 of Islamic Penal Code⁴. There is also a similar case in England law where a student who had stolen the exam paper in 1979 was exonerated and found not guilty for charges of disclosure of secret data although he was found guilty for stealing the paper itself. This shows that confidential trade information and secrets like the formula of Coca Cola cannot be stolen. This was revised in 1997 and it shows that a major part of trade secrets is practically moved in the suitcases of some employees who join the rival companies or decide to found their own companies. In some countries, this is counted as an example of information theft. In England, such behaviors are the motives for codification of civil law due to confidence absence. But legal commission regarded this ban insufficient and recommended that they are better to be subjected to the laws of illegal use or disclosure of confidential information (Elliott and Quinn. P 188). However, Iranian legislator has criminalized all types of breach of confidentiality in electronic transactions as examples of violation of trade secrets. Contrary to many crimes, the law of violation of trade secrets is of two legal elements: warning element and criminal element. Warning element refers to the legislator’s efforts for awakening of

4 Judgement no. 1269/78/12/11- File Classified as 1316/78. Branch 31 of Tehran Appeal Court.

the public regarding the criminal elements of the crime and its penalties.

The author believes that what is of paramount importance in this context is that despite the fact that protection of trade secrets is critical for building a competitive economy and the legislator have set practical sanctions for protection of various extensions of industrial properties including invention, commercial signs and the like, we are still witness to the breach of confidential trade secrets in various businesses that in some cases causes heavy losses and there is no consistency between the loss and the penalty that has been decided. There are also many uncodified dispersed laws that confuse the judiciary authorities regarding their decisions about various cases.

Criminal Protection of Trade Secrets in US

Of course, in legal systems of some countries like United States all types of information that are of commercial value for the owner and kept away from the public are regarded as trade secrets and their breach is a crime and has its relevant criminal sanction; e.g. business records, engineering of data, financial information and even costumers list. Accordingly, anyone who commits trade secrets theft as a representative of a foreign state and gets involved in an economic espionage must be sentenced to 15 years jail and 5 million dollars fine under US Copyright Law of 1831. In other cases, s/he must be sentenced to 10 years jail term and 250000 dollars fine (Title Section 18 of Copyright Law of 1832; *ibid*: 8). An example of disclosure of costumers list of a commercial institute as a trade secrets theft is US claim against Martin in 2000 who had released the list of costumers of a tourist agency and the technology of building intraocular lenses as well as the names of doctors who mostly order them (*ibid*, p. 169). Then in US law this criminal action is considered a type of theft and if it is done by assistance of a foreign element it is regarded as economic espionage.

In American legal system before 1996, the trade secrets cases were criminally prosecutable by Federal laws; these laws were codified regardless of the complicated principles of modern commerce and this is why economic espionage has not been considered a criminal action (Derafshan, p. 123). To prevent from trade secrets theft and protect technology and business transition and due to the lack of an efficient criminal protection of trade secrets and their role and place in economic growth, American legislators decided to enact the Law of Economic Espionage in 1996. This law has adopted a comprehensive approach for an efficient criminal protection of trade secrets.

The then US president William j. Clinton expressed his Protection of this law and its importance in the following

words: Act of 1996 protects trade secrets of all types of domestic and foreign trade against the possible economic espionage via legal prosecution of the convicts (*ibid*, p. 157).

According to what we have said about the trade secrets and their respective criminal sanctions, it seems that there are various legal gaps in Iranian criminal system regarding such an important issue as industrial property that is of a vital role in economic growth and development. The legislator has to conduct a thorough study of the notion of trade secrets and struggle to take positive steps towards its criminalization in line with the international treaties and documents. But in US legal system the legislator has tried to have a clear notion of trade secrets first and then proceed to set heavy criminal penalties for economic espionage and in doing so he has succeeded to reduce such crimes in the society.

Evaluation of Iran and US Criminal Sanctions of Violation of Trade Secrets

The importance and vital role of trade secrets in economic growth and development and commercial transactions between states in current conditions require an exact knowledge of the notion of trade secrets and consequently criminalization and adopting efficient sanctions for the sake of prevention of crimes and fulfilment of goals via certain influential penalties. Then, a clear law like the inventions registration law and industrial property law has to be enacted regarding the trade secrets that have not been addressed in the latter laws. Despite the enactment of the law of inventions, industrial projects and commercial brands registration in 2007 we are still in need of resorting to various legal sources like Islamic Penal Code, Cyber Crimes Law, Electronic Trade law, for determining the extensions of trade secrets. Then industrial property law's silence about trade secrets is one of the important flaws of Iranian criminal justice system.

Therefore, the criminal sanction that has been stipulated in article 648 of IPC, i.e. one year jail term and up to six million Rials cash penalty, and article 64 of electronic trade law, i.e. two years jail term and 50 million Rials cash penalty, does not suit the heavy losses that are caused by the breach or theft of confidential trade secrets. In other words, there is no proportionate criminalization as regards the criminal violation of trade secrets in Iranian penal code and the existing sanctions are insufficient and inefficient. Accordingly, it seems that criminal protection of trade secrets faces serious challenges in current situation and some actions have to be taken as to the legal gaps. And as long as a clear criminal policy has not been adopted in defense of this crucial right the fulfilment of economic growth as well as the concerns of the owners of the trade

secrets will not be possible. Meanwhile the existence of diverse and uncodified laws troubles the owners of the trade secrets.

But in US legal system there are clear laws that protect trade secrets as extensions of intellectual properties and trade secrets law is Protection ed by this legal system like other forms of intellectual property laws. Accordingly, any illegal breach of the terms of honest trade (like violation of confidentiality or unfair competition) is prosecuted immediately.

As previously said, the law of protection of trade secrets in US offers a comprehensive definition of trade secrets and by doing this covers almost every single extension of confidential trade secrets including visible and invisible data. To put it otherwise, American law offers a more comprehensive protection as compared to Iranian law. Thus, depending on the importance and role that certain trade secrets have in economic growth and development various sanctions are set for the protection of these secrets and accordingly the outcome is much more promising than what one is witness to in Iran. For example, Act of Economic Espionage of 1996 announces that if an economic espionage is done for the interests of a foreign state the convict will be sentenced to 15 years jail term and a 5 million dollars cash penalty and in other cases of the breach of trade secrets the convict will be sentenced to 10 years imprisonment and 250 thousand dollars cash penalty. Then, it is seen that in US legal system there is a remarkable consistency between the crime and penalty and this ensures the deterrence. Although heavier criminal sanctions particularly long imprisonments have heavier economic consequences for the state and the individuals and even in some cases the convict is not able to pay cash penalty and this prolongs the jail term we should never abandon the criminal sanctions in defense of confidentiality of trade secrets. Then, taking tough actions and heavier penalties against the violators of the trade secrets encourages the owners of ideas who play a decisive role in the economic and commercial development.

Therefore, one can feasibly claim based on the above considerations that US legal system is more consistent and efficient than Iran criminal justice system in dealing with the crimes of breaching confidentiality of trade secrets.

CONCLUSION

Trade secrets is one of the important branches of intellectual property rights that has been taken serious by most countries around the globe as it plays a vital role in commercial and economic development in world

economies. But unfortunately, this significant issue has not been addressed in the most important Iranian law regarding industrial property, i.e. law of registration of inventions, projects and commercial signs passed in 2007. However, there are few criminal sanctions in Iran Legal Code that protect the individual rights against the possible breach. Unfortunately, Iranian legislator has written the law of registration of inventions and industrial projects in a weak form and it seems that he was not sufficiently informed of the sensitivity of the issue. Then despite the existence of various laws in protection of trade secrets including the implementation law of general policies of Article 44 of Iranian Constitution, Penal Code of 1996, Cyber Crimes Law of 2009, Electronic Crimes Law of 2003, the judiciary authorities are confused when they are supposed to issue a verdict regarding a certain case of violation of confidential trade secrets. Since trade secrets is an important extension of industrial property it should have been taken seriously into account in the existing laws of industrial ownership but unfortunately this is not done and now we are faced with serious legal flaws and gaps in this regard. Accordingly, we need to revise our laws regarding this important issue in light of the efficient and intelligent legal codes in other countries like US Act of Economic Espionage that offers a well secured criminal Protection of the confidential trade secrets based on certain sanctions that play an important role in deterrence of these crimes.

Then Iranian legislator should struggle to codify a unique and consistent act based on clear sanctions in defense of the confidentiality of trade secrets that play a vital role in commercial and economic development. He should also set criminal sanctions against other possible criminal behaviors against trade secrets like sabotage or revealing trade secrets in various forms. Therefore, protection of trade secrets in current situation is faced with serious challenges and we need to take necessary actions to repair the deficiencies because the uncodified and inefficient laws do not address the needs of the owners of this important branch of industrial ownership.

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