LEGAL REGULATION OF COMMERCIAL SECRETS IN THE LEGISLATION OF UKRAINE
Arnold P. Kupin, Candidate of Law, Associate Professor, Associate Professor of Constitutional, Administrative and Labor Law, National University «Zaporizhzhya Polytechnic» (Ukraine).
E-mail: arnoldkupin@gmail.com
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The article analyses legal regulation of trade secret phenomenon in Ukrainian legislation as well as initiates ways of above-mentioned legislation improvement. Due to the process of information society formation in Ukraine, the issues of security and protection of rights for information resources of different access level enter into in the foreground of scientific discussions. Thus, there is intensive growth practical interest to trade secrets and other related concepts. One type of confidential information is the so-called «trade secret». The issue of protection of trade secrets is not in fact a matter of protection of information security, because one of the main characteristics that determines the mode of access to trade secrets is the ownership of this information. The article describes the development of legislation devoted to trade secret at the contemporary stage as well as emergence of essential economic and legal conditions in Ukraine for practical implementation of legal mechanisms of commercially valuable information security and protection. The above-mentioned factors determine urgency of the issue. So called “trade secret” is a king of classified information. The issue of trade secret protection at is core is not in the framework of information security; by virtue of the fact that the key characteristic that influences the access mode to trade secret is the right of ownership of this information. The definition of trade secrets given in the Civil Code of Ukraine is formulated taking into account modern international legal approaches to the understanding of trade secrets (TRIPS and NAFTA) and at the appropriate legal and technical level, although not without certain shortcomings. This definition has a cross-sectoral significance in the system of legislation of Ukraine and is applied when clarifying the content and qualifications of not only civil but also labor, administrative, criminal, procedural and other legal relations. The aim of the article is to analyze domestic legislation in order to expose the essence of trade secret and related concepts. The author determines that the establishing of information constituting a commercial secret list, which cannot be restricted to business entities access, is not sufficient. There is the need at the level of legislation to establish a special mechanism and general criteria for determining information as a trade secret. It would help citizens to exercise their right to file requests to private business corporation. During the writing of the article the following conclusions were reached. In the case of crimes against trade secrets, in fact, the criminality of the act is determined not by law, but by order of the owner of the information or the head of the enterprise, which is not a legal act. In our opinion, this situation is absurd, especially given the imperfection of the legislation governing the ownership of information. Therefore, two ways to solve the problem can be proposed, either by legislatively establishing an exhaustive list of information that can be declared a trade secret, or by abolishing criminal liability.

References

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