

CRIMINAL AND LEGAL PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN THE REPUBLIC OF SRPSKA

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Abstract: *The reform of the criminal legislation of the Republic of Srpska is the result of the process of its compliance with international conventions and EU law. However, the special part of criminal law has only partially regulated the criminal-legal protection of intellectual property rights, i.e. criminal-legal protection does not address the intellectual property rights as provided for in international conventions and as observed in comparative law. With inadequate criminal-legal protection of intellectual property rights the Republic of Srpska shall not be able to become a member of important international and regional organizations. In order to secure economic and social development, it is necessary to stimulate inventions, literature and art, and that is possible with adequate criminal-legal protection of intellectual property rights.*

Keywords: *intellectual property, criminal-legal protection, inventions, unfair competition, computer software, databases*

1. INTRODUCTION

In addition to administrative and civil protection, one of the forms of protection of intellectual property rights is criminal-legal protection. Although there are close links and similarities when it comes to this type of protection, there are certain differences in the criminal codes of individual states. These differences are caused primarily by differences in the legal systems of certain countries that certainly depend on the shape of the state and the social system, as well as cultural and historical heritage and economic relations within each country. Regarding the criminal-legal protection of intellectual property rights in the Republic of Srpska, it most certainly has its own peculiarities, which are expressed through the provisions of the Criminal Code of the Republic of Srpska [6]. In its special part, this law does not envision a separate group of offenses in the area of intellectual property rights, but within the individual groups of offenses it indeed did prescribe certain criminal offenses relating to intellectual property.

2. CRIMINAL OFFENSES OF PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

In the group of criminal offenses against the economy and payment operations the following criminal offenses relating to intellectual property are prescribed: creation of a monopolistic position in the market, violating equality in performing economic traffic, intrusion in computer systems, unauthorized use of someone else's company, samples or models, unauthorized use of another's invention and misleading consumers.

In the group of criminal offenses against the freedoms and rights of citizens the crime of prevention of printing, distribution of printed materials and broadcasting is also prescribed.

Regarding criminal-legal protection of computer programs and databases the following criminal offenses are prescribed: damaging of computer data and programs, computer sabotage, development and introduction of computer viruses, computer fraud and unauthorized access of a protected computer, computer network, telecommunications network and electronic data processing.

The largest number of offenses relates to criminal-legal protection of competition, given that a significant number of unfair appearances on the market consists of illegal use or imitations of other people's patented products, designs, trademarks and appellations of origin. "Criminal-political goals of this incrimination is the protection of equality in performing economic activities". [1] The offense of creating a monopolistic position in the market sanctions authorized person in a company or other business entity that has - contrary to law or regulation - concluded an agreement through which other companies or legal entities are limited in the free circulation of goods or services or concluded an agreement that otherwise creates a monopolistic position in the market, and thereby secures a substantial financial gain or causes considerable property damage to others.

One of the basic principles of free markets is equality of economic entities in the market, and stems the criminal offense of violating equality in performing economic transactions. This crime sanctions behavior of the responsible person who - through abuse of official position or authority - denies or limits the right to engage in the trade of goods or providing services the territory of the Republic of Srpska or puts them in a disadvantageous position compared to other undertakings in terms of working conditions and performing economic activities.

3. PROTECTION OF COMPUTERS AND COMPUTER PROGRAMS

"The emergence of computers and computer programs has undoubtedly marked the turning point in economic and social life of many countries." [2] In order to protect this very important segment of the business conduct, criminal law sanctions unauthorized deletion, changing, damaging, concealing or otherwise mode suppression of computer data or programs. Further, who ever enters, destroys, alters, damages, conceals or otherwise makes unusable computer data or programs or destroys or damages a computer or other device for electronic data processing with the intent to prevent or hinder the process of electronic processing and transmission of data relevant companies and institutions, shall be punished for a crime of computer sabotage. The criminal offense of unauthorized access to a protected computer, computer network, telecommunications network and electronic data processing will suit anyone who without authorization in violation of the protective measures included

in the computer or computer network, or unauthorized access to electronic data processing or specified data record or use.

The aim of criminal-legal protection of intellectual property is not just protection of economic entities, but also the protection of consumers, which is why the law provides for the criminal offense of unauthorized use of someone else's company, samples or models which sanctions any company that unauthorized use of someone else's company, trademark, designations of origin or the second character, deceiving customers or service users. In close relation to the above offense is also the crime of deceiving buyers, according to which each is sanctioned entities that the intention of deceiving buyers, brings into circulation products on a larger scale, with marks in that information that does not correspond to the content, origin or quality of the product, places on products which are not protected the trade-mark of protection or distributes products without designation of content, type, origin, durability or quality when such an indication is prescribed.

4. PROTECTION OF INVENTIONS

The law protects one of the oldest intellectual property rights, and that is invention. Specifically, with the increasing number of inventions increases the number of abuses of this right by unauthorized persons, which discourages inventions as one of the decisive conditions for economic development. "The basic form exists when somebody manufactures, imports, exports, offers for distribution, stores or uses in trade the products or processes protected by a patent." [5]

The specificity of this offense is reflected in the fact that it protects not only the protected patent but also the reported and as yet unprotected patent, i.e. this is a criminal-legal protection of intellectual property rights arising from the patent application. This crime offense also sanctions unauthorized disclosure of the essence of the invention, before it is published in accordance with the law, and that means in legal proceedings in the official gazette of the competent authority that decides on the right to a patent. Compulsory seizure of products that are manufactured on the basis of unauthorized use of the invention is prescribed.

One of the important economic rights is the right of exploitation of one's own copyright works. This right can be exercised in different ways depending on the type of the work, and one of the most common ways is the marketing and broadcasting. Although this right is mostly not exercised personally by the author but is often transferred to another person by agreement, the breach - regardless of the manner of exercising - is harmful to the author either directly or indirectly.

In order for an author or copyright holder to be protected in terms of his rights being implemented, the legislature has prescribed that crime is also prevention of printing, distribution of printed materials and broadcasting that protects authors from any person who unlawfully prevents the printing, sale or distribution of books, magazines, newspapers or other printed things, or producing and broadcasting radio or television programs. Although this criminal offenses has been prescribed within the group of criminal offenses against the freedoms and rights of citizens, it also indirectly protects the intellectual author from adverse consequences in the exercise of his property rights in a work made by the author.

5. CONCLUSION

The criminal legislation of the Republic of Srpska, even after the completion of the reform, is not fully in line with international conventions and the law of the European Union (TRIPS and EU Directives), which obliges Member States to a detailed and complete legal protection of intellectual property rights. The fact that the law does not prescribe a specific group of offenses to protect the intellectual property rights, as is done in the Criminal Code of the Republic of Serbia, [7] suggests that the law has not devoted the necessary attention to this very important group of crimes. By leaving certain intellectual rights without criminal-legal protection has discouraging effect on the development of innovation, art and literature, as the major motors of economic and social development. Without complete and comprehensive protection of intellectual property rights Republic of Srpska shall not be able to become a member of international and regional organizations, as it aspires.

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