CIVIL-LAW STRUCTURE OF PERSONAL CONFIDENTIAL INFORMATION UNDER THE LEGISLATION OF UZBEKISTAN

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Abstract. This article deals with issues on the concepts of personal confidential information, variety of confidential information, such as the protection of state secrets, commercial secrets and personal confidential information. In addition, the analysis of the civil-law structure as personal confidential information is conducted together with personal publicly available information, features of their protection. The regard to personal confidential information, civil-legal structure can be defined as a collection of personal confidential information, based on the civil law and the actual control of the owner, opportunities of implementing certain actions with them: both on confidentiality of the personal information or allowing an access and use of such personal confidential information.

Keywords: Information Society, confidential information, state secret, commercial secret, personal publicly available information, civil-law responsibility, personal confidential information.

After independence, the Constitution of the Republic of Uzbekistan proclaimed the right to privacy, personal and family secret, protection of honor and good name, everyone's right to privacy of correspondence, telephone conversations, postal, telegraph and other messages, as well as the inadmissibility of the collection, storage, use and dissemination of information about the private life of an individual without his consent.

Information about citizens is collected by all kinds of organizations at various levels, starting from the birth and ending with death. For example, when applying for a passport, one goes to a medical institution, etc. These rules have been further developed in the law of the Republic of Uzbekistan "On informatization"; in this law information is divided into public and information resources with limited access. Information resources with limited access include confidential information (by legislation) or information to which access is limited to owners of the information resources (Law of the Republic of Uzbekistan dated 11.12.2003, №560-II «On Informatization", Article 67), i.e. personal confidential information held not only in the database of legal entities, but also in the database of physical persons.

The law classifies the main part of personal information as confidential. This means that the collection, storage, use and dissemination of these data is not permitted without the consent of the individual, and is only possible on the basis of a court decision. The law establishes that personal confidential information cannot be used to cause pecuniary and material damage to citizens.

Personal confidential information may include information about political views, philosophical, religious and other beliefs, on belonging to a particular political party, to the social movements and associations, details of one’s personal life, including its intimate side and sexual behavior, about nationality, physical and mental health, consumption of alcohol, drugs and toxic substances, as well as information about the removal of the conviction from official records.

Before revising the personal confidential information, it would be wise to consider the concept of "confidential information". "Confidential information is a documented information, access to which is limited in accordance with the law" (Law of the Republic of Uzbekistan dated 11.12.2003, №560-II «On Informatization", Article 67); it follows that the confidential information includes state secrets, commercial secrets and information, access to which is restricted by the owners of the information resources.

Alekseev S. S. gives the following definition of the “legal structure” as “the most common way to define it as a system of regulation, expressed in a complex legal means that characterize a special combination of interacting permissions, prohibitions, as well as positive net binding and creating a special focused regulation" (Alekseev, 1995, p. 239).
Islamov Z. M. argues that the concept of “legal structure” is increasingly adopted in the field of legal science. While studying the legal system, it was revealed that each area is characterized by a specific regulatory regime, and it is just a legal peculiarity of the area focused; it became apparent that the concept under consideration expresses the governing party of legal reality (Islamov, 1998, p. 231).

Here it is necessary to accept and pay attention to the fact that each branch, based on its individual approach, has the specific features of civil-law structure.

It should be noted that the state as a guarantor of the rights and freedom of citizens, does not highlight these or other rights of citizens, but allows citizens to indicate those objects that they would like to restrict or prohibit from public use; here state plays the role of the state body protecting the rights of citizens which would be determined by the citizens individually. In addition, the legislator determines that the information resources and information systems can be public and private property.

In addition, it should be stressed that the legislator does not define the legal structure for the protection of personal confidential information, and there is a "presumption of information accessibility", as the saying goes, "everything which is not forbidden is allowed"; it follows that the personal confidential information, gently said, is inadequately protected and personal confidential information can leak out. The subjects of civil-law relations should be aware of the "presumption of information accessibility", that is the right of every subject to have free access to information. If the subject has not taken the appropriate measures to protect personal sensitive information, and information became the property of other subjects, in a good faith, they may not require confidentiality and prosecution, because they have not taken appropriate actions.

The private life of a person is not only an individual but also a social value. Therefore, any intrusion into this area causes damage to the individual and society as a whole. However, not all information about the private life of the individual is of a confidential nature, the disclosure of which would be undesirable for the individual. In practice, this is carried out as follows: if there are direct references in the law – then dissemination of such information cannot be done, in the absence of such reference – can be (Krasavchikova, 1994, pp. 5-6)

Based on the above said, the following aspects of personal confidential information can be highlighted: personal, family, banking, notary, patient confidentiality, secrecy of correspondence, etc. All these aspects of personal confidential information are subject to regulation in different normative legal documents. These types of secrets and rights to them have a number of characteristics: express the belonging of certain benefits to specific individuals and are characterized by isolation of individuals in these respects – their autonomy, equality, in breach revested, usually, in court actions (Malenina, 1991, p. 13)

There are quite a number of criteria for the classification of the individual rights of the citizen: stability, subject matter, content (Krasavchikov, 1966, p. 56); link with the property relations, the communication structure of participants, the object of regulation (Krasavchikova, 1983, p. 10), etc. At the same time, the main component of personal confidential information in the civil-law structure is its protection from outside intrusions.

The composition of the civil-law structure of personal confidential information consists of three elements: regulatory, security and protective.

The regulatory element is expressed in the regulation of the conduct of third parties, which by virtue of their professional functions are attached to the individual confidential information of the citizen and should not intrude into its secrets.

The security element means the provision to the subjects of legal relations subjective rights and legal duties with using the measures of the property and professional nature.

The protective element comprises two measuring categories: protection measures and sanctions.

Protection measures are used to revest the victim's conditions that existed prior to the violation, and sanctions effect against the transgressor, causing negative consequences in his personal or proprietary environment.

Ways to protect the rights and interests of the owner of the personal confidential information have a number of features. They primarily manifest in recognizing a specific court subjective right to privilege or privacy. The need to use such method of civil protection occurs when there is no direct violation of a particular right of a person, but the existence of this right is claimed by another interested person. There may be cases of challenging the subjective personal rights as non-property and property-related as well.
Further, an important feature of the regime of personal confidential information is revesting the condition that existed before the violation of law. Negation is a revesting tool that is informing the people among which the information was disseminated about the fact that their action was found inappropriate by the court. The negation form can be any: the publication, presentation, display, etc. Thus, thanks to a negation, in whatever form it was expressed, the condition that existed before the violation of a law is revested. This method is used in conjunction with the protection of property rights, or in combination with a method such as the suppression of acts infringing the right.

The current legislation does not establish special reasons of legal liability for the use of information collecting methods that do not cause harm to the health, economic and moral interests, such as: supervision in public places (streets, squares, shops) without intrusion into private homes; photographing in public places; fixing conversations on the technical means in public places, surveys of third parties, and so on. However, in such cases, a citizen under Article 13 of the Civil Code of the Republic of Uzbekistan has the right to self-defense. The person may take proportionate to infringement ways to protect himself and even harm to the person, justified by the situation, who is collecting information about him in such a way. It is possible to raise a question of civil-legal protection of the dignity of the individual, personal inviolability, honor and good name, business reputation (Articles 99-100, 10211022 of the Civil Code of the Republic of Uzbekistan). This provision is applicable in cases of protection of business reputation of legal entities. Thus, the gathering information about third parties without their knowledge may lead to legal liability for infringement of their personal interests.

Article 12 of the Universal Declaration of Human Rights states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks", that is, each person is free to choose how to live, he is the master of his own destiny and free to dispose of it as he wants to, and in our case has the right to dispose of personal confidential information based on his interests, namely, he can protect or take steps to protect his personal confidential information from others, and only depends on him whether the personal information is considered sensitive or not.

In most cases, some people secure their past (criminal history, or information on birth outside marriage, etc.); if such information is revealed, will create discomfort (some unpleasant moral feelings, the feeling of inferiority) and prevents self-realization in society. Therefore, a person tries to protect (defend) from third parties certain personal confidential information so that without his knowledge or consent, third parties couldn’t learn and make this information available for public or certain parties. Here I would like to emphasize that third parties cannot interfere in personal confidential information and enforce disclosure of this information if it is not connected with the public interest, or at the request of the person concerned. In some cases, it happens that the employer asks for information that the person does not want to reveal (for example, information on criminal records), the employer may impose conditions that the applicant would disclose such information, and the potential employee has the right to refuse to disclose the employer personal confidential information (in consequence of which the employer has the right to reject, respectively, to hire the employee).

Due to the demand of the time, the legislator is trying to create mechanisms throughout the legal guarantees of human rights in the area of privacy of information. During the Soviet regime, the employer made a special log of the reasons for dismissal, and what disciplinary measures have been applied to the employee. This has caused human suffering and certain inner discomfort, because it always hung "stigma" shame on him, colleagues "poked" with fingers, stressing on his incompetence and unprofessionalism. In connection with providing legal guarantees on privileges of personal confidential information, the legislator has determined that the "grounds (reasons) for the termination of the employment contract in the work book shall not be written. The work book shall not include information on disciplinary actions"(Instruction on the procedure of employment record books dated 08.29.1998 №402, 2001). Such attitude towards the person does not hurt his feelings, does not reject from society, the law, as far as possible, and discarded those ideas that would cause discomfort to citizens. In our view, such an attitude to the citizens should be strategically oriented to the domestic and international lawmakering.

In addressing the protection of personal confidential information a number of issues may occur: whether to limit the personal information; whether it is appropriate to limit third parties of personal confidential information; what are the laws that determine personal confidential information. To these and other questions
one can answer as follows: the rights of individual citizens should not be infringed; whether feeling of discomfort are unacceptable (any inconvenience of certain adverse conditions for life, any anxiety) due to the leakage of any information about one’s personal life, creating unfavorable conditions of life, both in moral and material terms.

We believe, with regard to personal confidential information, civil-legal structure can be defined as a collection of personal confidential information, based on the civil law and the actual control of the owner, opportunities of implementing certain actions with them: both on confidentiality of the personal information or allowing an access and use of such personal confidential information. These features of the civil-law structure of personal confidential information should be considered in the development of theoretical and practical activities.

References
Tashkent: “Iktisodiyot va khukuk dunyosi” nashriyoti.