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A COMPARATIVE ANALYSIS OF CRIMES CAUSING UNFAIR COMPETITION IN THE CRIMINAL LEGISLATION OF CIS COUNTRIES: THE CASES OF AZERBAIJAN, RUSSIA AND BELARUS

Açar sözlər: haqsız rəqabət, istehlakçı, kommersiya sirri, kommersiya casusluğu, vicdanlı rəqabət.

Ключевые слова: недобросовестная конкуренция, потребитель, коммерческая тайна, коммерческий шпионаж, добросовестная конкуренция.

Keywords: unfair competition, consumer, commercial secret, commercial espionage, fair competition.

I. Introduction

A review of the historical evolution of the concept of “unfair competition” indicates that its earliest origins may be traced to the Roman action *Actio servi corrupti*, which protected masters against attempts to induce their slaves to disclose trade secrets. Under this mechanism, a person who corrupted a slave and thereby caused harm to the master’s professional interests was required to pay double damages [4, p.41].

In the legal domain, the notion of unfair competition was first articulated in France in the 1850s, as a response to the adverse effects of

unrestricted commercial freedom following the revolution. Although initially intended to regulate relations among merchants, unfair competition law gradually shifted toward safeguarding broader public interests. The Sherman Act of 2 July 1890 regarded as one of the earliest legislative instruments addressing unfair competition which declares unlawful any combinations or clandestine arrangements intended to restrain trade. Persons who enter into or participate in such agreements may incur criminal liability in the form of a fine not exceeding five thousand dollars, imprisonment for up to one year, or both [18]. The Sherman Act therefore represents not only the first statutory framework addressing unfair competition but also one of the earliest legal acts providing for criminal liability for conduct giving rise to unfair competition.

In contemporary criminal legislation across many jurisdictions, including CIS member states, certain acts that result in unfair competition have been criminalized. However, these offenses are generally subsumed under the broader category of “crimes in the sphere of economic activity.”

Given that “economic activity” encompasses diverse areas of social relations, it has become

necessary to differentiate certain offenses within this sphere into a distinct chapter based on their specific legal object.

Any analysis of criminal liability for acts leading to unfair competition must begin with identifying which offenses fall within this category. Scholarly opinion varies on the classification and systematization of crimes in the field of economic activity, as well as on whether particular offenses should be regarded as manifestations of dishonest conduct within competitive relations.

For instance, E. Y. Pospelova distinguishes offenses infringing the consumer's rights of ownership, use, and disposal (Art. 159 RF CC); offenses violating the right to receive quality goods and services or reliable information about them (Arts. 180, 181, 184 RF CC); and offenses encroaching upon the safety of goods, works, and services (Arts. 215-1, 238 RF CC). This approach is controversial, as it aggregates offenses with fundamentally different legal objects, namely, different categories of protected social relations into a single group.

N. A. Lopashenko, by contrast, classifies the relevant offenses according to their immediate legal object and singles out those infringing relations based on the principle of fair competition. This group includes offenses under Articles 178, 180, 182, 183, and 184 RF CC.

S. S. Vitvitskaya and A. A. Vitvitskiy proposes grouping "offenses involving violations of free-competition rules" under Articles 176–180, 182–184, 187, 195–197, and 200 RF CC.

A. E. Zhalinski includes within the category of offenses against the lawful order of competition the conduct criminalized under Articles 178, 179, 180, 181, 182, 183, and 184 RF CC [12, p.117].

These divergent doctrinal perspectives demonstrate the absence of a unified approach to classifying offenses giving rise to unfair competition.

In our view, determining whether a particular act should be regarded as one that causes unfair competition requires establishing the correlation between the relevant criminal law provisions and the rules of competition law.

II. Criminal and legal characteristics of the act of misleading and deceiving customers

In the legislation of the Republic of Azerbaijan, acts constituting unfair competition are regulated under the Competition Code, whereas criminal conduct giving rise to unfair competition is addressed in the Criminal Code.

Conversely, the Turkish Commercial Code incorporates both civil-law acts constituting unfair competition and the corresponding criminal offenses within a single chapter titled "Unfair Competition."

The incorporation of this approach into the legislation of other states, including that of the Republic of Azerbaijan, and the consolidation of the relevant offences under a unified chapter titled "Crimes Causing Unfair Competition," would facilitate greater systemic coherence within criminal legislation and enable a clearer delineation of criminal acts that give rise to unfair competition.

An examination of the Competition Code of the Republic of Azerbaijan demonstrates that misleading or deceiving consumers is expressly recognized as a form of unfair competition [3].

Under the criminal legislation of the Republic of Azerbaijan, the act of deceiving consumers, as well as producing or selling goods of substandard quality, is classified among the offences regulated in the chapter on crimes in the sphere of economic activity of the Criminal Code.

The concept of "deceiving consumers," as set forth in the disposition of the relevant criminal norm, encompasses conduct involving the substantial misleading of consumers with respect to the quantity, calculation, weight, or consumer characteristics and quality of goods (or services)

by entities engaged in the sale of goods or the provision of services, including individuals registered as sole proprietors in commercial or service activities.

The principal direct object of this offence consists of the social relations safeguarding economic interests associated with the consumption of material goods in the areas of trade and household services. The additional direct object includes social relations that ensure the protection of consumers' property interests, health, and life [11, p. 42].

It is submitted that the existing formulation of the disposition is legally deficient. Consumer deception inherently arises within the context of entrepreneurial activity carried out by legal entities or individual entrepreneurs. Under applicable legislation, entrepreneurial activity consists of several distinct components. To ascertain the scope of "entrepreneurial activity," reference must be made to Article 13 of the Civil Code of the Republic of Azerbaijan, which defines such activity as independently conducted activity aimed at obtaining profit (or income, in the case of individual entrepreneurs) through the use of property, the production and/or sale of goods, the performance of work, or the provision of services [2].

This material norm also confirms that the performance of work, alongside the production and sale of goods (commodities), constitutes an independent category within entrepreneurial activity, and that the regulatory mechanisms governing these activities are separately established.

Furthermore, the Law of the Republic of Azerbaijan "On Protection of Consumer Rights," which serves as the principal legal act in the field of consumer protection, defines a consumer as a person who uses, purchases, or orders goods, work, or services or intends to do so for personal needs. Notably, the concept of "work" is expressly distinguished within this definition from the concepts of "goods" and "services."

Moreover, the disposition of the governing material norm provides that significant deception of consumers forms a basis for criminal liability. This formulation, however, appears flawed both legally and semantically. Rather than employing the expression "significant deception," the disposition would more accurately reflect the objective elements of the offence if it were formulated as "when the deception of consumers results in significant damage."

An examination of the criminal legislation of the Russian Federation reveals that Article 200 of the Criminal Code formerly imposed criminal liability for deceiving consumers. This provision was subsequently repealed by the Federal Law of 8 December 2003.

The accompanying explanatory note to the draft legislation indicated that administrative liability had already been established for acts of consumer deception and violations of advertising law, and that such administrative measures were deemed sufficient. Nonetheless, the assertion of complete decriminalization is untenable, as such conduct may still fall within the ambit of fraud under Article 159 of the Criminal Code of the Russian Federation [15, p. 95].

It is noteworthy that Article 200 had been applied extensively in practice over several decades. In the years immediately preceding its repeal, official statistics on the offence of deceiving consumers were as follows:

- 1998: 44,000 cases
- 1999: 63,700 cases
- 2000: 85,000 cases
- 2001: 92,200 cases
- 2002: 80,900 cases [13, p. 92].

These figures indicate that the consumer market represents a central sector of the modern Russian economy, and that a significant proportion of economic crimes are committed within this sphere. The primary competitive struggle among market participants occurs in this sec-

tor, frequently employing unlawful, and at times criminal, methods. The prevalence of such offences is facilitated in part by limited state oversight of this economic domain. Accordingly, addressing criminality in the consumer market is recognized as a strategic priority, given the substantial harm such acts cause to both public and private interests. The statistical data further demonstrate that offences involving consumer deception have exhibited a persistent upward trend, highlighting the growing impact on consumer markets [13, p. 93].

From this perspective, the decriminalization of consumer deception constitutes a deficiency in Russian criminal law. The designation of the act as an administrative offence does not suffice to justify its removal from the criminal code. Administrative offences and crimes differ in their legal nature and degree of social danger, with the critical distinguishing factor being whether the conduct results in significant harm. Consequently, the removal of such conduct from the criminal law framework cannot be regarded as an effective measure in the humanization of criminal policy.

Similarly, the Criminal Code of the Republic of Belarus previously included provisions imposing liability for deceiving consumers (Article 257). Unlike Russian legislation, the Belarusian provision did not specify particular forms of deception. Legal scholars have interpreted “deception of consumers” as conduct aimed at obtaining from citizens sums exceeding the value of goods or services, or at intentionally misrepresenting the quality or quantity of goods [9, p. 328]. Criminal liability arose where significant harm was caused, defined as at least half of the base value established at the time of the offence or where the individual had previously been subject to administrative sanctions for the same conduct.

This provision attracted scholarly criticism, with some commentators contending that estab-

lishing a minimal damage threshold of half the base value undermined recognition of the act’s social danger. In 2024, Article 257 of the Belarusian Criminal Code was repealed.

Thus, until 2024, Belarusian law imposed stricter sanctions than Russian law with respect to liability for deceiving consumers; however, presently, in both jurisdictions, such conduct is treated solely as an administrative offence. Unlike Russian legislation, Belarusian law, however, retains criminal liability for the deliberate disclosure of false information regarding goods, work, or services. Notwithstanding academic criticism, maintaining criminal liability in circumstances that endanger human life or health remains justified as a formally recognized criminal offence [16].

III. Analysis of the crime of trade secret disclosure

The disclosure of information pertaining to trade secrets constitutes one of the criminal acts that may give rise to unfair competition. The illegal acquisition or disclosure of trade secret information, as regulated within the chapter on crimes in the sphere of economic activity of the Criminal Code of the Republic of Azerbaijan, represents a contemporary issue of significance in both criminal law and criminal law theory.

Under Article 202 of the Criminal Code of the Republic of Azerbaijan, the unlawful obtaining or disclosure of information classified as a commercial or banking secret results in criminal liability when committed under the conditions established by the provision [1].

This provision represents a notable innovation in the criminal legislation of the Republic of Azerbaijan. In a market economy, economic entities may incur substantial harm if their technical, production, or other proprietary information is unlawfully acquired or used by competing entities. Accordingly, the inclusion of statutory provisions establishing criminal liability for the

unauthorized acquisition and disclosure of trade secret information constitutes an important measure for safeguarding the legitimate interests of market participants [6, p. 110].

Legislation defines a trade secret as information concerning the production, technological, managerial, financial, or other activities of legal or natural persons, disclosure of which without the owner's consent could cause detriment to their lawful interests [5].

Although Article 55 of the Turkish Commercial Code enumerates among acts giving rise to unfair competition the conduct of "disclosing trade secrets or directing others to acquire them," it does not provide a definition of a trade secret. Instead, the concept is addressed together with production secrets in Article 62 of the Code. Notably, neither statutory law nor doctrinal sources provide a precise definition, often emphasizing the inherent difficulty in defining the concept and typically identifying its content through enumeration of its constituent elements [7].

The doctrinal foundation of "trade secret" as a legal concept was initially established in the 1868 Massachusetts case *Peabody v. Norfolk*, subsequently extending to other states and ultimately codified in 1979 in legislation applicable across all U.S. states. In this case, the court concluded that the unlawful acquisition and use of an employer's production secrets by an employee or third party constitutes an act that gives rise to unfair competition. This decision laid the doctrinal groundwork for the trade secret concept, which has since been recognized in both legislation and judicial practice [17, p. 708].

Various legal regimes have provided differing definitions of trade secrets. For example, under Section 4 of the *Uniform Trade Secrets Act* (intended for interstate application), a trade secret encompasses any formula, pattern, compilation, program, device, method, technique, or process that: (i) derives independent economic

value from not being generally known or readily ascertainable by others through lawful means, and (ii) is subject to reasonable measures to preserve its secrecy. Unauthorized use or disclosure of such information may confer an economic advantage on others [19].

The unlawful acquisition of trade secrets is commonly referred to in legal scholarship as "commercial espionage." Historical instances of commercial espionage date back to early human civilization. A notable example is documented in Chinese chronicles, where a Chinese prince, during an overseas mission, concealed silkworms inside a decorated hat and subsequently transferred them to India, thereby undermining China's monopoly on silk production. This incident is widely regarded as a classical illustration of commercial espionage, dating to approximately the 15th century BCE [8; 20].

Historically, commercial espionage has been recognized as one of the most serious forms of unfair competition, and criminal liability for such acts has been established in the legislation of civilized states. A pertinent example is Article 254 of the Criminal Code of Belarus, titled "Commercial Espionage," whose provisions are substantially analogous to those of Article 202 of the Criminal Code of the Republic of Azerbaijan.

In contrast to the legislation of the Republic of Belarus, Article 202 of the Criminal Code of the Republic of Azerbaijan establishes criminal liability not only for the unlawful acquisition of information constituting a trade secret, but also for its unauthorized use or disclosure for personal gain or other improper purposes, provided that such acts result in substantial harm.

The social danger of this offence is corroborated by empirical evidence. A sociological study conducted by the "Head Hunter Ural" research service surveyed 1,597 residents of Yekaterinburg, revealing that more than half admitted to taking confidential corporate information upon

changing employment. Approximately 9% acknowledged willingness to sell company secrets to competitors. The study also highlighted that most employees considered the intellectual output of their work partially their own, with only 10% acknowledging exclusive ownership by their employer. Nearly 40% admitted to taking their individual work, 19% to transferring unique team-created methodologies, and 13% to copying client databases and partner contacts. Such conduct was most prevalent among legal professionals, marketers, managers, system administrators, industrial designers, and engineers [12, p. 182].

Accordingly, combating commercial espionage recognized as one of the most socially hazardous forms of unfair competition must primarily rely on criminal law enforcement mechanisms.

Under Part 1 of Article 183 of the Criminal Code of the Russian Federation, the objective element of the offence consists of acts aimed at collecting information constituting commercial, tax, or banking secrets through theft of documents, bribery, threats, or other unlawful methods. The essential elements of the objective side include both the acts directed at information collection and the manner in which the offence is committed, such as theft, bribery, threats, or unauthorized access to computer systems.

Doctrinal interpretations vary regarding the notion of “collection of trade secret information.” B. V. Voljenkin defines collection to encompass theft of documents or other information carriers, obtaining such information through bribery, threats, or extortion (or attempted thereof), interception of communications, unauthorized access to documents, copying, use of listening devices or other technical means, and unauthorized access to computer systems [14, p. 471]. Voljenkin’s approach seeks to concretely enumerate methods of acquiring trade secret information.

Other scholars, by contrast, adopt a broader conception. For instance, A. F. Jijalov interprets “collection” as any unlawful means of acquiring such information [10, p. 11].

Part 1 of Article 183 of the Russian Criminal Code limits the object of theft to documents containing commercial, banking, or tax secrets. However, the absence of a legal definition for “document” complicates the proper qualification of the offence and risks an overly narrow interpretation. Voljenkin notes that such information may exist in other forms, including drawings, models, diskettes, industrial samples, invention formulas, technologies, and other physical media any representation of information through symbols, depictions, signals, technical solutions, or processes. Therefore, the act of collecting such information should be understood broadly to include theft of both documents and other information carriers. The proposed amendment added the phrase “...through theft of documents and other carriers of information...” to Part 1 of Article 183 is thus a considered improvement [12, p. 193].

Unlike the Azerbaijani Criminal Code, Russian legislation specifically identifies the persons who may incur liability for unauthorized use or disclosure of trade secret information (Article 183.2, Russian Criminal Code), particularly when committed by individuals to whom the information was entrusted or who became aware of it in the course of professional or official duties. The Azerbaijani provision, by contrast, does not specify such subjects and does not treat a “special subject” as a necessary condition for liability.

IV. Conclusion

These observations indicate that, in the criminal codes of the Republic of Azerbaijan, the Russian Federation, and the Republic of Belarus, the establishment of a distinct chapter on “Crimes Giving Rise to Unfair Competition” within the

section on economic crimes and the inclusion therein of the two offences examined herein, namely (i) deceiving consumers or producing and selling substandard goods, and (ii) unlawful acquisition or disclosure of trade secret information would enhance the systemic coherence of criminal legislation and clarify the range of acts constituting unfair competition.

Furthermore, in light of the issues identified and the proposed solutions, it follows that, prior

to any consideration of decriminalization, it is essential to evaluate the social danger of such conduct using existing statistical data, and to align criminal law norms with competition law principles. This approach represents a key strategy for the effective prevention and prosecution of economic crimes in this area.

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Hüseynzadə Hicrət Rəcəb oğlu,
Bakı Dövlət Universitetinin Cinayət hüququ və
kriminologiya kafedrasının müəllimi

**MDB ÖLKƏLƏRİNİN CİNAYƏT QANUNVERİCİLİYİNDƏ HAQSIZ RƏQABƏTƏ
SƏBƏB OLAN BƏZİ CİNAYƏTLƏRİN MÜQAYİSƏLİ TƏHLİLİ: AZƏRBAYCAN,
RUSİYA VƏ BELARUS NÜMUNƏSİNDƏ**

XÜLASƏ

Bazar iqtisadiyyatına keçid edən ölkələrin, xüsusilə Müstəqil Dövlətlər Birliyinə daxil olan ölkələrin cinayət qanunvericiliyində iqtisadi fəaliyyət sahəsində olan cinayətlər, o cümlədən bazarda haqsız rəqabətin yaranmasına səbəb olan cinayət əməlləri xüsusilə seçilir. “Haqsız rəqabətə səbəb olan cinayətlər” fenomeni MDB ölkələrinin cinayət qanunvericiliyində ifadə olunmasa da bir sıra ölkələrin, o cümlədən Türkiyə Respublikasının qanunvericiliyində ifadə olunan bu anlayış haqsız rəqabət cinayətlərinin dairəsini müəyyən edir. Bu baxımdan MDB ölkələrinin cinayət qanunvericiliyində iqtisadi fəaliyyət sahəsində törədilən cinayətlər fəslində “haqsız rəqabətə səbəb olan” cinayətlər fəslinin təsnifləşdirilməsi və bu qrupa aid cinayətlərin dairəsinin müəyyən edilməsi zərurəti yaranmışdır.

İstehlakçıları aldatma və ya pis keyfiyyətli məhsul istehsal etmə və satma əməli, o cümlədən kommersion sirri olan məlumatları qanunsuz yolla əldə etmə və ya yayma cinayətinin tövsifi və cinayət-hüquqi xüsusiyyətlərinin təhlili müasir dövrdə cinayət hüququnun aktual məsələlərindən biridir.

Bu məqalədə “haqsız rəqabət” məfhumunun mahiyyəti, iqtisadi-hüquqi kateqoriya kimi “haqsız rəqabət” məfhumunun tarixi inkişafı, haqsız rəqabətə səbəb olan əməllər kimi istehlakçıları aldatma və ya pis keyfiyyətli məhsul istehsal etmə və satma əməlinin və kommersion sirri olan məlumatları qanunsuz yolla əldə etmə və ya yayma cinayət əməlinin cinayət qanunvericiliyində yeri və cinayət-hüquqi xüsusiyyətləri, Müstəqil Dövlətlər Birliyinə daxil olan bir sıra ölkələrin cinayət qanunvericiliyində haqsız rəqabətə səbəb olan cinayət əməllərinin müqayisəli təhlili, o cümlədən haqsız rəqabətə səbəb olan cinayət əməllərinin ifadə olunduğu hüquq normalarının dispoziisiya quruluşunda mövcud olan qüsurlar və bu qüsurlarla bağlı təkliflərə, həmçinin “haqsız rəqabətə səbəb olan cinayətlər” fəslinin cinayət qanunvericiliyinə daxil edilməsinin zəruriliyi, o cümlədən bu kateqoriyaya daxil olan əməllərinin kriminallaşdırılması və dekriminallaşdırılması məsələlərinə nəzər salınmışdır.

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**СРАВНИТЕЛЬНЫЙ АНАЛИЗ НЕКОТОРЫХ ПРЕСТУПЛЕНИЙ, ВЫЗЫВАЮЩИХ
НЕДОБРОСОВЕСТНУЮ КОНКУРЕНЦИЮ В УГОЛОВНОМ ЗАКОНОДАТЕЛЬСТВЕ
СТРАН СНГ: НА ПРИМЕРЕ АЗЕРБАЙДЖАНА, РОССИИ И БЕЛАРУСИ**

РЕЗЮМЕ

Переход стран к рыночной экономике, особенно государств, входящих в Содружество Независимых Государств (СНГ), обусловил выделение в их уголовном законодательстве преступлений в сфере экономической де-

тельности, в том числе деяний, приводящих к возникновению недобросовестной конкуренции на рынке. Хотя феномен «преступлений, вызывающих недобросовестную конкуренцию» прямо не выражен в уголовном законодательстве стран СНГ, понятие, сформулированное в законодательстве ряда государств, в том числе Турецкой Республики, позволяет очертить круг преступлений, относящихся к категории преступлений в сфере недобросовестной конкуренции. В этом контексте возникает необходимость классификации главы «преступления, вызывающие недобросовестную конкуренцию» в рамках главы о преступлениях в сфере экономической деятельности в уголовном законодательстве стран СНГ, а также определения круга деяний, относимых к данной группе.

Обман потребителей или производство и сбыт товаров низкого качества, а также незаконное получение или распространение сведений, составляющих коммерческую тайну, являются одними из актуальных вопросов современного уголовного права.

В данной статье рассматриваются сущность понятия «недобросовестная конкуренция», историческое развитие этого понятия как экономико-правовой категории, место и уголовно-правовые особенности деяний, вызывающих недобросовестную конкуренцию, таких как обман потребителей, производство и сбыт товаров низкого качества, а также незаконное получение или распространение сведений, составляющих коммерческую тайну. Представлен сравнительный анализ преступлений, вызывающих недобросовестную конкуренцию, в уголовном законодательстве ряда стран СНГ, выявлены недостатки, существующие в диспозициях правовых норм, предусматривающих такие преступления, и даны рекомендации по их устранению. Кроме того, рассматривается необходимость включения главы «преступления, вызывающие недобросовестную конкуренцию» в уголовное законодательство, а также вопросы криминализации и декриминализации деяний, относящихся к данной категории.

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