TRADE SECRETS IN INTERNATIONAL LEGAL INSTRUMENTS*

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With the increase and development of commerce, trade secrets have become the sensitive nerve and cornerstone of economic life, thus influencing the national economy by pushing its growth and prosperity rates. It had a prominent role in opening the horizons for further progress in the commercial, industrial, technical, organizational, and administrative fields.

Introduction

Trade secrets are considered a branch of intellectual property in many of the legislations and international agreements organizing them, such as the Jordanian law No. 15 of 2000 regulating them under the law of unfair competition and trade secrets the Egyptian which is part of the Egyptian Intellectual Property Protection Law No. 82 of 2002, and the American legislation, many of whose laws are considered to be among the best and strongest laws regulating trade secrets, such as: the US Malicious Act Code, the US Espionage Act 1996, and the agreements regulating trade secrets, the Paris Convention for the Protection of Industrial Property, and the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement.

The protection of trade secrets forms part of the general concept of unlawful competition and is based on special provisions regarding the protection of confidential information. It is noticeable that there is no unified legal system that regulates trade secrets.

This essay will try to answer the following questions: What is meant by a trade secret? Have the legislations regulated the subject of trade secrets by referring to them in the general rules? Or have these legislations put in place provisions specific to trade secrets? The study of the subject imposes other questions related to the conditions of these secrets, especially the objective ones: What are these conditions? And what kind of protection is provided to them? The main problem that this article deals with is the study of the legal regulation of trade secrets, as well as the effectiveness of the provisions established in the legislations under comparative study in providing appropriate protection for trade secrets.

1. Introducing trade secrets

In conventions and legislations, different terms have been used for trade secrets, and the jurisprudence has also differed regarding the names of trade secrets (Al-Ibrahim 2012, 22; Al-Sagheer 2003, 6). Example, this include *information undisclosed*, *savoir faire* (Sundus Muhammad 2013), and the term used in this essay, *trade secrets*, which will be

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adopted because it is the most commonly used among those dealing with commercial activity.

A definition of trade secrets had to be singled out in each of the compared legislative systems in order to reach an integrated definition of trade secrets.

In American law, the definitions of trade secrets have varied, because the system of these secrets is derived from more than one legislation, and each of these legislations has its own definition. The UTSA (The Uniform Trade Secrets Act) provides the following imprecise definition of the types of information that are subject to its protection (Quinto & Singer 2009, 3):

"Trade Secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

1. derives independent economic value, actual or potential from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Restatement of Tort 1939 defines trade secrets narrowly, indicated in Section 757, according to which trade secrets are: *"Any description, design, style, or group of information that is used in the work and gives its owner the opportunity to obtain an advantage in the face of competition from those who are ignorant of it or have not previously used it."*

In Egypt, the Egyptian legislator did not define trade secrets even though it regulated their provisions in both Article (66) of the Trade Law No. (17) of, and in Articles 55-62 of Chapter Three of Book One of the Law on Intellectual Property Protection No. 82 of 2002 (Sundus M. Qasim 2013,4).

As for the Jordanian and Palestinian legislation, they presented trade secrets in the law of unlawful competition and trade secrets and in the draft Palestinian property protection law, as a general and comprehensive concept when they considered it "any information" without specifying what this information is, so can every piece of information be considered a trade secret? Or is there a definition that can respond to the information so that it can be considered a trade secret?

What the Jordanian and Palestinian legislators have mentioned in terms of defining trade secrets as information, under which any information, whether administrative, technical, industrial, commercial, or otherwise, falls it, and no type of information can be excluded from this definition. The legislator here put several features on which the legal structure of information was established as trade secrets and excluded other information (Article 4 of the Jordanian Unlawful Competition Law and Jordanian Trade Secrets No. 15 and Article 114 of the draft Industrial Property Protection Law of 2012), and we will talk about these features later.

And as for the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS),[2] in spite of dealing with commercial secrets in the seventh section, it stated the

[2] It is an international agreement administered by the World Trade Organization (WTO) that sets minimum standards for laws relating to many forms of intellectual property (IP) as they apply to members of the World Trade Organization. The General Agreement on Tariffs and Trade (GATT) was

following in the second paragraph of Article 39: *"Natural and legal persons have the right to prevent the disclosure of information under their legal control to others, their access to it, or their use of it without obtaining their consent as long as that is. The information (a) is confidential ... (b) of commercial value ... (c) it was subjected to reasonable procedures ... "*. However, it also did not provide a specific definition of trade secrets and found it sufficient to regulate its provisions (Sundus M. Qasim 2013, 4; Abdellah 2009, 50).

As for the jurisprudence of the jurists in defining trade secrets, they defined secrets according to the angle from which they view them, such as: "It is kept by the manufacturer or ingredients and has not disclosed it" (Sundus M. Qasim 2013, 5; Khater 2003, 193). This is a narrow definition of trade secrets.

Among the jurists, there are those who believe that it is not possible to put forward a specific and clear definition of trade secrets, as the definition of the latter is characterized by instability, and this means that the information that is considered a trade secret at a certain time may not be considered as such at another time, for example, when it loses its commercial value, or vice versa. This is true, and this view also applies to the provisions that trade secrets are subject to. To keep pace with the tremendous development that the world is witnessing, these provisions are continuously being developed.

On the other hand, trade secrets can be considered useful information that is not known in general, or anything that motivates its owner to hide it from others who compete with him. The term *trade secrets* has several alternatives, as some used to call it *confidential information or undisclosed information*. It has been defined as: *"Any confidential or unknown information in general that gives its owner an advantage over his competitors, including production methods, programs, technologies, a specific method, statistics, studies, or other information that have an economic value and who own them has taken precautions to maintain".* This definition does not require that the information that is considered trade secrets be of a large degree of industrial or commercial art or include creativity and innovation, but rather that it has an economic value in its intended use (Abdel-Wahhab n.d., 81). Therefore, according to this definition, it is information that is used commercially in secret, whether economic, industrial, or commercial, because it achieves an actual or potential commercial advantage for its owner because it is confidential, and its owner has taken the necessary measures to preserve it.

2. The legal nature of trade secrets

Trade secrets have been the subject of disagreement among many jurists for a long time over the legal nature of these secrets, given that they represent moral rights. It should be noted that knowledge of the legal nature of trade secrets is of great importance due to the legal implications it is built upon (Obaidat 2015, 92).

There are two aspects of jurisprudence that examine the legal nature of these secrets as follows.

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negotiated at the end of the Uruguay Round in 1994. Publication at the following website: https://ar.wikipedia.org/wiki.

1. The first issue concerns the fact that the right to trade secrets is based on a relationship of trust, and this view becomes clear when the owner of trade secrets wants to establish a business relationship or work with other parties, aiming to increase his profits by increasing his projects, but as a result of his establishment of such a relationship, he is obliged to inform the other party his trade secret, placing his trust in that party of his secret and not to violate it, and these relationships may be free from contracts that create contractual obligations but are satisfied with the trust granted between the two parties.

These relationships are based on the principle of good faith, which in turn gives or determines the obligations of each of the parties in the emerging trust relationship despite the absence of an – explicit or implicit – agreement on these obligations (Obaidat 2015, 94).

The trust relationship is established based on the general rules related to tort liability resulting from damages, and is defined by these rules for damages, and this relationship is also based on the rules on trust and safety rules in commercial dealings that require such.

In order for the trust relationship theory to be considered as a basis for the nature of the right to trade secrets, several conditions must be met in this relationship, which are as follows: 1) Proving the existence of trade secrets, and this means that the owner of the secret proves that he has informed the other party of the secret as a result of the trust relationship that arose between them and so that there was a need to inform the other party of these secrets (Obaidat 2015, 95). 2) Proving the existence of the special relationship according to which the trade secret was disclosed, so that it is proven that there is a legal relationship between the parties based on trust, and that informing the other party of secrets is intended to strengthen this relationship and in order to exploit these secrets in a way that gives economic or commercial benefit. 3) Disclosure and unauthorized use, until the right of the owner of the secrets is proven in them, there must be an assault on his secrets, such as disclosure or misuse (Obaidat 2015, 98).

2. The second issue is based on the fact that the right to trade secrets is the exclusive right of ownership for its owner, and we have previously said that trade secrets are related to intangible things. Because of that, there were many disagreements among jurists about whether the nature of the right to secrets is a property right or not. This issue divided jurists into two groups, the first is the group that rejects the idea of counting the right to trade secrets as a property right, because it responds to intangible, not material, things that are specific in themselves (Sundus M. Qasim 2013; Mann & Roberts 2011, 586). Its protection is through a personal relationship between the owner of the secrets and others who know about them, and the possibility of exploiting trade secrets by more than one person is an idea that conflicts with the idea of a monopoly in the right of ownership: that is, in the case of property rights, as only the owner has a monopoly to exploit his property, without the participation of other people. This right of ownership grants its owner three types of behavior, namely use, exploitation and disposition, and this differs from the right to trade secrets which provides for two types of behavior, namely exploitation and disposition; this was the key argument of the group rejecting the idea of the right to trade secrets being a right of ownership.

As for the second group, which supports the idea that trade secrets are a property right, this camp has corroborated its opinion with several arguments, including the claim that it focused on the content of the right and not the subject of the right, and that it did not differentiate between real rights and personal rights, so that the ambit of the right includes both material and non-material things (Sundus M. Qasim 2013; Jalal n.d., 15). Another argument is that the owner of the trade secret has the three powers of the owner, so he has the right to assign these secrets to others, whether for or without compensation, to grant others a license to exploit them, and the owner of the secrets can use or exploit the secrets to obtain a profit return.

The US Economic Espionage Act of 1996 affirmed that trade secrets are considered property rights. Regarding TRIPS, it considered trade secrets as a form of intellectual property, but it did not consider trade secrets as a property right.

3. Conditions for trade secrets

Legal systems differed regarding trade secrets, either about the name, the basis of protection, or the level of protection. However, these systems were united about the conditions that the information in must meet order to be considered a trade secret. These conditions are summarized as follows:

3.1. Confidentiality

There is no doubt that confidentiality is at the center of the matter regarding trade secrets, and particularly, in terms of the basis of their protection, and this principle is what the legislation governing trade secrets has followed. Confidentiality is considered to be important to a great extent: that the information that could be a trade secret becomes known to the public, and as such, lose its value and effect, it can no longer be considered a trade secret.

The information may be considered confidential if it is difficult to obtain through normal and legitimate means, without effort and expense (Al-Sagheer 2003, 24). Confidentiality is carried out by not disclosing to others or informing others about the information constituting a trade secret, and the judge has the discretionary power to assess the degree of secrecy, referring on this point to the circumstances and facts of the case.

Confidentiality is actually a relative and not absolute category, so the information can be known by others than its owner, such as those working with him in the same facility and the parties in trust relations, and this information remains confidential as long as it is not open to public knowledge. The preservation of information cannot be neglected based on the relative confidentiality of the information, and the information constituting the trade secret in its precise components may not be confidential, but it is considered as such for its totality (Al-Ibrahim 2012, 63).

The American legislator emphasized the element of secrecy in the Freedom of Information Act of 1995 when it excluded the possibility of obtaining trade secrets from companies under this law, and in addition, through Article 552(4)(b), indicating the

possibility for companies to refuse to inform others about their trade secrets and their financial and business information.

The same provision was mentioned in Article 39 of the TRIPS Agreement, so the international agreement seems to have adopted the relative concept of confidentiality.
The Palestinian Industrial Property Protection Draft Law for the year 2012 referred to the relative concept of secrecy in Article 114 of Chapter Six in Paragraph 1-A, including: *"If it is a secret that is not usually known in its final form or in its precise components ...)".*

3.2. Commercial or economic value

The information must have a commercial value for the right holder to maintain its confidentiality. The rights holder usually does not take reasonable measures to maintain the confidentiality of the information if it does not have a commercial value, whether this value is for the public or only among competing dealers. For example, if we have a specific program that is used on the computer, the owner of this program always seeks to maintain the confidentiality of how this program works, to prevent others from misusing this program by selling it.

The information derives its commercial value from its confidentiality. Therefore, this condition is considered a complementary condition to the confidentiality requirement. The Egyptian legislator explained that in Article 2(55) of the Intellectual Property Rights Protection Law by saying: *"That its commercial value is derived from it being confidential."*

It is sufficient for the confidential information to achieve a specific benefit for the project and to give its owner a competitive advantage against other projects that do not have access to it. The protection of negative information and of information with probable value – such as information that is currently in the process of research and experimentation, means that it is not required to reach a degree of integration, that is to say, it is not necessary to be able to accurately determine the value of the information to verify the fulfilment of these conditions (Al-Sagheer 2003, 28).

There are many factors that affect the condition of commercial value, among them the factor of secrecy: the more confidential the information, the higher its commercial value; another factor is the cost of accessing confidential information, the more money spent to access or maintain it, the greater its commercial value, and also the extent of the possibility of accessing this information by legitimate means, for example, discovering it by chance or experience as this is not considered an encroachment on the secret, but it weakens the competitive situation and reduces its commercial value (Obeidat 2015, 25). Another one of the things that play a clear and important role in determining the value of commercial information is the number of projects operating within the same field of commercial activity (Obeidat 2015, 27).

3.3. Taking the necessary measures to preserve commercial secrets

In the first paragraph of Clause (b) of Article 114 of the Palestinian Industrial Property Protection Draft 2012, it was stated that any information is considered a trade secret if

the owner of the right has subjected it to reasonable measures to preserve its confidentiality.[3] The Palestinian draft law indicated that reasonable and necessary measures must be taken to ensure the confidentiality of information in the current circumstances, and the TRIPS Agreement also indicated that.

It is worth noting that the holder of the right to the trade secret may take only one action, and that can be found not sufficient to maintain the trade secret, and yet they can be found insufficient to preserve the trade secret (Al-Sagheer 2003, 31). All of this depends entirely on the type and nature of the transaction, the seriousness of the information, the strength of the procedure and the quality of the dealers, and the matter here – in the event of a dispute – is in the hands of the judge of the matter to assess the strength or weakness of the measures taken[4].

We must point out that the Palestinian draft law and the TRIPS Agreement referred to the idea of reasonable measures and the current conditions for information, thus making the strength or weakness of those measures subject to the judge's discretion.
An example of the measures that can be taken to maintain the confidentiality of commercial information (Qais 2004, 4):

- Marking the papers that contain the trade secret as confidential.
- Keeping these papers in places not accessible to others.
- Determining and naming the persons who are entitled to see these papers.
- Putting warning signs in the places where the trade secret and its documents are located to prevent entry to those who do not have a permit.

4. Legal protection of trade secrets

International agreements have regulated the legal mechanisms for protecting intellectual property rights. The procedures related to the limits of protection in terms of civil or penal protection have not been defined, but that is left to internal legislation (Obeidat 2015, 230). And the first international agreement dealing with intellectual property – of the industrial kinds – at the international level was the Paris Convention for the Protection of Industrial Property,[5] however, it did not stipulate independent special rules on trade secrets as a part of intellectual property rights, but rather dealt with it based on rules for unlawful competition (Obeidat 2015, 230; Raysman et al. 2020, 5). In view of the deficiency presented by the Paris Agreement, it was necessary to search for a mechanism to regulate trade secrets at the global level; a global trade organization took up this mantle and fulfilled the task under one of the annexes of the most important

[3] What is meant by the right holder is the person possessing the secret who has the right to disclose the secret, use and preserve that secret, as it is stated in Article 115 of the same draft: "The owner of the right to a trade secret shall consider every person who has the right to disclose, use and keep it ...".
[4] www.utexas.edu/journals/tiplj/volumes/vol8:ss2/jennings.html [accessed December 1, 2020]
[5] It is an agreement concluded on March 20, 1833 in Paris, and it is an agreement that defines the rules upon which intellectual property (owned by industry) should be in a manner aimed directly at developing industry, and it is considered the first agreement on intellectual property. This agreement mainly targets patents, design rights, trademark rights and other rights that need to be registered in state departments. This agreement was amended 6 times until 1967, and currently 173 countries participate in the agreement. [https://ar.wikipedia.org/wiki, accessed December 1, 2020].

international agreement governing intellectual property rights, is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which had a great impact in regulating trade secrets in the member countries.

4.1. Protection of trade secrets under the TRIPS Agreement

The TRIPS Agreement came into force in 1995, on the first of January, and is to this day the most comprehensive multilateral agreement on intellectual property. The TRIPS Agreement included provisions for the protection and promotion of trade secrets of commercial value, given their confidentiality[6]. This agreement is considered the entry point for joining the World Trade Organization. This agreement consists of seven main parts that define intellectual property rights and define their provisions, conditions for their protection and the mechanisms for implementing that protection by member states.

According to Article 1, Paragraph (2) of the TRIPS Agreement, the term intellectual property includes all its categories stipulated in Sections 1-7 of Part Two of the Agreement, which are: 1) Copyright and related rights, 2) Trademarks that include service marks, 3) Geographical indications, including appellation of origin, 4) industrial designs, 5) patents, including protection of new plant varieties, 6) designs of integrated circuits and undisclosed information, including trade secrets and test data.

The goals for which the TRIPS Agreement was organized are included in its preamble, which reflects the basic objectives of the Uruguay round of negotiations[7]. These objectives were stipulated in Article 7 of the agreement under the heading "The objectives". These goals include developing effective and appropriate protection for intellectual property rights, ensuring effective protection of products from the moment of design through the stages of manufacturing and ending with marketing, ensuring that measures and procedures for enforcing rights are not transformed. Intellectual property itself is a barrier to legitimate trade.

The TRIPS Agreement protected trade secrets, but under category of the so-called undisclosed information, by preventing unfair competition, according to Article 39 of Section 7, and further referred to the provisions related to the protection of trade secrets laid down in Article 10 of the Paris Agreement associated with unfair competition (Obeidat 2015, 241). The TRIPS Agreement is the first international agreement that organizes trade secrets in a comprehensive sense to establish international protection for them, and for this reason, the agreement obliges the countries that have ratified it to standardize their legislation to comply with the provisions it contained.

Developing countries have submitted objections to excluding trade secrets from the scope of this agreement as a private and independent right of intellectual property, on the basis that these secrets are not a branch of traditional intellectual property, as their protection is based on general rules in various laws, especially civil law, and trade law, and that these secrets are linked to unfair competition (Al-Sagheer 2003, 7).

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[6] An article entitled "Protection of Confidential Information under the TRIPS Agreement", see https://albaitalkuwaiti.wordpress.com [accessed December 1, 2020].

[7] Article entitled "The Agreement on Trade-Related Aspects of Intellectual Property Rights", see www.tas.gov.eg [accessed December 1, 2023].

Developing countries submitted these objections because the protection of undisclosed information created by the TRIPS Agreement adversely affects developing countries, especially in the field of pharmaceutical industries. These countries are opposed to the position held by the United States of America, since American law is the oldest law in terms of recognition, which considers that trade secrets are intellectual property rights (Al-Sagheer 2003, 7–8), and by international organizations, especially the World Trade Organization, which created this agreement.

The issue of protecting undisclosed information focuses on the extent to which this protection is provided,[8] when it is considered the right of the owner to prevent the disclosure, access to, or use of information lawfully controlled by others without obtaining the consent of the person who controls it. And that the concept of control is defined by the concept of monopolization, which is an important element of ownership and entails the right to use, dispose of and exploit, and prevent others from disposing of this right without the permission of the investor, in a manner contrary to honest commercial practices.

What appears clearly, however, is that the agreement excluded the idea of ownership as a basis for protecting "undisclosed information" of trade secrets. It did not recognize that the holder of the confidential information had the right to own it. Rather, it prohibited others from obtaining or using the information in a manner that contravenes honest commercial customs, so it established a protection system on the idea of deviation. It established the right behavior and honest habits in dealing prohibiting deviation from these and obliged the member states of the World Trade Organization to consider this deviation as an act of unfair competition.

The TRIPS Agreement wanted to achieve effective protection for trade secrets and gave national legislation the freedom to set a method for that protection within the rules it defined: this protection must be applied to secrets that have a confidential character, whose commercial value is derived from being confidential and that they have been subjected to reasonable procedures. in order to keep them confidential.

The agreement also includes provisions related to test data or other undisclosed data that are submitted to government agencies as a condition for obtaining approval for marketing medicines or agricultural chemical products that use new chemicals, and this data is the other type of undisclosed information on which protection applies (Al-Sagheer 2005, 9). In this case, member governments are obligated to protect such data from disclosure, except when necessary in order to protect the public, and unless steps are taken to ensure that the information is protected against unfair commercial use.

[8] Article 39(2) of the TRIPS Agreement, which reads as follows: "Natural and legal persons have the right to prevent the disclosure of information under their legal control to others, their access to it, or their use of it without obtaining their consent, in a manner contrary to fair commercial practices as long as such information a) is confidential in the sense that it is not, in its entirety or in the exact form and all of its components, usually known or easy to obtain by people among those dealing with usually the kind of information in question; b) is of commercial value due to its being confidential, c) has been subject to procedures reasonable under the current conditions by the person who legally controls it in order to preserve its confidentiality.

4.2. Protection of trade secrets under the Paris Convention for the Protection of Industrial Property

The Paris Convention for the Protection of Industrial Property was signed on March 20, 1883 and entered into force on July 7, 1884. This convention applies to industrial property in its broadest terms. This agreement includes among its provision's patents, marks, industrial designs and utility models[9], service marks, trade names, geographical indications and the suppression of unfair competition.

This agreement was revised more than once to accommodate developments in the industrial fields.[10] It is available to all countries and this is the first agreement at the international level that included and organized the concept of intellectual property protection in general and industrial property in particular.

The basic provisions of the Paris Agreement were divided into three provisions or three main categories, the first of which is national treatment. This means that every country that ratified this convention must give citizens of other ratifying countries the same protection that it gives to its citizens in the field of industrial property, and these citizens have rights to protect their industrial property, and the value of this principle or ruling is embodied in the binding texts included in the TRIPS Agreement through Article 1(3) thereof. Secondly, the right of priority, and this right is assigned by the agreement to patents and utility models if necessary, as well as industrial marks, designs and models Accordingly, *"the applicant of the application filing the first legal application in a Contracting State may enjoy a certain period (12 months for patents and utility models and 6 months for industrial designs and marks) to seek protection in any other Contracting State. Then the subsequent applications shall be considered as if they had been submitted on the same date of filing the first application"* (the Paris Convention for the Protection of Industrial Property 1883).

Thirdly some general rules stipulated in the agreement to oblige all countries to follow them. These rules pertain to patents, trademarks, designs, trade names, source data and unfair competition.

Regarding the protection of the Paris Convention for trade secrets, this agreement did not include provisions and rules related to the protection of these secrets directly, but it included protection for them through unfair competition. The importance of the general rules on unfair competition is that each contracting state is obligated to ensure effective protection from unfair competition, and also to independently submit the agreements that included protection for trade secrets – such as the TRIPS Agreement - to the Paris Agreement (Obeidat 2015, 231; Norton 1999, 239).

Consequently, as a result of this solution of amending the Paris Agreement by other agreements that include particular provisions on the protection of trade secrets, such as the TRIPS Agreement, the Paris Agreement did not achieve its original obligation to protect trade secrets directly with the rules contained the agreement itself, and two opposing trends emerged regarding the foundations provided by the Paris Agreement.

[9] It is a kind of "small patent" that is stipulated in the legislation of some countries.

[10] It was revised as follows: Brussels on December 14, 1900, Washington on June 2, 1911, The Hague on November 6, 1925, London, June 2, 1934, and Lisbon On October 31, 1958, Stockholm on July 14, 1967 and on October 2, 1979

One trend emerged representing developing countries and this trend was against the perception based on the principle that the protection of trade secrets is based on the rules of unfair competition stipulated in Article 10(2) of the Paris Agreement (Obeidat 2015, 232).

This trend is based on the criticism of the concept of protecting trade secrets as stipulated in the Paris Agreement, as it did not contain a mandate to protect these secrets in particular, and this trend emphasized the attribution of protection to trade secrets, which should be linked to national and penal legislation, and not to multilateral legislative systems.

As for the second trend, represented by developed countries – the United States, Canada and the European Union – against developing countries, considered that the provisions of the Paris Agreement regarding the protection of trade secrets are the basis for protecting these secrets under the TRIPS Agreement; and this trend was based on considering secrets a right of intellectual property, and the protection of trade secrets from misuse is based on the rules of unfair competition contained in the Paris Agreement (Obeidat 2015, 232).

Article 10bis has stipulated specific rules related to unlawful competition, as it considered that every competition that contradicts legitimate customs in industrial or commercial affairs is considered an act of unfair competition. This concept gave the contracting states complete freedom to choose their own interpretation regarding acts of unfair competition, and the way they regulated these acts within their national laws. Finally, it should be noted that this agreement enjoys flexibility, and this means that states are not obligated to use the interpretation of the agreement in relation to forms of competition other than what is considered legitimate.

4.3. Civil and criminal protection of trade secrets

Legislation has provided the owner of the trade secret with many means to protect his right to these secrets from misuse of them by means that are contrary to legitimate competition. So that the party harmed by this act has the right to file a lawsuit before the competent court in its consideration to demand compensation as a result of the damage he suffered, which is based on the direct relationship between the act and the harm.

The contract is considered one of the important means of protecting trade secrets. If there is a contract between the owner of the trade secrets and the one who is obliged to maintain them, then when the latter breaches his obligation, a contractual liability is incurred, and this responsibility arises through general rules at the contract execution stage (Sundus M. Qasim 2013, 77). In the case of a commitment to preserving trade secrets at the stage of concluding the contract, it can be agreed to preserve the secrets in the contract, either explicitly by placing a condition within the contract, or in a non-explicit manner so that it is implicitly understood, and this obligation is based on the binding party not transgressing the commercial secrets.

It should be noted that in the absence of an explicit or implicit provision for the obligation to preserve secrets, this obligation is assumed under the law, and this means that the contractual responsibility of the contractor for his obligation to preserve secrets

is implied even if it is not explicitly stipulated (Sundus M. Qasim 2013; Turki 1990, 161).

But in the event that there is no contract between the owner of the trade secrets and the aggressor, then the latter will be held responsible based on a default liability, given his breach of a general and recognized duty, which is the duty not to harm others, and in the case of trade secrets, tort liability is established if a person who is not between him and the owner of the secrets commits an assault on his secrets, violating them in bad faith in order to achieve a benefit for himself or for others, but if this person has obtained the secret by legitimate means, such as accessing it with his own effort, then in this case the tort liability is not applicable to this person.

The civil law and the civil lawsuit do not monopolize the protection of commercial secrets, but these secrets are protected in a large and clear manner in the penal law, and it can be said that the issue of protecting trade secrets has become more criminal than civil. American law is considered the best at protecting commercial secrets criminally because, as we said earlier, this law is the oldest and the most organized with regard to these secrets. The United States has administered a law called the Economic Espionage Act of 1996, which law is based on the criminalization of theft and attacks on trade secrets.

Although the Jordanian law does not stipulate criminal protection for trade secrets in the legislation on trade secrets, we can, through the general penal rules, find an application for the criminal protection of secrets. Therefore, it is necessary to refer to these rules in order to reach the protection of commercial secrets criminally, considering the right to trade secrets a property rights: for example, if we are in the process of stealing a trade secret, then the crime can be adapted as a crime of theft punishable under the general criminal rules.

It should be noted that the Palestinian law, through the draft law for the protection of industrial property, and the Jordanian law, through the law of unlawful competition, did not include any provisions related to the criminalization of assaulting commercial secrets, and this is unlike the Egyptian law, which included through the Law on the Protection of Intellectual Property Rights – a provision sanctioning crimes related to undisclosed information with a fine.

Conclusion

Trade secrets, as we have noted, are a new topic in intellectual property rights in general and industrial property rights in particular, and the importance of these secrets has emerged in giving their owner a competitive advantage over other workers within the same field of activity in a short time frame. The term *trade secrets* has been chosen as they are most commonly used within commercial relationships and business practices.
Although the choice to name them trade secrets was made, there were many differences over the definition of these secrets between the various legislations regulating these secrets and between the jurists who interpreted them according to the angle from which they viewed them. Some of them went with the narrow concept of trade secrets and some of them went with the broad concept in defining them.

Regarding the nature of these secrets, there was a significant disagreement between the jurists: some of them said that the right to secrets is a result of personal relationships or of trust, and some of them said that the right to secrets is a property right, and each of the two camps had their arguments that they adopted.

It is worth noting that trade secrets are not considered as such unless they contain a set of objective conditions, namely confidentiality, commercial value, and the necessary measures are taken to preserve them by their owner; without these conditions the trade secrets lose their confidentiality and are not considered as such.

It is noticeable from our study of the subject of this essay that the legislative vacuum, whether in Palestinian law or Jordanian law, could lead to a massive assault on trade secrets, thus negatively affecting the national economy and destroying its prosperity.

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