

Peculiarities of Legal Protection of Commercial Secrets of an Enterprise in the Republic of Uzbekistan

Nargiza Raimova

Doctor of Sciences (DSC) in Law, the Associate Professor University of World Economy and Diplomacy Tashkent, Uzbekistan

A. T.

Abstract

In this article is discussed the role of a trade secrets in civil legal relations by the legislation of the Republic of Uzbekistan. It is known, that the role of objects of intellectual activity has immeasurably increased, as they became along with traditional material objects full participants of economic turnover. In this article is also given complex analyses of essence and legal nature of trade secrets as the object of legal relations and elaborated decisions to improve acting legislation regulating present sphere.

Keywords: information, confidential information, legal regime, types of information, methods of protection of information.

Information, exactly confidential information, is the most important component of the development of society in formative modern world. The current civil society is gradually turning from an informed to the information, so we can fearlessly say that the 21st century is considered to be the age of information. Information is a very important and necessary element of any activity of man, society and the state in the public, social-economic and political spheres.

The market economics is interrupted connected with the competitive relationship, one of the elements of which is the relationship for the protection of confidential information. And it is quite clear: every organization has its own produce secrets that should not be the subject not only outside of the organization, but often among its employees. Nowadays these include the information about new developments and projects, preparing advertising actions, presentations and etc.

In particular, in the world in 2021, 934 cases of leakage of confidential data of enterprises were recorded and published in the media, and clear losses due to public leaks amount to 37.8 billion dollars, which is 16% higher than in 2020.

In addition, global spending by companies on information security amounted to 89.13 billion dollars, which is 7 billion dollars more than in 2021. According to analysts, this amount will reach 96.3 billion dollars by the end of 2022[1].

Commercial activity as a system was right long time not known to the legislation as the economic activities were completely under authority of the state. When our country has passed to a new standards of living where business and a competition in commercial activity became the integral

attributes of economy, questions of fastening of the confidential information in the legislation became very actual, as possession the information having certain value by virtue of its uncertainty to other persons, promotes economic development, successful competitive struggle in market conditions. In a century of information technologies, the confidential information has got the character of the goods in the market of business, that having strengthened its value in commercial activity and in the legislation.

The formation of independent states during post-Soviet Union expanse led to explosion of national legislation as for the protection of confidential information. Appropriate legislation has adopted on the different types of confidential information, which has been amended several times taking into account both national peculiarities of each state and foreign economic and political environment in most of the countries of member states of the Commonwealth of Independent States (CIS).

As for our country, transition of the Republic of Uzbekistan to a market economics marked the new tendencies in the sphere of entrepreneurship transient the sphere of services and production. Particular significance in the legal regulation of economic activity in the circumstances of developing market relations in the Republic of Uzbekistan obtains interest for information circulation. As Islam Karimov, the First President of the Republic of Uzbekistan pointed: «We live in the age of impetuous technological progress, high technology, information and computer systems»[2]. Information is a very important and necessary element of any activity of man, society and the state in the public, social-economic and political spheres. Commercial activity as a system of right for a long time was not known in legislation as an economic activity was completely under the state authority. When our country has moved to a new level of life where entrepreneurship and competition in commercial activities are essential attributes of economics consolidation problems in legislation of commercial secrets have become very actual since the possession of information got definite value, because of its obscurity to other persons promotes economic development and successful competitive struggle in market conditions. Commercial secret got character of the goods purchased in the market of entrepreneurship, thereby reinforcing its importance in commercial activity and legislation in the age of information technology.

The institution of commercial secrets appeared at the end of 19th century and it wide spread in the second half of 20th century, due to increase the role and value of information in the modern world. Nowadays information is a separate product in a market. Information has greater commercial value constitutes commercial secrets because of its character representing its owner existing in other circumstances to increase incomes to avoid unnecessary costs, to keep its position in the market of goods, works, services or to obtain other commercial advantages, which also unknown to public.

There are calculations according to which a fourfold increase in the volume of information leads to a doubling of production. Already, 74% of employees in the United States and 80% in Japan are engaged in information processing [3].

Certain issues related to the legal regulation of confidential information were studied by representatives of the legal profession. In this regard, the works of Baratov M.Kh.[4], Gostev I.M.[5], Gulyamov S.S.[6], Zokirov I.B.[7], Ionsev M.G.[8], Imomov N.F.[9], Karakhodzhayeva Sh.R. [10], Kolomiets A.V.[11], Nasriyev I.I.[12], Okyulov N.[13], Rakhmonkulov H.R.[14], Adrian FitzGerald, Jamie R. [15]etc.

The analysis of foreign legislation on confidential information indicates that in many foreign countries with market economics is widely introduced and legally proved effective mechanism to protect commercial secrets from the various interventions of both state and non-state structures. The international experiences based on normative legal acts of a number of states that conventionally designated as the first group countries were analyzed in this article. This choice is explained by the

fact that, first, as new history shows these countries are subject to the highest degree of probability of entry to the Republic of Uzbekistan in the integration process. Second, these countries before the Soviet Union breakdown had a common legal base regulating the problems of establishing legal status of state secrets and commercial secrets.

Comparative analysis of normative legal acts on the protection of information, some economically developed countries, including the US, the UK, Germany, China, Thailand (so-called second group countries) taking into account the prospects of further cooperation of post-Soviet countries, i.e. Uzbekistan with the leading countries of the world were carried out.

Being the kind of confidential information and is directly connected with the forms of ownership and methods of management of the economics, there was the command-administrative system, commercial secrets is almost a new direction for the legal systems of the first group of states. It presents the variety in determining the legal status of commercial secrets in the first group countries.

For example, the commercial secret is defined as «... non-governmental secret information related to the production, technology, management, financial and other activities of the entrepreneurship, the disclosure of which might harm his interests» in Moldova and Kyrgyzstan[16].

The information on the various aspects and spheres of productive, economic, administrative, scientific, technological, financial, commercial secret belongs to economic interests of an entrepreneurship, the protection of competition interests and the possible danger to the economic security of an entrepreneurship in Belorussia [17].

The commercial secret is indicated not the information itself, and its position and it is « ... the confidentiality of information that allows the holder under the existing or possible circumstances, to increase income, to avoid unnecessary costs, to keep its position in the market of goods, works, services or to obtain other commercial advantages» in the Russian Federation[18].

According to the Federal laws «About Trade Secrets» (1979) and «About economic espionage» (1996) commercial secret is defined as information (including formulas, models, programs, mechanisms, methods, technologies) or technology, which has an independent economic value (actual or potential) and not available to others who could extract economically from its use or disclosure in the relationship, which measures have been taken to protect its secretness in the USA.

According to the Law «About unfair competition» commercial secret belongs to the information completes the features of secretness (available only known to a limited circle of persons) provided that the owner of the information legitimate interest in its preservation in Germany.

The concept of commercial secret is defined as «technical and management information close character of suspected features of economic or practical value and in relationship of which taken reasonable measures to protect secretness in China». The legislation of People's Republic of China does not contain a special act of commercial secret, but there are a number of rules that affect this problem. Thus, the Regulation on Commercial Security Services (1988) provides establishment of such services, activity which directed to the protection of commercial secrets.

According to the Law «About Trade Secrets» (2002) the concept of commercial secrets is treated similarly to the US in Thailand. However, Thailand Law shared commercial secret into two types. The first type includes industrial secrets, which consist of commercial information affecting technical problems related to the production process or chemical formulas. The second type is commercial information, which includes sales methods, contractual forms, customer base, advertising technology etc.

In spite of lack of clear legal definition of commercial secrets court cases following features such as, firstly, the information in its essence must be «an integral feature of confidentiality», secondly, the information must be related to the conditions, which should be an obligation to disclose, thirdly, it must be any illegally usage of this information caused the damage to its owner in English law[19].

It should be noted that the comparative analysis of these legal acts reveals the tendency of some legislations of investigated countries combine subsystem legal protection of state secrets and commercial secrets in a single system.

The role of common denominator of state secrets and commercial secrets combined into a group of information with limited access in Russian Federation legislation[20]. Commercial secret classified as non-governmental secrets in the legislation of the Republic of Kyrgyzstan[21].

Formed over 150 years of confidential branch of law regulates relations not only in the sphere of entrepreneurship, but also in the sphere of state secrets protection in the UK. As a result of rush growth and development of forms and methods of unfair competition in international economic relations protection of vital economic information of the US Federal Government, as well as American firms, business, industry and individuals both within the country and abroad have found their reflected in the Law of the US «About economic espionage» (1996), which were the initiators of the Ministry of Justice and the Federal Bureau of Investigation of the US[22].

In this case, the main focus of the American law enforcement system aimed to criminal responsibility for illegal usage of information constituting commercial secret, as existed before the civil responsibility is not adequate to deal with the struggle against economic espionage. In particular, the violation of the rights of the holder of commercial secret law provides a penalty of imprisonment up to ten years and a fine of up to half a million dollars. If the offender is a juridical person, the penalty can be up to five million US dollars. Increased penalties are also provided in cases where the larceny of commercial secrets is in the interests of foreign citizens and organizations. Besides, the law provides for the confiscation of any property acquired in violation of the rights of the holder of a commercial secret, and used for committing crimes. The statute about property confiscation confers power to federal government organs for dismantling and removal of computer networks, printers and other devices used for the commission of crimes by law.

The Criminal code of Switzerland contains articles on diplomatic espionage about economic intelligence activities and military intelligence activities. For example, the diplomatic espionage is not only the disclosure of certain information, but also in the falsification, annihilation of certain documents, as well as to conduct intentional relations with a foreign government to the detriment of the Confederacy.

The person, who is assisting a foreign power illegally receives, reports, gives or otherwise provides information about defense amenities, armory, provision, import, export, production technologies so on, if such disclosure could cause harm to the security of the Kingdom can be engaged responsibility for espionage in Sweden.

Large and foreign wealthy companies introduce their staff additional post-Officer in charge of countering the theft of valuable information. Others companies permanently or periodically use private services specialized to investigation and security. The staff number of these services consists of thousands of employees. The growth tendency of the series is not demanded. The actions of private services and police are contradictions, but they try to settle with the help of law or on parity basis. There is an agreement on information exchange if crime is committed in the protected area.

Thus, the experience of the second group countries shows that the state secrets and commercial secrets

should be regarded as a vital element of the country. The commercial secret protection along with the protection of state secrets should be carried out not only in private, but also in the interests of national security.

The primary sources of international legal basis on protection of commercial secrets include the regulation of universal international contracts such as the Convention (1883) on the Protection of Industrial Property, as amended in 1900-1979 and the International Covenant on Civil and Political Rights (1966).

In particular, the article 12 of the Convention allows the opposition to unfair competition, including through the creation of correspond to special national services. The article 19 of the International Covenant on Civil and Political Rights (1966) regulates the limitation of the inviolable rights and freedoms as the freedom to seek receive, disseminate all kinds of information and ideas orally, in writing or in print, in the artistic form and otherwise, if it required to ensure public or national security [23].

An integral part of these documents are the normative-legal acts regulating the problems providing national security of economic sphere. The US law «About Economic Security» adopted in 1996. The law «About National Strategy for the economic security of the Russian Federation» has been adopted and it is revised periodically by the Federal Government and it is approved by the President of the Russian Federation every 3-5 years.

The direct regulation of the activities of the special services of the first group countries is reflected in the normative legal acts regulating the proper activities in information protecting or defining legal status of authorized state organs to exercise it.

It should be noted that different approaches in determining legal status of commercial secrets are also reflected in the allotment of the relevant competence of special services of those countries.

If in all states of the first group countries the state secrets protection problems obliged to the state security organs of these countries, the protection of commercial secrets of enterprises, organizations and institutions in compulsory order were failed in competence only the special services of Moldova and the Ukraine. Moreover, the security service competence of the Ukraine includes only commercial secret, which may cause damage to the vital interests of the Ukraine. The organs of the Federal Security Service and the Committee on National Security have the right to provide methodical and practical help to enterprises, organizations and institutions separately ownership form in the development of measures to protect commercial secrets in the Russian Federation and Kazakhstan. Commercial secret is not mentioned at all in the laws on security services of the Belorussia, Kyrgyzstan and Tajikistan.

For example, the FBI in compulsory order participates in the protection of commercial secrets only to those companies and firms participating in international economic cooperation in the US. In other words one can say, the FBI was involved in the struggle for the «survival» of an enterprise in a competitive competition in domestic market. Market relations naturally «fall out» economically non-solvent structure or those, who neglect measures to protect their intellectual property from internal («home») competition.

The results of the investigation make conclusions in all countries including the first group countries information with limited access, but do not contain information constituting state secrets regulated legally by the state. The legal regulation of this category of information is carried out by means of special regulations in the form of laws.

As for the Republic of Uzbekistan, in our opinion, pressing requirement of present day is the

determination of legal regime of commercial secrets in the entrepreneurship relationships.

Analysis of statistical data on crimes registered in this area from 2010 to 2020 shows that there is an emerging trends to their growth. Over the specified period of time, the number of analyzed offenses increased 15 times.

However, we believe that official statistics do not reflect the real picture of the prevalence of the offences under consideration due to the constant variability of the latter. We conducted a sociological survey, which confirms this. So, to the question: «What would you do if commercial espionage was committed against you?» entrepreneurs answered as follows: 54% of respondents would seek help from law enforcement agencies and, accordingly, 46% would deal with «their own forces» or used the services of security companies. Thus, about half of the surveyed entrepreneurs would not apply to law enforcement agencies, as they believe that if the case becomes public during the investigation and trial, the company can irrevocably undermine its business reputation, and thereby increase the caused damage. This situation, in our opinion, once again confirms the fact that due to the lack of effective legal measures in this area, certain difficulties arise in practice.

Based on statistical data, it was revealed that the number of such cases in judicial practice increases every year. So, if the economic courts of the Republic received 39 applications for protection of rights to commercial confidential information in 2020, this figure increased to 63 in 2021, and reached 75 only in January-September 2022[24].

It is necessary to add qualitative new legal norms to domestic legislation, especially in the law of the Republic of Uzbekistan «About trade secrets» in establishing legal regime of commercial secrets. Everything depends on the authority of our entrepreneurs in the domestic and in international market. The legal relations connected with the regulation of commercial secrets in a market economics is a very important legal institution related to the formation of a competitive environment among local entrepreneurs. Paul Gates mentioned: «One, who owns information possesses market». This fact is also dictated by the adoption of the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan «About measures to implement the Resolution (PP-1572) of the President of the Republic of Uzbekistan on July 8, 2011 on additional measures for the protection of national information resources» on October 11, 2011[25].

Above mentioned all words prove actuality of scientific and theoretical investigation of the problems related to the definition of the legal regime of commercial secrets in the legal relationships of entrepreneurship in present day.

In conclusion it can be argues, that disclosure and investigation of trade secrets is an actual problem of our time. This is due to a number of reasons. Namely:

1. Taking into account the existing legislation and also to avoid undue identification with various concepts in the sphere of regulation of legal relations related to the legal status of various types of confidential information, developed the author's definitions of «confidential», «secret», «proprietary», «the legal regime of commercial secret», «know-how».
2. Depending on different characteristics (owner, the cause of. or possession, scope of activity, degree of confidentiality) are developed scientific criteria for classifying restricted access information.
3. The conclusion is made about that commercial secret has twofold character. On the one hand, the information that makes up trade secrets, as well as intellectual property, arises as a result of intellectual property of human activity.

4. It is proved that in addition to the exclusive rights that more degrees refers to objects in the material world, there is also a right to confidentiality that should be used when reviewing the information that makes up a trade secret that has an intangible form of expression.
5. The rights of the owner of information constituting a trade secret can be divided into the following groups: the right to own actions; rights of requirements; the right to protection.
6. Justified the division of protection methods to confidential information into two groups: ways to protect against illegal acquisition of confidential information; methods of protection against illegal usage of confidential information.

In order to resolve the above problems, from our point of view, developed and submitted to the relevant authorities, the draft of the Law of the Republic of Uzbekistan «About modification and additions in some legislative acts of Uzbekistan in connection with improvement of legislation about commercial secret», the decree of the President of the Republic of Uzbekistan «On approval of the list of data of confidential nature», as well as a Model provisions about trade secrets and confidential information of the company.

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