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## RESEARCH ARTICLE

### THE ACTUAL PROBLEMS OF LEGAL PROTECTION OF COMMERCIAL SECRETS.

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#### *Abstract*

In many foreign countries with market economy (the USA, England, Germany, France, Japan, China, etc.) the effective mechanism of protection of the confidential information from a various types of interventions both state, and not state structures is widely introduced and legislatively fixed. For example, in a number of the countries laws «About a trade secrets», «About economic espionage» effectively operate, etc., in the criminal legislation of group of the countries there is a whole system of punishments for wrongful use of the confidential information.

The actuality of the topic defines commercial valuable information is the right of every establishment for keeping secretness of it's industrial, commercial and financial operations, as well as proper documentation. It presents great interest in securing a wide range of problems related to those which information belong to a commercial secrets, as far as possible lifts the curtain for partners, competitors, government organs not to cause adverse effects on its business.

The problems related to the methods of protecting such information from leaking, industrial espionage, disclosure and non-sanctioned access are actual too.

The problems related to the fact that the legislation provides a wide range of powers by government organs in the different tests that may affect the interests of sensitive enterprise because unset concrete facets of government intervention in economic activities of enterprises considered painful for entrepreneurs in many countries.

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The current civil society is gradually turning from an informed to the informed, so we can fearlessly say that the 21th century is considered to be the age of information. 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.

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 it's 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 have 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 President of the Republic of Uzbekistan pointed: «We live in the age of impetuous technological progress, high technology, information and computer systems»<sup>1</sup>. 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.

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<sup>2</sup>.

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<sup>1</sup> I.A. Karimov. Strategy of reforms - increase of economic potential of the country: the Report of the President of Republic Uzbekistan of Islam at the cabinet council of the Ministers devoted to results of social and economic development of the country in 2002 and the basic directions of deepening of economic reforms for 2003 // A way selected us is a way of democratic development and cooperation with the progressive world. V. 11. - Tashkent: «Uzbekistan», 2003. - P. 195.

<sup>2</sup> St. 1 of the Law of Republic Moldova «About a trade secret» from 6/6/1994 of year and St. 1 of the Law of the

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<sup>3</sup>.

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<sup>4</sup>.

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<sup>5</sup>.

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<sup>6</sup>.

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<sup>7</sup>.

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.<sup>8</sup>

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<sup>9</sup>.

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<sup>10</sup>. Commercial secret classified as non-governmental secrets in the

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Kyrgyz Republic «About a trade secret» from 3/30/1998 of year // [www.base.spininform.ru](http://www.base.spininform.ru).

<sup>3</sup> St. 1 of the Position «About a trade secret» of Belorussia from 11/6/1992 of year // [www.base.spininform.ru](http://www.base.spininform.ru).

<sup>4</sup> St. 3 of the Federal act of the Russian Federation «About a trade secret» from 4/29/2004 of year // [www.base.spininform.ru](http://www.base.spininform.ru).

<sup>5</sup> The review of foreign practice of protection of the information // [www.copyright.com.uz](http://www.copyright.com.uz).

<sup>6</sup> There.

<sup>7</sup> There.

<sup>8</sup> There.

<sup>9</sup> There.

<sup>10</sup> St. 10 of the Federal act of the Russian Federation «About the information, information and information protection» from 2/20/1995 of year; the Federal act of the Russian Federation «About the state secret» from 7/21/1993 of year; the Federal act of the Russian Federation «About a trade secret» from 7/29/2004 of year // [www.base.spininform.ru](http://www.base.spininform.ru).

legislation of the Republic of Kyrgyzstan<sup>11</sup>.

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<sup>12</sup>.

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 (1996) 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

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<sup>11</sup> St. 6 of the Law of the Kirghiz Republic «About protection of the state secrets of the Kirghiz Republic» from 4/14/1994 of year; the Law of the Kyrgyz Republic «About a trade secret» from 3/30/1998 of year // [www.base.spinform.ru](http://www.base.spinform.ru).

<sup>12</sup> The review of foreign practice of protection of the information // [www.copyright.com.uz](http://www.copyright.com.uz).

required to ensure public or national security<sup>13</sup>.

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 Republic of Belarus, 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. 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<sup>14</sup>.

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.

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<sup>13</sup> Pulatov Y.S. International convention on protection of human rights and crime control. - Tashkent: Shark, 1995. - P. 33-66.

<sup>14</sup> The resolution of the Cabinet of Ministers of the Republic of Uzbekistan «About measures on realization of the Resolution of the President of Republic Uzbekistan from July, 8th, 2011 № software-1572 «About additional measures on protection of national information resources» from 11/7/2011 of year // Meeting of the legislation of Republic Uzbekistan. - Tashkent, 2011. - Item 17.