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Legal regime of privacy and data protection in Kazakhstan, in particular liability issues and conflicts with the right to freedom of expression

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INTRODUCTION

In the XXI century humanity meets more and more new objects, which need protection by assigning the relevant rules of the Law. The main object of today is information. Nowadays, society is entirely dependent on the received, processed, and transmitted data. For this reason, the data itself acquires high value. The more price of useful information, the higher its safety is.

One major feature of legal state is the realization of the rights of individuals and providing their free development. Legal State admits the individual's certain freedom, beyond which government intervention is unacceptable.

Information has special value; it carries the data on personal, individual or family life.

Article 2 of the Constitution establishes the basic principles of modern democratic society: "Man, his rights and freedoms are the supreme value." Accordingly, the information that directly affects the private interests of the individual must be respected and protected by the state. One of the main areas of protection of the individual is to respect the privacy of individuals and citizens, respect for its integrity. In everyday life safety of private information depends on him.

The idea of privacy, has more than a hundred years history of legal thought in foreign countries, meanwhile has passed a difficult way to becoming law; by fixing the individual components of the subjective right, a formal declaration in the Constitution of the USSR of 1977[1] to translate ideas into real-life, based on the norms of the Constitution of 1995[2], and fixing the system of personal information protection and guarantees privacy standards in various areas of law upgraded the Republic of Kazakhstan.

Certain attempts to highlight issues related to this problem are found in pre-revolutionary literature, including relation to criminal law. However, in the Soviet legal thought the idea of privacy was not honored, that is why this topic was unjustly kept quiet.

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[1] Until 1991 Kazakhstan was part of Soviet Union

[2] The Republic of Kazakhstan (hereinafter Kazakhstan or RK) declared its independency in 1991 and adopted the Constitution in 1995

As a complex legal institution, protection of personal data and the privacy right began to form only with the adoption of a new Constitution in 1995. Regulations on the personal and family secrets protection in general, as well as a number of other rules prohibiting improper handling of confidential information, including personal nature were set out in 1998 in the Criminal Code of Kazakhstan for the first time (in the Criminal Code of the Kazakh SSR, this article is not intended). Research interest to this subject appears gradually.

Meanwhile, the system of rules dedicated to the protection of confidential information, including personal nature, is complicated from day to day. The right does not stand at one place, and today in Kazakhstan a new law "On personal data and its protection" is put into effect in 25 November 2013 № 94-V. According to the document, the Act regulates social relations in the sphere of personal data, as well as defines the purpose, principles and legal basis for the activities related to the collection, processing and protection of personal data. The purpose of the Act is to protect the rights and freedoms of man and citizen in the collection and processing of personal data.

The law states that personal data is information relating to an identified or identifiable on the basis of their subject of personal data recorded on electronic, paper and (or) other tangible medium.

In other words, the personal data refers to: surname, first name, middle name (if any), date and place of birth, personal identification number, legal address, number of the document proving his identity, family and social situation, the presence of movable and immovable property, education profession and other personal information that identifies a person's personality or allow you to install it.

The isolation of the "personal data" category from the more general category "private life" is primarily associated with the spread of automated systems for processing and storing information, primarily computer data bases, which can remote access via technic links. Definitely these systems, which, in fact, made a revolution in the structuring, storage and retrieval of data needed, set the stage for the emergence of the problem of protecting confidential information of a personal nature.

The development of this problem is a natural need for reliable protection of information resources and processes, streamlining of public relations in this area. Our state has already

started to implement legislative and executive areas of an integrated approach to the protection of personal data.

Today many issues related to the protection of private life, many of which, including in the area of criminal, constitutional, criminal procedure, civil procedure law and other sectors covered in the present study remain open, it is proposed to solve them.

This paper aim is to provide a comprehensive study of the legal norms, including criminal law on privacy and data protection in Kazakhstan, in particular liability issues and conflicts with the right to freedom of expression.

It is worth noting that all references on this thesis to the applicable law concerns Kazakhstan, unless the context otherwise required and/or otherwise states.

Object of research is the theoretical and practical issues related to the application of existing legislation in the field of objective personal privacy right, the definition of personal information - as an independent subject of criminal law protection and the different special protection for some officials (i.e state servants in comparison with other citizens) in Kazakhstan.

Subject of study includes:

- criminal law standards relating to the protection of confidential personal information, the privacy right, set in Kazakhstan, foreign, international legislation;
- The practice of law enforcement by courts in specific cases in Kazakhstan.

This paper aim is to provide a comprehensive study of the inviolability of personal data, information about privacy in the norms of criminal law in other areas of law.

The aim of the study led to the formulation and solution of the following tasks:

- To identify trends in the development of legislation on personal data protection and privacy of information about the private life;
- To investigate criminal responsibility for violations of laws on protection of personal data and the right to privacy;
- To summarize the scientific experience and jurisprudence on this issue;
- To make proposals to improve the existing legislation, as well as other branches of law rules.

This work is based primarily on the dialectical approach to the analysis of the research subject. The analysis was conducted on the basis of historical, systematic structural, formal-logical, linguistic, statistical methods. Comparative legal analysis of the legislation standards has a special place

In the course of work the following sources were analyzed: the Constitution of Kazakhstan, legal acts, administrative, civil, criminal law, as well as other legal and technical material.

Scientific novelty of research. During the study the theoretical principles in the field of constitutional and legal regulation of personal data and privacy, the state of the rules affecting relations in this important for the society and the state public relations are analyzed.

Theoretical and practical significance of the study results. In according to the object and purpose of all findings and provisions arising from the study, subordinated to the idea of using them in the development of new and improvement of existing legislation and to build an effective system of personal data protection and privacy law.

The structure of the thesis. Master's thesis consists of an introduction, four chapters (including paragraphs), conclusion, bibliography.

Chapter 1 provides overview of the legislation on privacy and data protection in Kazakhstan. Chapter 2 describes the types of liability (civil, criminal) for violation of the legislation on personal data in various forms. Chapter 3 presents the discussion on conflicts of privacy and its protection laws with the right on freedom of expression and the fourth chapter familiarizes with special conditions which set up by the laws for protection of the Kazakhstani officials.

CHAPTER 1. OVERVIEW PRIVACY AND DATA PROTECTION IN KAS-AKHSTAN

1.1 PRIVACY AND DATA PROTECTION – GENERAL OVERVIEW

The term "private life" is very multilayered and multilevel. Exhaustive definition of private life does not exist, but it is - a broad interpretation term and it covers different spheres of human life.

The first attempt to formulate the essence of this concept was made in 1890 by the American Bar Warren and Brandeis, who defined it as «the right to be alone» («the right to be left alone", "right to be left to himself")

Everyone has his own idea about what is “private life”, and presenting of it depends on the psychological characteristics of a particular person, and from the norms and traditions that exist in a given society at a given historical period.

Private life as a social phenomenon is the "physical and spiritual area that is controlled by the individual, that is, free from external guiding influence, including on legal regulation."[3] In this aspect of private life is a combination of the following components: the inner spiritual spheres of human life, the sphere of interpersonal communication and relationships, organizational, medical and physiological, behavioral, property components.

The question of establishing the limits of control over individuals and groups of individuals from government, religious, and economic institutions has always been one of the central problems in the history of the struggle for individual freedom. In essence, the traditional rights enshrined in the constitutions of democratic states - freedom of religion, i.e., freedom of conscience, the inviolability of the home, the guarantee against unauthorized searches and against self-incrimination - intended to protect the desire of the authorities to too closely to social control over the individual.[4]

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[3] Efremov "Information" C / P., 1999
[4] Stepanov E. Personal data and its protection. // Recruitment business, №9. 2007

A person needs "security zone", and it is not just a personal preference, it is an important requirement of efficiency of the social structure. The privacy right creates this safety zone, limiting social control beyond which we would define as necessary and sufficient. It provides individual personal autonomy, personal independence, just as the ownership of the estate gives it independence (of course, both within the law).

American lawyers L. Brandeis and Warren S., who devoted to it a special article written in 1890 said: "The intensity and complexity of life, inherent to an developing civilization, lead to the need to have a safe haven from the outside world, so that solitude and privacy have become more important for a person ; but modern enterprise and technical innovations, invading his privacy, causing him emotional pain of suffering, much more serious than those that may be caused by simple physical violence."

It was undoubtedly a revolutionary step, because in the nineteenth century law protects only "typical" property interests and was not inclined to recognize a category of moral damage, i.e. damage that can't be calculated in monetary terms. Now, the right meets a new challenge: "... in addition to the protection of the human in its common interests, to give the protection of specific personality in all the richness of its original features ...". In this way famous Russian lawyer of the beginning of the century I. A. Pokrovsky defined that task. Gradually this theoretical idea "inculcated" in consciousness of judges and legislators, and meleno, with reservations, the right to the inviolability of the private sphere has received recognition in the judicial practice.

This process was hampered by two major factors. Firstly, difficulties with determination of the content right have appeared. As it was already stated, the category of "private life" is devoid of legal content. Judicial practice faced with the fact that under the common roof of "privacy" a number of diverse interests who took to identify and classify is gathered. That is why it appeared not easier to specify the content of the privacy right through the powers available to the subject of this law, but through the violations of this right which it protects. Classification of such disorders can be represented as follows: 1) violation of the privacy of the person or interference in his personal affairs (this includes violations such as eavesdropping and interception of telephone conversations or correspondence perusal); 2) Publication of personal data, which, from the point of view of the person adverse-

ly affect its public image, or cause him pain and mental suffering (including in cases where such information is untrue); 3) exposure of a person in a false light in the eyes of others; 4) The use of the name or image of the face in the interests of the person who uses it (primarily for the purpose of commercial gain).[5]

The second factor is that the privacy right can't be subject to certain restrictions, and such restrictions are objectively required to balance the interests of the individual with the interests of other individuals, groups and the state, which, by definition, expresses the "public interest." More consistently the courts found a violation of privacy in cases of commercial use of a name and a face image (e. g. in advertising). Much more cautious position they occupied in those cases where the offender could refer to the "legal protection of property rights", for example, when the owner of the hotel, shop or company arranged surveillance of the behavior of guests or employees. More problematic it was to achieve the protection of the privacy right when it came to matters relating to the publication in the press of information about the private life of a person.

In the postwar years, the situation changes dramatically. The privacy right comes to the forefront of public attention. It is included in the catalog of human rights and enshrined in many constitutions industrialized countries. The idea of legal protection of privacy takes on a new, deeper meaning. There are two reasons that determined the realization of the value of said rights and a broad social movement for its recognition and real protection.

The first reason is a historical experience, which gave impetus to the mass consciousness. During the years of Nazi domination the Europeans, and especially, the Germans have experienced themselves to which tragic consequences brings total control. Ordinary Americans, for whom fascism remained "on the other side of the ocean," need an additional jolt of McCarthyism, to ensure that privacy is something much more serious than the "patrician requirement", as the Americans were inclined to treat it early in the century.

The second reason is strengthening of the "de-privatization" of human life caused by the fact that information about the person begins to be considered, according to the American researcher A. Miller, "as a cost-effective goods and as a source of power", and

[5] Stepanov E. Personal data and its protection. // Recruitment business, №9. 2007

modern scientific and technological advances offer unprecedented opportunities for stockpiling and use of such information and its transformation, thus an instrument of social control and manipulation of human behavior.

Various devices for telephone and electronic eavesdropping, optical means for night vision, hidden TV lenses allow monitoring and capturing every gesture, facial expression, every word in a private conversation, extending the capabilities of the human eye and ear, and creating a great temptation to use them instead of traditional methods of observation. Many of them are tiny and are available in the open market, so that they can take advantage of not only the police or intelligence services, but also any interested in this person or company.

Another threat is associated with means of psychological penetration into the inner world of man (testing, the use of "lie detector"). Methods of "scientific" validation of business qualities, integrity, political and personal orientation are being adopted by private and public organizations in the selection of personnel. Meanwhile, the scientific accuracy of these methods, as well as at the level of accuracy of the particular case, is not absolute.

And finally, the most massive and most casual threat is the creation of computer systems of personal data. Computerization - it's not just a new "technic" form of accumulation of information about individuals. Modern computer technology can instantly share information, compare and collate personal data accumulated in various information systems, so that any more or less trained person having access to the desired database, can be traced for our lives, never even saw us. Medical information falls into the hands of the employer, information on income - in the hands of traders and producers of goods, information about the arrest or conviction - in the hands of social services.

Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 28 January 1981) was adopted, its purpose was to strengthen a system of the right to privacy guarantees. The legislation of different countries no matter whether they are parties of the Convention or not, meets these principles consistently more or less.

First of all, the Convention establishes the requirements for the data itself. Personal data must be obtained in a right way and lawful means; they should be collected and used

for well-defined purposes, which do not contradict the law and should not be used for purposes incompatible with those for which they were collected; they must be relevant, to the full, but not excessive in terms of the purposes for which they are collected; they should be stored in a form which permits identification of data subjects is no more than is required by the purpose for which they were collected. Another principle states that personal data about national origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may be subject to computer processing only in those cases where the rule of law provides a solid guarantee of their confidentiality. Finally, the Convention provides safeguards for the data subjects. These guarantees' purpose is to give to any person the right to be informed of the existence of personal data file and its main purposes, as well as its legal address; periodically and without waste of time or means everyone should be able to request that, if accumulated in the database with their personal data, and to obtain information on such data in an accessible form; require alteration or destruction of data that do not meet the requirements listed above (precision of reference to a particular purpose, etc.); recourse to judicial protection of the right violated if his request or demand for access to his personal information, clarification or destruction of data were not satisfied. Withdrawal of these positions is allowed only if it is expressly provided for by law and constitutes a necessary measure in a democratic society, established for the protection of national security and public safety, the financial interests of the state or to prevent crime.

Furthermore, the information about privacy is a subject of legal protection. Together with the privacy right Article 18 of the Constitution establishes the right to personal and family privacy and the confidentiality of correspondence, telephone conversations, postal, telegraph and other messages.

Norms of the Criminal Code protect both the privacy right and the information about the private life. At the same time, the direct object of the crimes set in Article 142 of the Criminal Code, is not all analyzed right, but only its information aspect.

Public danger is represented not only by the collection and dissemination of information constituting a personal secret, but also by actions and public information about the private life of individuals subject to its further generalization and systematization.

It is suggested to refer this category of criminal cases to the number of cases of private prosecution. This is because, firstly, the collection of information about the private life of a person without their consent is unacceptable in any case, except in cases stipulated by legislative acts. Secondly, the state is not the only source of ideological coercion: the power of the dominant morality severely limited privacy throughout history. This power began to wane only recently. For example, freedom of sexual life, as a part of personal life, has become a truly complete only now, when the French Penal Code and the jurisprudence of the European Court of Human Rights were destroyed articles about criminal liability for adultery (1975), and homosexuality (1982).

In France, the law from 17th of July 1970 protects the privacy from the citizen and the criminal point of view. He thwarts attempts to "violations of privacy of intimacy" by eavesdropping the transmission of words or visual fixation in private places without the consent of the person concerned.

Taking into consideration the danger of exposure of computer science on private life of every citizen, the Law from 6th of January 1978 relating to computing, files and freedoms, with a new force asserts the need to protect privacy and instructs to the National Commission on Informatics and Liberties to follow this. Right to respect for private life, being the embodiment of the principle of legal interference in the personal affairs of each, that is an expression of the sovereignty of the individual, is a fragile social achievement, which is threatened by the social and political upheavals, as well as a huge opportunity, monitoring and control appearing in the course of technical progress.

1.2 PRIVACY AND DATA PROTECTION IN KASAKHSTAN - BACKGROUND

Law "On personal data and its protection" establishes that personal data - is information referring to an identified or identifiable subject of personal data on its basis, fixed in electronic, paper and (or) other tangible carrier.

In other words, the personal data refers to the surname, first name and patronymic (if any), date and place of birth, personal identification number, legal address, the docu-

ment proving his identity, family and social situation, the presence of movable and immovable property, education, profession, and other personal information that identifies a person's personality or allows to install it.

Individual, whose personal data is mentioned, is called the subject of personal data. Personal data are completed in the database, depending on the purpose of their purpose and use. Public bodies, physical and (or) legal entities who owns the right of ownership, use and manage databases containing personal data, are called owners.

What can be done with a personal data? Personal data can be collected and may be processed, i.e.:

- accumulated;
- destroyed;
- depersonalized;
- stored;
- used;
- changed and supplemented;
- access to them can be blocked;
- distributed;
- transferred to third parties.

In addition, the database containing personal data must be protected from unauthorized access or hacking.

Public body, physical and (or) legal person performing the functions of collection, processing and protection of personal data, is called the operator of personal database.

The general rule established by the Law "On personal data and its protection" determines that the collection and processing of personal data carried out by the owner and the operator, with the consent of the subject or his legal representative. Consent of the subject or his legal representative is made in writing or in electronic form or in any other manner with the use of elements of protective actions.

However, the law provides a number of exceptions to the general rule when collecting and processing of personal data may be made without the consent of the subject or his legal representative.

For example, journalists collect and use personal data not only for the preparation of positive materials in respect of which the subjects would willingly give their consent to the processing of personal data. It's hard to imagine that the hero or heroes of corruption scandal or critical publications would agree to the use of their personal data and their dissemination in the media. Applying the general rule the collection and use of personal data only with the consent of the subject would have made it impossible to carry out professional activities of journalists, especially when it comes to preparing materials with the public interest, critical, expose corruption and other offenses and crimes.

Therefore, if the collection and processing of personal data are made for legitimate professional activities of a journalist and (or) the activities of the media or scientific, literary or other creative work - to get the consent of the subject is not required.

Thus:

- Journalists have a right to collect and process, distribute (i.e., publish), personal data without the consent of the subject they belong, or his legal representatives only in the presence of their legitimate professional activities. Professional activities (not only journalists, but any representative media) refer to the collection, processing and preparation of reports and materials for the media on the basis of employment or other contractual relationship;

- Such consent for scientific, literary or other creative activities is not required;

- Exception for journalists and the media acts if the requirements of the legislation of RK to ensure the rights and freedoms of man and citizen are observed.

Government of Kazakhstan in the near future[6] will issue the regulations on approving the procedure for determining the owner and (or) the operator of the list of personal data is necessary and sufficient to perform the tasks undertaken by them, and on the approval procedure of the owner and (or operator) measures to protect personal data.

1.3 OVERVIEW OF LEGAL REGULATION OF PRIVACY AND DATA PROTECTION IN KASAKHSTAN

[6] The newspaper "Kazakhstan truth" (May 22, 2013 in №№ 173 - 174 (27447 - 27448)

1.3.1 ANALISYS OF THE LAW “ON PERSONAL DATA AND ITS PROTECTION” AND OTHER LEGAL ACTS

The purpose of the Law of RK № 94-V of 25 November 2013 "On Personal Data and its Protection" is to ensure the protection of the rights and freedoms of man and citizen in the collection and processing of personal data.

Law regulates the relations between the subject, the owner, operator and third party related to the collection, processing and protection of personal data. In addition to this rights and obligations of the subject, the owner and operator are legally established.

However, it is set by law, that collection, processing of personal data by the owner and (or) operator with the consent of the subject or his legal representative, except in the case of activities of law enforcement agencies, courts, enforcement proceedings, the state statistical activity, the implementation of international treaties, etc.

Guarantee on the protection of personal data by the state when their collection and processing is carried out only in cases of protection of personal data is set.

Legislation in the field of regulation of personal data regulates the relations connected with the collection, storage, processing and use of automated personal data. Moreover, this legislation exists as an independent along with the general law on the protection of the right to privacy, and provides:

- The protection of personal data from unauthorized access by others, including representatives of government agencies and services that do not have the necessary powers to it;

- Ensuring the safety, integrity and reliability of data in the process of working with them, including the transfer on the international telecommunications;

- Ensuring appropriate legal regime of the data while working with them for the various categories of personal data;

- Control over the use of personal data by the subject himself.

Organization order of work with personal data is regulated by legal and legislative acts, legal and regulatory guidance documents.

The main document, regulating the work with personal data is the Labor Code. It gives the concept of personal data of the employee, establishes regulation of work (processing) of personal data rights provides general requirements for the processing of data containing personal information, are safeguards DA determined the storage, use and transfer of personal data."

Law “On personal data and its protection” was developed in order to improve the legislation in the sphere of application of information technology, information security and implementation of the right to seek, receive, transfer, product and distribution of information.

Its provisions are intended to achieve the objectives to eliminate the available gaps and contradictions in the legislation; solving urgent problems that marked the practice of application of the earlier Law "On Information, Informational support and Protection of Information"; updating and optimization of the conceptual apparatus; formation of the necessary regulatory framework for the protection of public and civil rights to information; creation of legal conditions for effective interaction between the different actors of the information society and the successful market information services and information technology.

The adoption of the Act is a necessary condition for the creation of the information society, the problem of constructing of which is mentioned in the state's strategic program "Kazakhstan-2030", and the entering of Kazakhstan in the global information space.

Legal regulation of the processing of personal data was necessary to ensure constitutional human and civil rights, in particular the right to privacy, as well as to bring Kazakhstan's legislation in line with internationally accepted standards and principles. More than 20 countries have laws similar to the newly adopted law from 25th of November 2013, which means a unified interaction states in the field of personal data.

Law "On Personal Data and its Protection" is aimed at:

- Providing a legal protection of citizens in constantly increasing number of databases containing personal data;

- The creation of a legal framework for the adequate protection of personal data of citizens from interest to them by criminal organizations;

- Regulation of cross-border transfer of personal data within the framework of international agreements;

- Improving the organizational and legal support of individuals and entities, public authorities, local governments for storage, use, transfer, disposal and other acts of personal data.

For non-compliance of the established order of work with confidential information the administrative, civil and criminal liability is set.

Kazakhstan's legislation contains a number of rules relating to the protection of personal data and information privacy.

Firstly, these are the provisions of Article 18 of the Constitution:

"1. Everyone has the right to privacy, personal and family secrets, protection of honor and dignity.

2. Everyone has the right to confidentiality of personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other messages. Limitations of this right shall be allowed only in cases and in the order, strictly provided by law."

3. State bodies, public associations, officials and the media are ought to provide every citizen with the opportunity to familiarize themselves with the documents, affecting their rights and interests of documents, decisions and sources of information.

Privacy, personal and family secrets are protected by the Constitution and laws of Kazakhstan and, above all, by the norms of criminal law. Private life is an area of human activity that relates to the individual, and the road belongs to him. Therefore, according to the general rules, it is not subject to control by the state and society. This is the sphere of personal and non-business relationships and concerns.

Personal and family privacy is part of private life, the sphere of delicate and intimate aspects of personality existence. Therefore, the disclosure of certain information about it is recognized as immoral. Personal privacy, in particular, can include information about the state of health, intra-family life, secret of adoption. The law can’t interfere in this sphere; it is intended to protect it from any unlawful interference.

On the provisions of the Constitution of Kazakhstan it is based a number of legal rules governing the protection of private, personal and family privacy of the individual. In

particular, the articles of the Criminal Procedure Code provides that if the criminal proceedings are not permitted to collect, use, and dissemination of information about the private life, as well as personal information that a person finds it necessary to keep secret for purposes not specified tasks of procedural activities. And in the course of criminal proceedings measures to protect the received information constituting personal secret are taken. Such data of inquiry and preliminary investigation shall not be disclosed, and personal secrets, authorized to representative of a number of professions to protect the legitimate rights and interests of citizens, are a professional secret. These include the confidentiality of adoption, medical diagnosis, wills, attorney secrets, preliminary investigation and so on. The legislation of Kazakhstan provided that if the relevant persons (eg., judges, social workers, doctors, notaries) have become aware of any facts that constitute a personal or family secrets, they shall not disclose them. Otherwise, the perpetrators shall be established by law.

Such liability is established by civil, administrative and criminal law. A citizen has the right to protection of privacy. Disclosure of privacy is possible only in cases stipulated by legislative acts. Every person has the right to protection of honor and dignity in court.

The above rights are not only received consolidation, but also filled with new content in the Constitution of Kazakhstan. In recent decades, a proliferation of new media (internet, fax, cellular telephone) became very popular.

That is why the Constitution is not limited with an exhaustive list of them, and provides the opportunity and other communications, the secret of which is also protected by law.

Mystery of post and telegraph correspondence relates to personal privacy. A special feature here is that the citizen trusts post, telegraph is not the actual content of negotiations, but only mail forwarding or technical support phone calls. Particularly acute question inviolability of the secrecy of correspondence, telephone conversations and postal, telegraph and other communications acquires due to the fact that in order to fight crime, law enforcement authorities have the right to monitor correspondence, telephone conversations, telegraph and other communications of citizens. Therefore, the legislation clearly defines the grounds and procedures taking actions that restrict these rights.

Control of post and telegraph correspondence, as well as wiretapping allowed when implementing covert operative-search activity. Carrying out operational search activities related to the control of correspondence and telephone charges, shall be permitted only on the basis of the Law "On operative-search activity" on September 15, 1994. Last also provides that all the resulting operational-search activity information concerning the private life of citizens, the honor and dignity of the person, if they do not contain information about the commission of acts prohibited by law, can't be stored and destroyed.

Private life is regulated by the Criminal Code. Articles 142-145 of the Criminal Code establish criminal responsibility for private life violation, illegal violation of the secret correspondence, telephone conversations, postal, telegraph or other communications, disclosure of medical privacy, trespassing.

According to Article 16 of the Criminal Procedure Code (hereinafter CPC), the private life of citizens, personal and family secrets are protected by law. Everyone has the right to confidentiality of personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other messages.

Restrictions of these rights in criminal proceedings are allowed only in cases and in the order strictly set by law. Reasons and procedure for detention of correspondence, message intercept, monitoring and recording of negotiations are set out in Articles 235-237of CPC.

Article 10 of CPC says that private life of citizens, personal and family secrets are protected by law. Everyone has the right to confidentiality of personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other messages.

Restrictions of these rights during civil proceedings are allowed only in cases and in the order strictly set by law.

Finally, according to Article 18 of CPC, the private life of citizens, personal and family secrets are protected by law. Everyone has the right to confidentiality of personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other messages. Restrictions of these rights in criminal proceedings are allowed only in cases and

in the order strictly set by law, nevertheless, these legal rules are not sufficient to guarantee the observance of the rights of all state bodies, individuals and organizations.

Administrative Rule contains no articles directly related to responsibility for citizens' rights to privacy violations. Responsibility for refusal of giving the information (Art. 84 of the Administrative Code), the dissemination of information about the guilt before the entry into force of a judgment of conviction (Art. 86 of the Administrative Code) or responsibility for the violation of peace (Art. 333 of the Administrative Code) is difficult to attribute to the measures for the protection of the right to privacy.

To bring Kazakhstan's legislation in line with international standards for the protection of the right to privacy, it is necessary to adopt a special law that would guarantee the protection of and illegal, and arbitrary interference, as reflected in General Comment of the UN Committee on Human Rights.

It is necessary for Kazakhstan's legislation to contain all the definitions used in Article 17 of the ICCPR, in accordance with the recommendations of the UN Committee on Human Rights and the international practice.

It should be noted that in practice, facts of violation of citizens' rights to privacy, personal and family privacy by the customs authorities of Kazakhstan often occur. In particular, according to existing customs regulations on the mandatory provision of citizens exported video cassettes, audio cassettes, CDs and films for preview on their content of the forbidden information.

According to the Commission on Human Rights, the customs requirements led to justified complaints of citizens because of the complexity of their implementation and contributes to corruption offenses on the part of customs officials.

1.3.2 TRANS-BORDER TRANSFER OF PERSONAL DATA

Normative regulation of information exchange processes, including personal data, as well as the implementation of such processes under the influence of active interstate interaction are becoming more relevant.

It is necessary to ensure the effective protection of human rights and fundamental freedoms, in particular the right to privacy, with respect to such exchanges of personal data with the growth of exchanges of personal data across national borders.

Legislation on personal data is formed long time ago in many countries, and in some is widely developed. International standards specify that the national law relating to the party transmitting the data may authorize international transfers of personal data to countries that do not provide the level of protection provided for in this document, if such a transfer is necessary and is made in the interest of the data subject in the framework of contractual relations, to protect the vital interests of the data subject or another person, or when it is required by law in the public interest. How and who will determine whether the protection of the rights of subjects of personal data in cross-border transmission of data is implemented, the Law does not specify. In Europe, the question of such a line is easily solved - whether the State is party of the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 28 January 1981), and whether it fulfills the directive of the European Parliament and of the Council of the European Union for the processing of personal data. Kazakhstan is not a party of these international instruments. In fact, there are no such documents developed at the regional level in the post-Soviet space.

As fairly the Committee on Foreign Affairs, Defense and Security of the Majilis points out: firstly, the transfer of personal data affect the rights and freedoms of man and citizen. In accordance with the Law of Kazakhstan "On International Treaties of Kazakhstan", international treaties, which are the subject of the rights and freedoms of man and citizen shall be subject to ratification. In this connection, it is necessary to establish in Law that only the international treaties are ratified by Kazakhstan, may be the transfer of personal data to the physical or legal person of a foreign country. Meanwhile, there is now agreement on cooperation in the establishment of public information systems passport and visa documents of the new generation and their further development and use in the CIS member states, approved by the Government of Kazakhstan dated by March 30, 2009 № 430. Secondly, personal data to be transmitted is not impersonal "in a foreign country" (as

stated in the bill), and a specific natural or legal person of a foreign country, which can later be responsible for the violation of the rights of subjects of personal data.

Considering that according to the bill, the proliferation of personal data includes placement in information telecommunication networks, as well as what it said international (trans-border) transfer of personal data, but it is not defined the to which extent the law applies to foreign legal entities and individuals, then its application to Internet resources definitely have difficulties. Indeed, our legislation does not explain where exactly is Kazakhstan in the Internet and where begins the territory of foreign states. In many cases, the owner of the website (online resource) has different information about the person who visits this resource. Visitor can voluntarily fill out a form on the site, to answer in the course of using the site to certain questions of the owner; stores information about the actions of the visitor to the site (information about products that interested visitor, their price group, etc.). Finally, the owner of the site is available and certain technical information about a visitor's computer, and with the help of so-called cookies (cookie). If you are self-employed, and the entire base of your customers - it is a small tablet that you hold in the program Google Docs, "cloud" services of Google for documents and physically your plate is located somewhere on the server in the US, then you can already break the rules the bill. In this regard, the territorial scope of the law looks rather vague, leaving a number of questions. For example, will the law be applied in the processing of personal data by legal or natural persons outside the territory of Kazakhstan, but using processing facilities located on the territory of Kazakhstan and vice versa, etc.

From a legal point of view ensuring of adequate protection of the rights of subjects of personal data may indicate the presence of legislation in the field of personal data. Therefore, before submitting personal information to the territory of a foreign state, the operator needs to study foreign legislation on personal data and thereby assess the adequacy of the protection of the rights of subjects of personal data.

CHAPTER 2 ACTUAL PROBLEMS OF QUALIFICATION OF PRIVACY RIGHT VIOLATION

2.1 QUALIFICATION OF PRIVACY RIGHT VIOLATION

The experience of most developed democratic countries shows that without an effective mechanism of human rights protection and, in particular, the rights and freedoms of the so-called first generation of national level, it is impossible to form a just civil society and the democratic state. Ensuring individual rights and freedoms through implementation of international legal standards in this area, is a prerequisite for sustainable and dynamic development of any state[7].

The privacy right is protected by the Criminal Code, which contains crime components, providing criminal responsibility for abuse and illegal actions with the information about the private life of a person, the article 142 of the Criminal code "Violation of privacy" should be noted.

A crime, responsibility for which is under Article 142 of Criminal Code, consists in privacy information violation, that is, collection or dissemination of information constituting privacy, without legal justification.

According to point 1 of Article 142 of Criminal Code: "Illegal collection or dissemination of information about the private life of individuals that make it personal or family secret, without his consent, if these acts have caused harm to the rights and legitimate interests of the victim." [8]

The immediate object of a crime provided by Article 142 of Criminal Code is public relations related to the provision of the constitutional privacy right, personal or family secret.

The public relations related to ensuring the rights and legitimate interests of that harm can act as optional object of the offense.

The subject of the crime is the information about the private life of individuals that make up his personal or family secrets, regardless of whether this information is defamato-

[7] Baimahanov M. T. Selected works on the theory of state and law.
[8] Kairzhanov E. I. Criminal Law of the Republic of Kazakhstan (General Part). - Almaty, 1997.

ry or not. They can be contained in the diaries of the victim, letters addressed to him or family members, printed editions of previous years, etc. [9]

Crimes are carried out by illegal actions. Illegal actions mean that the offender, not being authorized by law or regulations, without the consent of the victim collects or distributes information about his private life, personal or family secret of the victim.

Collecting of information means that the guilty party secretly or openly, examines the documents, letters and other sources of information in the house of the victim, his relatives and friends. In addition, collecting should be considered as familiarization with documents describing the victim in the personnel department at his place of work, service, with content cards disciplinary records, medical history. Collecting information may include getting information either from relatives, friends, neighbors, colleagues. A characteristic feature of this paper documents and other written and printed matter is not withdrawn. The content of documents is only used.

Dissemination of information about the private life of the victim means announcement of them at least to one person. The interested person, abetting the guilty by promising reward shall be liable as an accomplice (Art. 27 and Part 1 of Art. 142 of the Criminal Code). Distribution methods can be different: oral, written, submitted by telephone or other communication channel. Separately, in the disposition of article such methods are highlighted:

a) the dissemination of information in the public (i.e., in the presence of a significant number of listeners) speech;

b) publicly demonstrated works - movies, videos, leaflets, posters, placed in a place over a considerable number of citizens;

c) in the media - television, newspapers, magazines, radio.

Collection or dissemination of information, I think, should be referred to the formal elements of a crime and a crime considered to be finished after performing the actions themselves. Consequences: named in the article and consisting of causing harm to the rights and legitimate interests of citizens come immediately, as soon as the offender begins

[9] Petrosyan M. E. "The privacy right " M. 1999. P.9

to collect or distribute information about the private life of the victim. Attempt to refer the deny to hire or dismissal, disorder in the family, and so on to harmful effects, made by some scientists, cannot be accepted, since in this approach to the evaluation of the collection of information must be considered as a preparation for the dissemination because the collection itself cannot yet lead to harmful effects, which were mentioned by these authors. In addition, the infringement of the rights of citizens in hiring, dismissal is separate crimes or offenses regulated by the Labor Law[10]. There is hardly necessity of offense regulated by other branches of the law, to include in a number of consequences. The focus is on a detailed analysis of the legal bases of collecting, storage, use and disclosure of personal information confidential as provided by law. There are two groups of such grounds: grounds provided by law, and judicial decisions; as well as general conditions, including the developed practice of the European Court of Human Rights, which should meet every case of invasion of privacy, both from the state and from other entities.

Those areas of public relations, in which restrictions of analyzed citizens' rights can have place, are determined. Among them:

- ✓ relationships for providing the state of emergency; in the field of law enforcement, public bodies (including the operational investigations);
- ✓ fingerprinting;
- ✓ relations in the field of care service;
- ✓ credit and information activities;
- ✓ Establishment and operation of automated information systems.

Kazakh legislation also establishes the principle of openness, with respect to information of public interest. The concept of the public interest, as an essential objective significance of certain actions, values of tangible and intangible to normal society, the functioning of the state is formulated. At the same time disclosed information about the private life of public figures should be directly relevant to that person who carries out the state or other

[10] Labor Code of the Republic of Kazakhstan (with alterations and amendments on 11.07.2014).

public activities[11]. It is suggested to legalize the position about that the greater public figures and information about it, the more strongly the interference with his privacy as an universal right.

Another reason for limiting the constitutional right to privacy information, which is provided directly by the Criminal Code, is the presence in the actions of a person of extreme necessity.

Any person in the country, where the position of a secret wiretapping acts, can claim to be a victim, without any obligation to give evidence or even on the basis of the allegation, that the tracking was really conducted.

Contrary to the assertion that a man with a clear conscience, nothing to be afraid of wiretapping, this kind of invasion of privacy is extremely unpleasant, not only for the person who has violated the law or is going to do it. To realize the vulnerability of private life is extremely unpleasant, even if you know for sure: the biggest "catch" of connected person will be the information about a particular subject, which are divided for half an hour with their friends and girlfriends. However, I think, the vast majority of citizens who express confidence that their talk on the phone periodically or continuously is being listened to, only flatter their own vanity. For them clicks during a telephone conversation that the public opinion is inclined with unwavering tenacity explain exactly as listening are not as a tribute to the totalitarian past, as a kind of testimony of his own importance[12].

Of course, there are categories of people who may have suspicions for a reason: at all times and in all states there were people who feared of unauthorized connection, and, obviously, not unreasonably, the representatives of the opposition and human rights activists. Reporters also like to think so, and they do not lose hope that their creative plans are also interesting to someone other than themselves.

In the GDR, where were the secret dossiers[13] on 6 million of citizens were lead, more than a thousand employees of state security were busy with wiretapping.

Agents of N. Ceausescu's regime listened to 2.5 million telephone lines in Bucharest[14].

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[11] Law of RK "On mass media".

[12] Panfilov B. G. "Private Life" S/D., 1999.

[13] Primachenko A. "Without noise and cod" R/D 1998. P. 20

According to human rights organizations today more than in 90 countries illegal control over the information of the opposition human rights defenders, trade unionists and journalists is practiced.

So, how much every one of us is protected from unauthorized invasion of privacy through wiretapping?

Actually, according to the firm belief of experts, today for a citizen not employees of public law enforcement and intelligence agencies, but people who do not have to do with them are much more dangerous in this respect. In particular, because of the availability of all kinds of special devices, from those that can be purchased for pennies on radiobazare until brought in by individuals from abroad swatches espionage techniques that domestic operatives see advantages in advertisements from foreign exhibitions. For example, in France for the year were only recorded more than 100,000 cases of eavesdropping individuals. And hardly anyone has more or less clear idea of what is actually a latent such offenses.

I do not know, how it is in France, but wiretapping in our country is not difficult for attackers. So there is nothing to say about such trifles, when a caller on DLD, waiting for your free line, often gets the opportunity to listen to your conversations. Or when the telephone station arranges a conversation in the "conference" against the wishes of her unwitting participants, then your conversation wedged another pair. As a result, there are some conversations, when all four, shouting over each other and demanding the "opponents" to hang up, but usually weaker tandem gives line to more brazen. In such situations, the citizen is completely defenseless and powerless. If you talk about listening to the part of law enforcement, intelligence agencies, there exist certain legal means to ensure the protection of the interests of man, even if his privacy right is limited in connection with the issuance of a warrant. But there a real life also makes its allowances[15]. Well, for example, the right to privacy is automatically annulled as well as ten, twenty or more interlocutors of one - the only citizen in respect of whom was authorized to listen. Let’s consider such question,

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[14] www.bezpekavip.com
[15] www. online.zakon.kz

when authorities quickly search activity invade privacy through wiretapping. This investigative action must be performed by the decision of the inspector and must be authorized by the prosecutor. However, in cases of urgency, by decision of the investigator, that action is performed without a warrant, but then directs him within twenty-four hours of listening to messages, record conversations (Art. 237 of the Criminal Procedure Code of the RK). The prosecutor, in turn, checks the validity of the investigation and shall rule on its legality or illegality. If the decision to illegally produced listening, recording, negotiation is taken, this action cannot be admitted as evidence. Thus, if the prosecutor did not recognize this audition lawful citizen's right to immunity will be violated without legal justification, and the mystery of the citizen will remain open.

Any officer without any hesitation gives a solemn oath that the information obtained by listening, but not related to criminal activity, will never be used against the object of development. But, of course, in fact, no one can really guarantee that all of the "not pertinent", but compromising your information will never be used against. Without any legal justification, but simply as a means of blackmail; for example, when you arrange a meeting, awareness of which of your spouse clearly jeopardizes the safety of your home. In such cases, the deceived husband, as a rule, are not very interested in the observance of procedural rules[16]..

Surprisingly, the European Court of Human Rights has approved legislation on wiretapping of a single European state. Perhaps, the fact that this country is Germany will no less surprise some people. In this country a request for permission to audition should, in particular, contain evidence that with help of other methods "it is impossible or excessively difficult to get information." [17] The main guarantee of oversight of these activities is the G-10 Committee, chaired by a person having the right to hold judicial office. Members of the committee are appointed by the parliamentary committee consisting of five members of the lower house of parliament with the mandatory representation of the opposition. The minister monthly informs the Committee about all allowed restrictive measures before they

[16] The Civil Code of the Republic of Kazakhstan (Special part). Commentary under ed. Of M. K. Suleimenov, Y. G. Basin
[17] European Court of Human Rights. El. sourse.

begin to apply. In case, for reasons of urgency, the interception was initiated to obtain a permit, the committee has the right to cancel such an order of the Minister. Moreover, the committee's decisions cannot be appealed in court. Twice a year, the Minister shall inform the parliamentary group of the overall situation with the application of this law. G-10 Committee has jurisdiction over all the intelligence departments and the police all the lands of Germany. After the end of the listening party whose phone was tapped, should be notified of the fact of listening, if it does not jeopardize the purpose of the investigation. Mandatory destruction in the future is not useful information confirmed by a written instrument.

Objective element of a crime, provided by Part 1 of Article 142 of the Criminal Code is characterized by the commission of one of the following:

• Illegal collection of information about the private life of individuals that make a personal or family secret, without the consent of the person to whom they relate.

• Illegal distribution of such information without the consent of the person to whom they relate.

• Illegal distribution of them in a public statement, publicly performed work or media.

The legislator does not mention the lack of consent of the person whose rights and legitimate interests are affected by this way of distribution, as well as on the illegality of such action, however, seems to be the term "illegal" should be extended to all forms of conduct referred to in Art. 142 of the Criminal Code, otherwise it is not clear on what grounds a person in this case should be prosecuted. [18]

Collecting of information[19] is perception of content or signal information (the effects represent hardware signals that characterize their work, condition or specifics) by biological means human perceptual information, technical or software perception.

Illegal collection of information consisting the personal or family secrets, represents a collection of such information contrary to the law by unauthorized person. Constitution of RK and other laws establish specific grounds, conditions and procedures for obtaining in-

[18] The Criminal Code of the Republic of Kazakhstan (with changes and amendments on 10.06.2014)

[19] Commentary to the Criminal Code I. I. Rogov, P. I. Baymurzin. Almaty in 1999.

formation relating to personal or family secrets than create barriers to arbitrary interference with privacy. Thus, the collection of this information is available through reclamation of the person to which they relate, or in other subjects, with the consent of that person. Detailed information can be obtained without the consent of the person to whom the information relates, if the collection is a necessary measure aimed at ensuring the interests of state security, public safety, the protection of the rights of data subjects or the rights and freedoms of other persons, for the suppression of crime. Gathering information about the private life, as well as information violates personal or family secret, without the consent of the person to whom it relates, is possible only on the basis of legislation. It is mentioned above, that the privacy right may infringe. Illegal information may be collected in any way: in secret, under the pretext of openly or by access to documents in offices and other places, through interviews with relatives, neighbors, colleagues, physician; kidnapping, copying various documents and other materials.

Dissemination is disclosure of information about personal or family secrets, and as a result they become the property of a third person.

It should be noted that the legislator in several articles of the Criminal Code instead of the term "distribution" uses the term "disclosure". In principle, these concepts are identical and in Russian language means actions for familiarization with something to many people, moreover, it is intended that this information becomes widely known. The difference here is you can spend on the content of the information catechumens. The term "disclosure" is usually applied to the sensitive nature of the information, and the term "distribution" - to any information (eg., spreading rumors). Relation to the same information constituting secrecy, the terms "disclosure" and "distribution" are used in the rules of the Criminal Code, are definite[20].

In the process of dissemination of information two parties take part (two men - at least): one announces this information, and the other – perceives it, that is, the spread can be represented as the transmission - reception of information, both of these actions are carried out by two different actors. Consequently, the spread comprises:

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[20] Criminal Law of the Republic of Kazakhstan. General part /under ed. Of Rogov I. I., M. A. Sarsembaev

The action of one person to announce secrets (transmission of information).

The action of another subject to perceive it (reception) of this information. "Perception is a reflection of objects and phenomena in integral form as a result of awareness of their distinctive features. Perception is related to the identification, understanding and comprehension of objects and phenomena, to assign them to a specific category. Perception is performed by steps".[21] These actions can occur simultaneously (concurrently), for example, direct (oral) transmission of information, but between them is possible, and the time lag (for sending a message to the letter). Also, a situation may occur when there is only transmission (reading) information and its perception does not occur because of any reason (eg., lack of knowledge of the language in which the message is transmitted, etc.). In this case, there is an attempt on the dissemination of personal or family secrets.

At the same time the much greater danger of wrongful dissemination of information about the privacy interests of the protection of privacy of information about the private life, as compared with the collection of such information without a legitimate reason is emphasized. In this regard, it offered to identify the disclosure of information about the private life of a person skilled in the composition under Part 2 of Article 142 of the Criminal Code.

Collection of personal confidential information is suggested to consider the completed crime only when the subject was able to access on the private life of a person.

High degree of a public danger is not only a violation of privacy of information about the private life, in the manner prescribed in dispositions of Article 142 of the Criminal Code, but also the storage of information about the private life, the use of its wicked reason. It is proposed to criminalize such acts.

Obligatory sign of privacy violation under the current wording of Article 142 of the Criminal Code is causing harm to the rights and legitimate interests of citizens. However, such damage when it is immaterial (moral, caused by the honor, dignity of the victim, in the field of non-property relations) in practice is difficult to establish. In addition, the social danger of the act, which consists in the violation of the constitutional right to security of

[21] VP Revina "Criminal Law of the Republic of Kazakhstan", Moscow, 2001

information about the private life, high in itself, without any additional damage to other goods[22].

It should be noted that in practice, frequent violations of citizens' rights to privacy, personal and family privacy by the customs authorities of Kazakhstan. In particular, they indicate the action customs rule on mandatory provision of citizens exported video cassettes, audio cassettes, CDs and films for preview on their content of the forbidden information.

According to experts, the demands of customs authorities rouse censure of citizens because of the complexity of their implementation and contribute to corruption offenses on the part of customs officials.[23]

Examination conducted by the Association of Sociologists of Kazakhstan among 1,500 respondents, showed that 19% of respondents gave a negative assessment of the situation in the field of protection of rights to privacy. 65.3% of respondents gave a positive assessment of the state mechanisms to protect the rights to privacy. 15.7% of respondents were undecided[24].

In general, the results of the analysis of the situation with human rights to privacy suggests that public rights protection mechanisms to privacy is perfected in accordance with international obligations of Kazakhstan in the sphere of human rights, except for certain violations of law and individual rights officials or other persons.

2.2 CIVIL LIABILITY

Law "On introducing amendments and addenda to some legislative acts of Kazakhstan on issues of personal data and its protection" establishes administrative liability for violations of the order processing and the illegal distribution of information about the personal data of their human holders - in the form of fines for individuals and officials. Several

[22] Criminal Law of the Republic of Kazakhstan. Special part: Textbook / Ed. prof. A. N. Agybaeva, G. I. Baimurzina
[23] www.law-n-life.ru

[24] www. adilet.zan.kz

times increases the amount of fines for dissemination of personal data and, without his consent.

In the Labor Code the concept of personal data processing of employee is complemented by collect, organize, update, use, blocking and destruction of such data, determines the order of such actions.

Illegal collection or dissemination of information about the private life of individuals that make it personal or family secret, without his consent, if these acts have caused harm to the rights and legitimate interests of the victim are punishable by a fine from two hundred to five hundred monthly assessment indices, or the salary or other income of the convicted person for a period of two to five months, or by engagement in public works for a period from one hundred twenty to one hundred eighty hours, or corrective works for the term up to one years, or imprisonment for up to four months. The same acts committed by a person through his official position, as well as dissemination of the information specified in part one of this article, in a public statement, publicly performed work or in the media, and entailing the same consequences shall be punished by a fine of five hundred to eight hundred monthly estimates or the salary or other income of the convicted person for a period of five to eight months, or by deprivation of the right to occupy certain positions or engage in certain activities for a term of two to five years, or by arrest for a term of four to six months[25].

International Covenant on Civil and Political Rights (from 16 December 1966), states: "No one can be subjected to arbitrary or unlawful interference with his privacy, family, arbitrary or unlawful interference with his or her home or correspondence, nor to unlawful attacks on his honor and reputation" (Article 17) [26] .

2.3 CRIMINAL LIABILITY

[25] Labor Code of the Republic of Kazakhstan dated by May 15, 2007 № 252-III
[26] International Covenant on Civil and Political Rights from 16 December 1966

The Criminal Code envisaged liability for infringement of privacy in Article 142 for the first time.

Social danger of the act is expressed in violation of the constitutional right to privacy, that is, of the field of public relations, which is located outside the service and (or) social activities. Penetration of privacy may adversely affect the implementation of the victims of professional duties, his reputation, family life, etc.

The object of the analyzed acts is public relations, ensuring the realization of the right to privacy.

The subject of the crime is considered to be information on the private life of a person that make it personal or family secret. The fact that the person wished to keep this information secret, regardless of their nature is meaningful for classification of the crime. Any information beyond the scope of the public interest, such as information about relationships in the family, with relatives outside of the classroom work, hobbies, and friendly relations, on various aspects of sexual life, health status, about future plans, etc. can be related to this information.

The objective side of the analyzed act constitutes the commission of the said article in the disposition of action:

- Illegal collection;
- Dissemination of information about the private life of a person;
- Ensuing of consequences in the form of harm to the rights and legitimate interests of the victim;
- The presence of a causal link between the actions of the perpetrator and of consequences.

Illegal collecting information about the private life should be understood as actions not authorized by that person, aimed at gathering information about the personal or family secrets victim. The person to whom they relate decides whether this information, personal or family secret or not.

The Court may agree or disagree with his opinion. Collecting the information can be conducted openly - guilty examines the documents, letters, diaries in the house of the

victim, relatives, friends; veiled - guilty studying official documents, cards disciplinary records, medical records, and so on.

Fact of announcement of messages to at least one person without the consent of the victim, regardless of the method (orally, in writing, by telephone or other communication channels) should be admitted as dissemination of information about a part of life of individuals that make it personal or family secrets. In such case information may be collected by any means: in the course of the conversation with your neighbors, friends, work colleagues, as a result of visual observation; through access to documents, and so on.

Getting information about the private life of a citizen is allowed in criminal procedure and the operational investigations[27].

A crime is considered to be completed from the moment of the consequences occurrence. For admitting the collection and dissemination of information about the private life of a person as a criminal offense, advance as a result of the consequences of such actions in the form of harm to the rights and legitimate interests of citizens is required. These effects can be expressed in the manifestation of distrust on the part of others, in the refusal to hire or dismissal from it, in the deterioration of relations in the family, with friends and colleagues, in disrupting the bargain, reputational and so on. The infliction of harm can be both material and moral.

The subjective side is characterized only by direct intent, since the person is aware that he illegally collects or distributes information about the private life of constituting a family or personal secret, thereby violating the Constitution of Kazakhstan guaranteed privacy, predicts that as a result of his actions will come to unwanted victim impact and wants to commit these acts. Motives for committing this act may be different: greed, revenge, jealousy, envy, but they are based must always lay baser motives. Motifs do not affect the qualifications.

The perpetrator is an individual responsible person who has attained the age of 16.

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[27] The Criminal Procedure Code of the Republic of Kazakhstan (with alterations and amendments on 04.07.2014)

Part 2 of Article 143 of the Criminal Code includes two qualifying features: 1) the use of guilty of his official position; 2) the use of special technical means for secret information[28]. Their office may use a person having the opportunity to get acquainted with correspondence, telephone conversations, postal, telegraph and other messages (for example, employees of post, telegraph and other means of communication, enforcement).

The use of special technical means intended for getting secret information, raises the possibility of more complete information, and, therefore, increases the degree of social danger of the act. Under special technical means for secret information, understood instruments, other equipment, fix, remove and decode the information.

The perpetrator under part 2 of Article 143 of the Criminal Code is the special, as he can be a person with official authority, as well as having access to special technical equipment.

Part 3 of Article 143 of the Criminal Code establishes responsibility for discretionary, but organically connected with the actions of the analyzed crime: the production, manufacture, sale or purchase in order to market special technical means for secret information. Under the production of special technical means intended for secret information, it should be understood such actions of the guilty, which resulted in affording the hardware. By these means of production is understood as making their primitive way, and in mass production. Sale is the realization, that is compensated or uncompensated transfer by any means, said means natural or legal persons[29].

The subject of this act of skilled is special. Commission of an action aimed at illegal collection or dissemination of information about the private life of individuals that make up his family or personal secret by the official, is considered to be used for his official position[30]. Announcement of the specified information in a public speech (eg., meetings, rallies), publicly performed work (eg., on videotape, CD ROM) or the media (newspaper, magazine, radio) extends the range of persons who may be familiar with the components

[28] Criminal Code from 16th of July 1997, as amended.
[29] The Criminal Code of the Republic of Kazakhstan (with alterations and amendments on 06.10.2014)
[30] Commentary to part 2 of Article 141 of CC

family or personal secret information. Ultimately those and other actions increase the likelihood of undesirable consequences for the victim.

If the illegal collection of information about the private life is associated with illegal penetration into dwelling, it should be classified according to their deeds conjunction with Article 145 of the Criminal Code.

If the collection or disclosure of information about the private lives is the way to commit another crime (for example, in order to use them with extortion (Art. 181 of the Criminal Code), or they are carried out by illegal means (by theft (Art. 175 CC)), they must be qualified by relevant articles and do not form together with Art. 142 of the Criminal Code.

In some cases, disclosure of information about the private lives of the Criminal Code defines both the composition of another crime, divulging the secret of adoption (Art. 135 of the Criminal Code), the disclosure of information of inquiry or preliminary investigation (Art. 355 of the Criminal Code), the disclosure of information about the security measures applicable to judges and participants in criminal proceedings (Art. 356 of the Criminal Code), the disclosure of information about the security measures taken in respect of officials holding public office responsible (Art. 322 CC). In these cases, the deed is qualified with respect to the set commented article. On the contrary, is not illegal disclosure of personal and family secrets the person obligated to report it by law (for example, during the interrogation as a witness).

Legal cases of acquaintance with the correspondence of citizens are occasions when correspondence is seized in connection with the investigation of the criminal case for the purpose of solving the crime, detection or arrest the offender. This exemption (cut) is made only with the authorization of the public prosecutor or by court ruling or resolution. A crime is considered consummated since the illegal reference person correspondence, telephone conversations, postal, telegraph and other messages, regardless of the consequences.

In practice, cases of criminal or civil liability for breach of the confidentiality of correspondence, telephone conversations, postal, telegraph and other messages in Kazakhstan are few. This is explained by the fact that in all cases, a simple user has no ability to

fix or establish a breach of their right to confidentiality of the negotiations. Accordingly, lose any sense of seeking protection[31].

Traditionally, Kazakh courts in deciding are followed by the norms of positive law. Enshrined in the law of the Constitution of direct action, action norms fixed by international agreements, including provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights is almost not reflected in the Kazakh judicial practice.

CHAPTER 3. ACTUAL PROBLEMS OF APPLICATIONS OF THE LAW ON PERSONAL DATA WITH THE RIGHT TO FREEDOM OF EXPRESSION AND SOME SPECIAL CONDITIONS OF PROTECTION IN KAZAKHSTAN.

3.1. CONTRAVENTIONS TO THE LAW ON PRIVACY AND ITS PROTECTION WITH THE RIGHT TO FREEDOM OF EXPRESSION

Law "On personal data and its protection" prohibits to any organization demanding from the citizen his personal data if they are directly needed. For example, if a citizen is not a lifeguard, pilot or military, when applying him for a job employer has no right to request information health status, fingerprints, information about blood group and Rh factor[32].

The new amendments to the Civil Code now allow Kazakhs to demand prohibition of the use of his name and other personal information, without his consent, except those, which are provided by law.

All these innovations would have only been welcomed, if the law specifically had defined what it refers to personal data and to what extent the protection of individual rights to maintain privacy - and the public interest in the freedom of speech and freedom of information should be limited. Any law is a restriction of rights and freedoms. Law "On personal data and its protection" was adopted to protect the privacy right and personal data,

[31] Bassin Y. G. Transaction. - Almaty, 1997.
[32] The Law of RK №95-V from May 21, 2013 "On personal data and its protection"

and it is clear that protecting the rights and legitimate interests of some subjects, it will impose additional obligations and responsibilities for non-compliance on others. Regarding journalists and the media, taking into consideration the specificity of their activities, the rules of this law can be used in two ways.

In fact, the legislature created a kind of "constitutional oxymoron." Oxymoron is a paradoxical combination of opposites. Indeed, in the Constitution, along with the article, protecting privacy, there is also an article on freedom of speech. Introduce legislation makes this story a fiction, creates a constant threat to the media, trying to conduct independent investigative reporting on the facts of abuse and corruption of officials and officers.

In the law the concept of "personal data" is defined very vaguely, "information relating to an identified or identifiable on the basis of their subject of personal data fixed in electronic, paper and (or) other tangible medium." If you look closely to the articles of the new law, its watchdog entity becomes clear.

For example, Article 8 states that the subject or his legal representative gives (revokes) consent to the collection, processing of personal data in writing or in electronic form. In other words, the use of any information about a person without his consent is illegal.

However, Article 9 provides the collection and processing of personal data in the case of legitimate activities of journalists or media, but here there are very significant caveat: "subject to the requirements of the legislation of Kazakhstan to ensure the rights and freedoms of man and citizen."[33] And as the citizen defines himself whether his rights were violated or not, the journalist or the media may come under judgment for any mention of some facts that this citizen will refer to their personal or family secrets.

Here is an example, the notorious case in neighboring Russia. In February 2013 the opposition blogger Navalnyi posted accusations of deputy from "United Russia fraction" Vladimir Pekhtin in his blog. He showed some documents, according to which Pekhtin owns property in Miami (the USA) priced at 2 million dollars, not made to the income dec-

[33] The Law of RK №95-V from May 21, 2013 "On personal data and its protection"

laration. As a result, after lighting the history by the media, Pehtin has resigned deputy powers of the State Duma. The process of exposure was named by bloggers as "pehting." [34]

With the adoption of the Law in Kazakhstan such "pehting" is now very and very unlikely. Because if such facts about some Kazakhstan government officials are published in a newspaper or television station, prosecutor can come and open a criminal case - for abuse of mazhilisman's personal data, which he attributes to his private family life. Newspapers and journalists can be subjected to very large fines that they just ruin or even imprisonment with confiscation of property.

A paradoxical situation: in the law of Kazakhstan there is an article of the Criminal Code on libel. So if a journalist is wrong, and there is no official property on the beautiful island of Mauritius - he will be gaoled for libel. If he told the truth, and this property is still there - he will be convicted for the disclosure of personal data.

The fact that all of this is not an empty threat is evidenced by the adoption of amendments and additions to other legislative acts of Kazakhstan. The example is the Criminal Code. In particular, Article 142 of the Criminal Code[35] states that "illegal collection of information about the private life of individuals that make up his personal or family secret, without his consent or causing substantial harm to the rights and legitimate interests of the person as a result of illegal collection and (or) other processing of personal data "is punishable by a fine of four hundred to seven hundred monthly calculation indices. These are millions of fines, which cannot be afforded even by a successful and rich media.

The same acts committed by a person through using his official position in order to reap the benefits and advantages for himself or for other individuals and organizations, as well as the dissemination of information in the media is punishable by a fine from one thousand to two thousand monthly calculation indices, or by deprivation the right to occupy certain positions or engage in certain activities for a term from two to five years, or imprisonment for up to five years with confiscation of property, which is a tool or means of committing a crime, or without it.

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[34] www. adilet.zan.kz
[35]Criminal Code of the Republic of Kazakhstan dated by July 16, 1997.

Of course, it is possible that the power will not use the law as a cudgel against freedom of speech to the full extent – anyhow Kazakhstan holds itself out as the abode of democratic values, he is interested in world public opinion, its image in the eyes of the West. But there is no doubt in fact that against the freedom of speech, against all types of media a constant and very real threat in the form of a new law that allows the most brutal manner overlapping channels "unwanted information" is created. [36]

Dosym Satpayev, political scientist's opinion on this issue:

"- This very controversial law was introduced without a broad public debate, it was created and adopted in privately atmosphere of bureaucratic offices. In the interpretation of this law, there is no clear definition of "personal data", it is vague, amorphous. That creates great risk of abuse provisions of the Act by officials and government agencies.

Generally all adopted laws can be divided into two categories: those, which are not executed at all, and those, which are executed incorrectly, with distortions. There is a great danger that the law will be enforced just partially, in the interests of those who are interested to conceal important information to the public, manipulating the concepts of protection of the private life of a citizen. We should also add an amazing and legal incompetence of our officials that proved and passed the certification of law enforcement and security agencies. Testing of officials, selected for senior civil service positions in the so-called "body" A ". It turns out that a large number of them do not know the law. They cannot to use it correctly. Offers of human rights defenders, independent experts are simply ignored, and as a result we got a law that will not defend, and to a greater extent to violate the rights and freedoms of Kazakh people."

Sergei Duvanov, expert of Kazakhstan International Bureau for Human Rights, a human rights activist and publicist: [37]

"- This law is not something special, it fits well in a number of other laws introduced in recent years in Kazakhstan, which restrict citizens criticizing those in power officials. I mean the laws "On the Media", "On political parties" and many others. But this law

[36] Baimakhanov M. T. Selected papers on the theory of state and law
[37] www.exclusive.kz

is the last limit point. In a sense it is a landmark law! In fact, any criticism of the authorities is prohibited. Mention of the name and surname in the media or public speaking - is cause for prosecution. One has only mentioned the name of the official in a negative aspect - and he gets the full legal right to receive "satisfaction", including - to condemn a person to imprisonment.

Of course, you can speak and publish that some official has property or accounts abroad, but the price paid will be fierce: a multimillion-dollar fines or prison. It is suicidal for journalism. The power has protected them completely from any criticism. This law is much more radically solves the problem of the ban on unsolicited information to the authorities. And the fact that the government is appealing to the rights and interests of citizens is a smokescreen to hide the punitive nature of the law. It allows the government, not particularly straining, to lock up anyone who mentions the name of corrupt officials.

Throughout the world, there is a concept: public activities. If you are an official or politician - forget about my personal life, it all will be constantly under the scrutiny of the public and the press. Public figures have to be open - it is a principle that provides a healthier society by corrupt officials and those who violate the code of conduct for civil servants. And we have the power, officials fully protect themselves. In our law there is no such thing even as "public work". This is a flagrant violation of human rights and freedoms. The most shameful for us is to keep silent. This is an indication that we have not yet matured to the civil society. In any European country adoption of this law would cause a mass protest demonstration millions. This is an indicator of our civic maturity. " [38]

I think that the law will affect the state of our media. The closest result would be the consequence of the termination of various types of inter-clan struggle in the media, stuffing compromising than the often used different power groups. Those who are used to write smoothly conflict free without touching the power to continue to operate. Those who criticize the government will be forced to go on the Internet to which the hands of our "protectors", fortunately, have not yet got. But the most important negative consequence of it is

[38] Internet-resourse- www.exclusive.kz

other: a huge part of the population remains today without a good part of truthful information about the power that rules the country today.

The main international documents in the field of human rights and freedoms confirm the importance of the right of everyone to respect for his private life and the right to freedom of expression, as fundamental to a democratic society. These rights are not absolute and are not subordinated to the other one, they are both equal. Thus, there is necessity to find a way to balance the two fundamental rights that are guaranteed by international instruments: the right to privacy and the right to freedom of expression.

In the Constitution of Kazakhstan, in Article 20 "1. Freedom of expression and creativity are guaranteed. Censorship is prohibited. 2. Everyone has the right to receive freely and disseminate information by any means, which are not prohibited by law...."[39]

Decisions of the problem of competition between the media rights to freedom of expression and the right to respect for private life revealed to point out a number of fundamental principles of media boundaries intervention in private life. Among them there are:

1) Freedom of expression constitutes one of the most important foundations of a democratic society, and the media play a crucial role in the implementation of this principle. Freedom of speech includes freedom to hold opinions, receive and impart information, the form and content of which offend, shock or disturb the State or part of the population;

2) Maximum freedom and protection from interference in the freedom is allowed in the publication of the press opinions, estimates and statements, including, and relevant to the private life of citizens

3) A greater degree of interference with press publication of information relating to one or another part of the private life of persons occupying a prominent place in public life (political and social leaders, officials of different categories, big businessmen and other similar figures), compared with ordinary citizens is allowed;

4) A clear distinction should be between reporting facts, that can have a positive impact on the discussion in a democratic society issues related to, for example, politicians

[39] The Constitution of the Republic of Kazakhstan dated by August 30, 1995, with changes and additions.

in the exercise of their functions, and reporting details of the private life of a person who is, everything else is not engaged in any official activities .

In the first case the press performs its vital role as guarantor of democracy, informing the public on matters of public interest, but in the second case, it doesn't play such a role, and it is only to satisfy the curiosity of a particular readership to the details of the private life of a person[40].

4 SPECIAL CONDITIONS OF DATA PROTECTION FOR SOME OFFICIALS IN KAZAKHSTAN

4.1 DIFFERENT LEVEL OF PROTECTION – GENERAL OVERVIEW

In international practice, there are different levels of protection of the right to privacy. If this is a public figure, it should apply to criticism and an increased interest in her private life of the society more tolerant than the ordinary citizen.

Public figures are persons holding public office and (or) use public resources, as well as all those who played a role in public life, whether in politics, economics, the arts, the social sphere, sport or in any other field[41]. As indicated by the Parliamentary Assembly, "certain facts from the private life of public and in particular politicians, of course, can be of interest to citizens."

Meanwhile, among the "public figures (figures)," "absolute" public figures such as politicians, athletes, stars of show business and "other", such as, for example, the defendants in criminal trials are distinguished, which are of interest to the public only because of their involvement in an event.

"Absolute" public figures	Public figures for limited purposes (relative public figures)

[40] Law of the Republic of Kazakhstan dated by July 23, 1999 № 451-I on Mass Media (with amendments and additions on 05.16.2014)

[41] Paragraph 7 of resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe on the right to privacy.

They have the right to privacy at home or even in public places, where they are removed from the public eye in the sphere of private environment (eg. to the table in a dark corner of the restaurant).	Photos with such figures can be published only if the public interest outweighs the interests of others.

"The distinction drawn between celebrities and "relatively" public figures should be clear and obvious to the state, based on the principle of the rule of law; private individuals have a clear understanding of how they should behave in a given situation. Moreover, they need to know exactly where and when they are in a protected sphere, and where and when - in an area where they should be ready to intervene on the part of others, and especially - from the yellow press "(judgment of the European Court of Justice).

In Kazakhstan, the legislation does not contain the concepts of "public face" or "public figure."

The only fact that a person's privacy is invaded is a "public figure" is not enough to justify such intervention[42].

So, in the Princess of Monaco case (Hannover Princess vs Germany), the interest of the public and the press to the princess was based solely on her belonging to the royal family, while she herself had not performed any public duties. The Court has not recognized a legitimate interest, stating that in this case the public's right to know about the private life of Princess does not outweigh Princess' right to protect her privacy. "In the present case, the mere fact that the applicant's assignment to the category of celebrities is not enough to justify interference in her private life," - said the European Court of Justice.

To answer the question whether it was legitimate in one case or another invasion of privacy by the media, it is necessary to consider whether in a particular case the public interest in such information, or was it simply a secular curiosity.

[42] Basin Y. G. Legal entities under the Civil Code of the Republic of Kazakhstan: Concept and general characteristics

So, it is necessary to determine whether the topic of publications and information was socially significant? Could the message about the details of the private life of a person have a positive impact on the political or public debate? For example, if a politician is trying to show that he's a great family man, but in fact he is not, it turns out that he was lying to voters, and this aspect should be covered. You can also ask the following questions: Did the disclosure of information about the private life of contribution make the solution of any public concern? Or publication was pursuing a goal to satisfy the curiosity of a particular readership to the details of the private life of a person? Did the public interest in disclosure of information have a place at a time when it was spread?

When you reply to these questions should be taken into account all the circumstances of the case (the historical conditions, that is, that preceded the publication status of a person, the relevance of the theme, etc.).

As for Kazakhstan, the concept of "public interest" is found in the legislation, for example, according to Art. 150 of Code of Civil Procedure, "in a statement given by the prosecutor in the state or public interests, a justification of what is the state or the public interest, what right has been violated, and so on must be contained"[43]. The Tax Code provides as one of the signs of non-profit organization for tax purposes to implement activities in the public interest. Environmental Code refers to the "public interest" in connection with the need for public environmental review of any economic and other activities for the public interest to preserve favorable for life and health of the environment. The Land Code" the order to use the land located outside (beyond) the foundation of the building is determined by agreement between the members of the condominium with the condition of following the public interest ..." etc.

However, clarification of the term "public interest" ("public interest") in Kazakhstan legislation could not be found and an unambiguous interpretation too.

In addition, Kazakhstan is not exempt from human responsibility for the publication of restricted information (privacy), if the public interest in the publication of such information is greater than the other person's right to protect this information. No definition of

[43] Civil Code of RK

"public information." All this leads to the fact that the journalist was completely unprotected by law, when criticizing a person holding a high position in society. The result is a list of taboo subjects and categories of people that the media do not try to write, which in turn leads to the minimization of control by the authorities of the society.

Meanwhile, Russia, Ukraine, the Baltic countries after the country's democratic development have laid "public interest override" in their legislation. For example, Russia provided a ban on non-pecuniary damages for the dissemination of false information about the private life, in the case when the media were distributed to such information in order to protect the public interest. In addition, the RF Law "On the Media" provides that "the spread of messages and materials prepared using hidden audio and video recording, filming and photography is permitted if it is necessary to protect the public interest and measures against possible identification of outsiders"[44].

Some laws, particularly in Germany, provide the principle of "legitimate expectation of privacy."

Federal Supreme Court pointed out that even celebrities have right to respect for their private life and that right is not confined to their homes, but also extends to the publication of photographs. Beyond the threshold of his home, however, they are not entitled to the protection of their privacy, unless at the same time they are removed to a secluded place - away from the eyes of the public - when everything becomes absolutely clear that they want to be alone, and being confident in lack of curiosity gaze behave in this situation as would never behave in a public place. Therefore, the illegal invasion of privacy is the publication of the photos to retire in a place people if the photos were taken secretly or retire people were caught off guard. "

However, this is not the most perfect method, since in practice it is difficult to find a photograph whether depicted in a photo taken by surprise that it was for a place (assuming for a close-up photos are seen only the person in whose privacy invaded).

In the cases of the "right to image" courts shall also take into account whether photographing/filming occurred in a public place or not.

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[44] The Law of RK "On the Media" (Media Law) from 27.12.1991 N 2124-1 (current version from 02.07.2013)

In Kazakhstan, the right to own image is provided by Article 145 of the Civil Code. Article 145 of the Civil Code prohibits the use of facial image without his consent. According to this you cannot use photos and video person depicted in them, without their consent. Such consent is not required if the person represented to pose for a fee[45]. Thus, the article is not an excuse, if the person was photographed in a public place. However, in practice, the courts refuse to satisfy the claims for protection of the right to their own image, if the person was photographed or filmed during public events. And this is absolutely correct, because in such cases are photographed and making his own public events, and to isolate them from the individual is practically impossible. However, in the absence of direct indication of this in the law, the courts would be difficult to justify such decisions[46].

Any restrictions must meet a three-part test, which is incorporated in p-h 3 of Article 19 of the International Covenant on Civil and political rights. He suggests that "firstly, government intervention should be established by law; secondly, imposed by law or restriction should aim to achieve, to recognize the legitimacy under international law, and, thirdly, the restriction must be necessary for the defense or prosecution of a legitimate aim".

The first two criteria don't usually make a problem; all the limitations are provided by laws and pursue a legitimate aim. But the third criterion, in my opinion, has been already creating problems.

So, the rules providing criminal liability for violation of the right to privacy in Kazakhstan don't pass the three-part test.

A striking example is the Law "On Amendments and Additions to Certain Legislative Acts of Kazakhstan concerning the protection of citizens' rights to privacy" dated by December 7, 2009. Thus, the Penal Code has already provided liability for violation of privacy (Article 142 of the Criminal Code. Violations of privacy). The maximum penalty for this offense was provided for up to 6 months of arrest. Law "On Amendments and additions to the legislation on the protection of citizens' rights and privacy" has strengthened

[45] The Civil Code of the Republic of Kazakhstan (Special Part). Comment by ed. of M. K. Suleimenov, J. G. Basin.
[46] The Civil Code of the Republic of Kazakhstan (Special Part). Comment by ed. of M. K. Suleimenov, J. G. Basin.

this responsibility. The amount of fines have been increased, and for an act committed by using of his official position, or public order, or through the media, has introduced a new measure of responsibility - imprisonment of up to five years with confiscation of property. This penalty is, in my opinion, cannot be equated to the degree of public danger to such crimes that infringe on the inalienable human right - life. That is a violation of privacy, based on the type of punishment assigned by the legislator to the misdemeanor and put on a par with such crimes, such as murder by mother of the child (Article 97 of the Criminal Code) - up to 4 years in prison, infecting another person with HIV/AIDS face who knew he had this disease (Part 2 of Art. 116) - up to 5 years in prison.

Meanwhile, the statistics contained in the Parliament by Vice-Minister of Justice Beketaev on the application of this Article is a very modest and does not justify the increased responsibility for that act. It is as follows: "according to article 142 of the Criminal Code there was no crime in 2006, one crime - in 2007, 4 - in 2008".

I believe that strengthening of the responsibility to protect the right to privacy should go while strengthening rules guaranteeing the public's right to receive public information. It is essential that the rights of one individual are protected without compromising the rights of other members of society.

4.2 SPECIAL CONDITIONS OF DATA PROTECTION FOR THE FIRST PRESIDENT OF KAZAKHSTAN

Article 3 of the Constitutional Law “On the First President of Kazakhstan” provides that the first President of Kazakhstan - Leader of the Nation has immunity[47]. He cannot be prosecuted for acts committed during the execution of the credentials of the President of Kazakhstan, and after their termination - related to the implementation of the status of the First President of Kazakhstan - Leader of the Nation. He cannot be detained, arrested, searched, interrogated a personal inspection.

[47] www.online.zakon.kz

Inviolability applies to all property owned by the right of private ownership of the First President of Kazakhstan - the leader of the nation and cohabiting with him members of his family, as well as on the use of residential and office space, office transport, communications, correspondence, documents belonging to them.

The property owned by the right of private ownership of the First President of Kazakhstan and living together with him members of his family, cannot be imposed by any whatsoever restrictions.

Bank secrecy and integrity of the bank accounts of the First President of and living together with him members of his family are guaranteed.

4.3 SPECIAL CONDITIONS OF DATA PROTECTION FOR SOME OFFICIALS IN KAZAKHSTAN

The legislation of Kazakhstan has special rules that protect the reputation of officers separately. Thus, there is the criminal liability for violating the honor and dignity of the President of Kazakhstan and obstruction of its activities, and the impact on his close relatives to prevent the execution of their duties. In this article, there is a note that public statements containing critical statements about pursued by the President of Kazakhstan policy, does not entail criminal liability under this Article.

For violating the honor and dignity of a deputy and impeding his activity also provides for criminal liability, and for the impact on close relatives of the deputy to prevent the execution of their duties[48]. There is a note in the article that the public statements containing criticisms of parliamentary activities MP, does not entail criminal liability under this Article.

Insulting of a public official during his official duties performance in connection with their execution (Article 320 of the Criminal Code) also entails criminal liability. This article contains a note, according to which the representative of the authorities recognized the official government body, endowed in the manner prescribed by law administrative

[48] The Criminal Code of the Republic of Kazakhstan (with changes and additions from 10.06.2014)

authority in respect of persons who are not in the service of his addiction. For public appearances, containing criticism of the performance of the authority is not subject to criminal liability under this Article[49].

In accordance with the Constitution, the Chairman and members of the Constitutional Council, the judges and the Prosecutor General of Kazakhstan have the right of immunity.

First of all, it should be noted that parliamentary immunity is not a personal privilege of the deputy; it has publicly legal nature and is designed to provide increased protection to the parliamentarian in the exercise of public functions. In its content, this guarantee is higher in comparison with the general constitutional guarantees of privacy and due to the need to protect the special status of Members of Parliament as a member of representative and legislative body. Rule on the immunity of deputies of the Parliament of Kazakhstan in unaltered form is reproduced in paragraph four of Article 52 of the Constitution, the first paragraph of Article 32 of the Constitutional Law "On the Parliament of Kazakhstan and the status of its deputies", the second part of Article 496 of Code of Criminal Procedure.

According to it Member of Parliament during the term of his office may not be arrested, subject to detention, measures of administrative punishment imposed by a court of law, prosecuted without the consent of the House, except in cases of flagrante delicto or committing grave crimes.

5. CONCLUSION

The research on this Master paper is based on the law "On personal data and its protection" of 25 November 2013 № 94-V. This Law regulates social relations in the sphere of personal data, as well as defines the purpose, principles and legal bases of activity associated with the collection, processing and personal data protection.

The law "On personal data and its protection" provides the collection, personal data processing without the consent of the subject, as well as the implementation of the trans-

[49] Kairzhanov E. I. Criminal Law of the Republic of Kazakhstan (General Part).

border transfer of personal data to foreign countries that do not ensure its protection only in cases of implementation of international treaties ratified by Kazakhstan.

Personal data is offered to be divided into types of general and limited access depending on the sphere of application.

In addition, in order to ensure the full protection of personal data from wrongful acts causing harm to the rights and legitimate interests of citizens, it is proposed to introduce criminal liability of the owner and (or) operator, as well as third parties.

The law also defines the processing of personal data procedure, activity principles of businesses and individuals, government agencies and other organizations in this area. It establishes the obligation of the holder to ensure measures of personal data protection, the right of an individual to access its personal data, the rights and duties of the subject and the holder of personal data.

Related law sets administrative liability for violation of the processing of personal data in the form of fines for individuals and officials. Introduction of administrative liability, according to the developers, is necessary for combating and preventing the illegal distribution of information on the human personal data of their holders to protect everyone's right to privacy, personal and family privacy, protection of information about health and other biometric data.

After overview of the Kazakhstan legislation on the issue of privacy protection, we can conclude that the legislation of Kazakhstan does not clearly defined and agreed upon articles defining the content of the mysteries pertaining to the private sphere.

The concepts of personal, family secrets and private life are given in vague and generalized form, since the legislator in determining these concepts has just listed the part of these mysteries.

However, this approach (when the definition of the legal concept of transfer shall be effected by the fact that it includes) seems not very effective, since it is impossible to list all the possible in-law aspects of private life, and eventually it will only contribute to clutter and improve this concept risk space. The question which other types of information can be considered as a "mystery" in each case remains open.

In comments to Criminal Code, namely to article 142 "Violation of privacy", it is said that privacy refers to the sphere of relations, which is outside of the service and social activities of man. The subject of the crime is information about the private life of a person that make it personal or family secret. The main thing which will be taken into account is that the person wished to keep this information secret. And the question of what comes into his personal or family secret solves the person itself (but the court retained the right to agree or disagree with the allocation of certain information to personal or family secret). The details of a private nature may include any information "outside the scope of public interest", such as information about relationships with family, relatives, employment outside of work, on friendly relations, on various aspects of intimate life.

Thus, the position on the question of what would be classified in a particular case to privacy is ambiguous and contained comments also follow the path of the transfer that may relate to the information of a private nature. However, the comments indicate one important criterion to be considered in determining such types of secrets: a person wished to keep this information secret. This implies that a person has taken measures to protect privacy and, in spite of these measures, the mystery was solved.

All these questions on the assignment of certain information to privacy are important for the media and journalists, as Art. 144 of Civil Code provide that disclosure of "privacy" is allowed in cases established by law. The Criminal Code provides for liability for breach of privacy. A Media Law of Kazakhstan provides disclosure of information constituting state secrets or other secrets protected by law as grounds for suspension of the release media or distribution of media products..

Thus, journalists are forced because of their profession to collect information about other citizens and distribute it, may become victims of criminal prosecution for the disclosure of privacy, and the media in which they work, risk generally be closed on this basis. And here the most acute question is maintaining of the balance between the privacy right and the right to freedom of expression.

Taken together, the legal responsibility for violation of the rules on personal data is far from being perfect, but already quite a lot is done in the framework of the Labor Code, the Civil Code, the Code of Administrative Offences, the Criminal Code and other legal

acts of the state level. Nevertheless, the level of protection of the rights can be evaluated as low.

The main drawback of the existing legal liability for infringement of the rules on personal data is the lack of interconnectivity between different spheres of circulation of personal data. We should highlight among other weak points, firstly, the lack of complexity in providing legal liability for violation of the rules on personal data, and a number of rules in general represents fragments of such activities systematically unrelated; secondly, in the legal acts there is no systematic approach to the regulation of relations connected with the protection of personal data by means of legal sanctions; thirdly, existence of significant shortcomings in the legal and technical designing themselves of offenses affecting the studied relationship.

In conclusion it should be noted that the problem of protecting relations connected with the confidential information of a personal nature, is a complex, affecting many aspects of society, including substantive and procedural branch of law. Progress in the fair regulation of these relations cannot be achieved without a common evolutionary movement in people's minds by giving priority to the interests of the individual, his rights and freedoms as the highest value for the state and society.

REFERENCES

1. Universal Declaration of Human Rights (adopted at the third session of the UN General Assembly resolution 217 A (III) of 10 December 1948). - M .: Human Rights, 2000.
2. The Civil Code of the Republic of Kazakhstan (as amended as of 10.06.2014)
3. The Civil Code of the Republic of Kazakhstan (Special Part). Comment ed. MK Suleimenova, JG Basin. - Almaty, 2000
4. Code of Civil Procedure of the Republic of Kazakhstan (as amended as of 09.29.2014)
5. The Law of the Republic of Kazakhstan №95-V on May 21, 2013 "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on issues of personal data and protect them" and Decree of the Government of the Republic of Kazakhstan dated September 3, 2013 №909 «On approval of the Rules of owner and (or) operator, as well as third party measures to protect personal data "
6. Law "On operative-search activity" on September 15, 1994
7. The Law of the Republic of Kazakhstan dated July 23, 1999 № 451-I On Mass media (as amended as of 16.05.2014, the)
8. Russian Federation Law "On the Media" (Media Law) from 27.12.1991 № 2124-1 (the current version of 02.07.2013)
9. Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) (as amended on September 21, 1970, December 20, 1971, January 1, November 6, 1990, May 11, 1994) . - M .: Human Rights, 2000.
10. The Constitution of the Republic of Kazakhstan dated August 30, 1995, as amended.
11. The Constitution of the USSR of 1977, as amended October 7, 1977 / ru.wikisource.org/
12. International Covenant on Civil and Political Rights of 16 December 1966
13. Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 28 January 1981);

14. Resolution of the Government of the Republic of Kazakhstan on March 30, 2009 № 430 “On approval of the Agreement on cooperation in the creation of the state information systems passport and visa documents of new generation and the distance-follows, their development and use in the CIS member states”
15. The Labor Code of the Republic of Kazakhstan (as amended as of 07/11/2014 g).
16. The Criminal Code of the Republic of Kazakhstan (as amended as of 06.10.2014)
17. The Code of Criminal Procedure of the Republic of Kazakhstan (as amended as of 04.07.2014)
18. Database Reference and legal system Adviser,
19. Baimakhanov MT Selected papers on the theory of state and law. - A., 2004.
20. Basin YG Legal entities under the Civil Code of the Republic of Kazakhstan: Concept and general characteristics of Almaty, 1996
21. Basin YG Transaction. - Almaty, 1997.
22. The newspaper "Kazakhstan truth" (May 22, 2013 in №№ 173 - 174 (27447 - 27448).
23. Efremov "Information" C / P., 1999.
24. The Civil Code of the Republic of Kazakhstan (Special Part). Comment ed. MK Suleimenova, JG Basin. - Almaty, 2000.
25. Kairzhanov E. "Criminal Law of RK" general part. Almaty. 1999.
26. Panfilov BG "Private Lives" R / D., 1999.
27. Petrosyan ME "The right to privacy", Moscow, 1999.
28. VP Revina "Criminal Law of the Republic of Kazakhstan", Moscow, 2001.
29. Rogov PP, GI Baymurzin, I.Sh.Borgashvili, G.K.Rahimzhanova "Comments to the Criminal Code of the Republic of Kazakhstan."
30. Stepanov E. Personal data and its protection. // Recruitment business, №9. 2007.
31. Privacy and human rights. International Study Zuko-lation and practice in the field of protection of privacy. Privacy International, with the financial assistance of the Institute "Open Society". The main authors of this pre-treasure - David Banisar (Electronic Privacy Information Center) and Simon Davies (Privacy International) .- www.bureau.kz

32. www.online.zakon.kz
33. www.adilet.zan.kz
34. www.bezpekavip.com
35. www.law-n-life.ru
36. www.exclusive.kz