

## Conceptual Problems of Developing a Mechanism to Protect the Right to Privacy in Global Communications Networks

*Tatarinova Lola, Erdzhanov Timur and Tatarinova Danila*

Al-Farabi Kazakh National University

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**Abstract:** The Republic of Kazakhstan as part of modern civilization is now at the next stage of development of science and technology. This stage is characterized by a high rate of development of information technologies and the creation of global telecommunication networks, particularly the Internet, as well as the quantity and quality of information transmission and processing, increasing capacity of mobile carriers, the formation of different profiles of electronic databases of personal information of the Republic of Kazakhstan residents.

**Key words:** Right protection · Communication network · Mechanisms

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### INTRODUCTION

The Republic of Kazakhstan as part of modern civilization is now at the next stage of development of science and technology. This stage is characterized by a high rate of development of information technologies and the creation of global telecommunication networks, particularly the Internet, as well as the quantity and quality of information transmission and processing, increasing capacity of mobile carriers, the formation of different profiles of electronic databases of personal information of the Republic of Kazakhstan residents, including in the framework of global state information systems (Draft Law of the Republic of Kazakhstan "On Personal Data" [1] Draft Law of the Republic of Kazakhstan "On amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of personal data" [2]). In this regard, there are new opportunities in education, science, culture and oddly enough espionage and various violations of the privacy of the individual. These achievements of scientific and technical progress, of course, a positive impact on quality of life, streamline management processes, the organization of social services, the possibilities of the constitutional rights of citizens to information. But at the same time, through these developments it is possible violations of civil rights to privacy, on the family secrets, protection of honor and dignity and the rights to the images.

This circumstance attracted the attention of foreign scholars and legislators in the 70-ies. XX century. Almost all developed countries have adopted national laws governing the system of protection of privacy with regard to Automatic Processing of Personal Data of citizens. In this area, successfully developed international legislation and the legislation of the European Union [3, p. 3].

Analyzing the available scientific literature and regulatory framework, the authors came to the conclusion that the characteristic features of the legislation of the Republic of Kazakhstan on the automated processing of personal data in the period from 1992 to 2012 was the inconsistency and instability, characterized by the absence of a legal basis for the formation mechanism for the protection of constitutional the right to privacy in the automated processing of personal data, the result of which was the situation actually uncontrolled proliferation of personal data of citizens of the Republic of Kazakhstan. So, in the 90's. XX century. in the Republic of Kazakhstan formed a market of counterfeit electronic products, offering to the public in the free market a huge number of electronic databases of citizens that contain information about their family, wealth, place of work, residence, passport data, bank deposits, non-cellular and fixed-line phones, state health, criminal record. Negative trends also contributed to failure to comply with information security in the processing of personal data in automated

information systems in view of the contradictory legal framework governing these requirements and the lack of legal provisions establishing responsibility for their violation. This is due to the imperfection of laws and regulations aimed at protecting the right to privacy in Kazakhstan. These normative legal acts include, first of all, the Law of the Republic of Kazakhstan "On Informatization" [4] and the Law of the Republic of Kazakhstan "On amendments and additions to some legislative acts of the Republic of Kazakhstan on the protection of citizens' rights to privacy" [5].

At the same time, it is recognized that the law enforcement authorities of the Republic of Kazakhstan repeatedly documented and prevent attempts to use the above-mentioned databases on citizens criminals for criminal purposes.

Trying to find a solution to this problem is reflected in the draft law of the Republic of Kazakhstan "On Personal Data" and the Concept of the Draft Law of the Republic of Kazakhstan "On amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of personal data", which provides the legal regulation of working with personal data on the basis of generally accepted international norms and principles in accordance with the Constitution and laws of the Republic of Kazakhstan is to ensure the rights and freedoms of the individual associated with the collection, processing and use of personal data in an environment where large-scale use of computer equipment for this purpose can make privacy citizens "transparent" for the public authorities. Thus, the Act introduced the concept of personal data and how they are handled, the foundations of the organizational and legal support of individuals and businesses, public bodies to form and use arrays of personal data on the basis of legislative regulation of the rights, duties and responsibilities of the holders (owners) of these arrays. These laws are expected to serve as a normative basis for the formation of the Republic of Kazakhstan mechanism to protect human and civil rights to privacy in the automated processing of personal data.

Thus, we note that the statement of the problem addressed in this article is directly related to such important scientific research of the Ministry of Education and Science of the Republic of Kazakhstan as a "legal framework to combat crime in the global communication networks."

The complexity of protecting the right to privacy due to the lack of a modern legal science and in existing national legislation of Kazakhstan shared understanding

of the right to privacy, as well as a clear definition of "private life". This is largely due to the presence in the structure of a wide range of legal rights, increasing with the development of public relations. In addition, the formation of new elements to the structure of the individual's right of privacy due to the close relationship between the institution of the privacy and the right to information as a category in terms of historical development of civilization mapping process participation of the individual in social relations. Therefore, in the present, the development of public relations in the field of information and folding jurisprudence determined the formation of a new structure element of complex constitutional right to privacy - the right to protection of personal data in the global communication networks.

Model of the mechanism of protection of the right to privacy in the processing of personal data in automated information systems on the territory of Kazakhstan is currently in its infancy. As shown, the absence of such a mechanism had a negative impact on the state of protection of private life of the individual in terms of information exchange, in particular, contributed to the spread of the Internet in the segment array of personal information of citizens of the Republic of Kazakhstan, which are in free access.

Therefore, the main purpose of writing this research paper is a theoretical understanding of the necessary legal measures to improve the model of the mechanism of protection of the right to privacy in the processing of citizens' personal data in automated information systems.

This article will attempt to solve a scientific problem to address existing gaps and contradictions in the national legislation of the Republic of Kazakhstan, preventing the effective protection of the constitutional right to privacy with regard to Automatic Processing of Personal Data and entering them into the system of global communication networks.

**Main Part:** The right to privacy has often become the object of unlawful actions, due to the known contradiction between the desire of every individual to preserve the privacy of his personality and the right of others to freely receive and impart information. This right is enshrined in the Constitution of the Republic of Kazakhstan and in many international conventions, both regional and global importance.

On the complexity of the existing problem of the statistics of the European Court of Human Rights. In the period from 1959 to 2011. they were issued 863 decisions on the complaints of a violation of the right to respect for

private and family life guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is interesting to note that among all the solutions to protect the substantive rights of the individual article 8 is steady fourth place, behind only the right to ban ill-treatment (Article 3 of the Convention), the right to security of person (Article 5), the right to a fair trial (Article 6) and the right to property (Article 1 of Protocol No 1). [6]

However, the development of measures to protect privacy, it is necessary to define the basic concepts ryazhom, as in this case, there are objective difficulties caused by the lack of a precise definition of the term "privacy".

In general terms, it is possible to agree with RB Golovkin, stating that "The right to privacy is expressed in the freedom of communication between people on an informal basis in the areas of family life, kinship and friendship ties and other intimate personal relationships, attachments, likes and dislikes" [7, p.7].

But it is worth noting that, unfortunately, the above definition does not disclose the essence of privacy, since this concept is very broad and voluminous. Thus, this concept can be included in the first place, the complex social relations that characterize the human and civil rights, as a subject with complete freedom, is also defined by the French thinkers as 'natural' freedom.

Thus, we can assume that the right to privacy - a set of social relations that characterize the human and civil rights as a subject having full freedom to exercise all sides personal life, if it is not contrary to the interests of society and the state. At the same time, the definition of man's place in the aggregate values guaranteed by the state, is through the implementation of legal relations. As a result, it is endowed with legal status.

On the other hand, it is important to highlight the view Belyaeva, NG, in which the right to privacy can be viewed in three ways:

- The right to privacy as an individual's right to his own life, actions against himself, this right is directly connected with the personality of a particular person, therefore, protected against interference from all subjects of the law;
- The right to privacy as an independent right, suggesting the inadmissibility of interference in the private life of the state, organizations, businesses and individuals;

- The right to privacy as the right adjacent to the other rights, namely the right to respect of family life, the right to inviolability of the home, the right to privacy of correspondence [8, p. 83-90].

The above rights may be considered as adjacent to the right to privacy of the elements and as a stand-alone law. Privacy face a prohibition state, its agencies and officials illegally and arbitrarily interfere in the private lives of citizens constituting a secret.

Violation of privacy can now be performed through global communication networks, so the development of new technology there was a question about the legal ways to protect the right to privacy in the global information systems, which will be recognized by the state.

These issues are particularly important in the development of the modern age of information, which, like all progress, along with the great benefits to humans and bears some difficulties and dangers. In a totalitarian and authoritarian political regimes, the government seeks to control all aspects of human life, including the privacy of individuals to use information to gain mastery over them. Hence the critical importance of these constitutional guarantees.

However, when fixing the definition of "privacy" problems arise from the fact that every person, by virtue of his or her identity, has its own view of the term "private life" and the view is dependent on both the psychological characteristics of the individual person and of the norms and traditions that exist in a given society at a given historical period. Generally speaking, privacy can be defined as the physical and spiritual area, which is controlled by the man himself, that is, free from external, directing influence, including the legal regulation (but should have legal support).

In this regard, it is important to note that the category of "private life", as such, has no legal content and legal regulation of the institution only sets limits on its integrity and, therefore, the limits of legitimate interference. It is appropriate to refer to the practice of such an authoritative body such as the European Court of Human Rights, which in the case of "Castello-Roberts v. the United Kingdom said that" private life - a capacious category, which is impossible to give an exhaustive definition. " [10].

From the above it can be highlighted that privacy - this is one of the main konstitutsionnyhprav person,

which includes the protection of the law of personal, family secrets and the privacy of correspondence, telephone conversations, postal, telegraph and other communications, including through the global communication networks, provision of a person and citizen guaranteed by the state control over information about himself and members of his family, the right to inviolability of the home, the right to protection of honor and dignity and the opportunity to refute false information about yourself.

Despite the differences in the extent of dissemination of information, the actions of the state and society to prevent and eliminate harmful effects, in both cases may be similar. First of all, it's legal education (ordinary and vocational), which will develop in respect of one person to another, respect for privacy and confidentiality, provide an opportunity to resolve the contradictions appeared legitimate means.

In addition, it should be noted that part of the "private life" is the right to privacy of correspondence, telephone conversations, telegraph, mail and other communications, as well as is a legally defined and protected by the state of the real process of a national set of powers that make up the content of the constitutional right of every person.

Considering the definition of the term "right to privacy", the following part of the analyzed categories [10, p.5].

First, it is the inner spiritual life. The assignment of it to the private sphere - is a way of recognizing the sovereignty rights in the world of his thoughts and feelings, freedom to think one way or another, to believe in something and not to believe in something, to experience certain feelings. Finally, the right to decide to whom and to what extent the report or not to report their thoughts, beliefs, emotions, or do not make them the subject of public discussion, that is a fact of social life.

Second, is the sphere of direct interpersonal communication. There are important external aspect - defense secrets interpersonal communications correspondence, telephone conversations and today and links through a computer address). No less important is the right of man to build interpersonal relationships, decide who is worthy of his respect and who - contempt, who to love or not to love, with whom to enter into intimate or friendly relations and who shun, shun, shun.

Third, private life - is the decisions and actions relating to personal and family use. The person who

decides which items and services, when, in what proportions and quantities to consume and in terms of commodity-money relations and market - where, from whom and on what terms to buy them. This includes household, fellowship, home economics and everything to do with leisure. In this area, the right and opportunity of every person to act on his own will and understanding.

Fourth, the concept of private life extends to property relations - the person entitled to dispose of the property, all of what he owns directly, ie their property [10, p.7].

Finally, the notion of privacy with the need to include issues of religious, cultural, ethnic, gender and sexual identity of the individual.

The fact that the regulations do not define the concept of "private life" and a list of its elements, as well as the scope and areas of human activity, can be explained by the fact that the relationship between the people in the private sphere for the most part governed by the rules of morality and morality, backed by regulations of the state.

However, it is important to note that the degree of protection of the right to privacy depends mainly on the degree of dissemination of information about the private life of a person related to the restricted information.

Thus, the information and any information that constitutes the object of privacy can be conditionally divided into the following groups:

- Significant (in this they differ from libel), but, nevertheless, defamatory information.

This includes information about the facts of biography, a person acts that have taken place or are assumed, if supported by appropriate evidence. In the absence of such, the information can not be regarded as assumptions distributor and as such it is legally indifferent, or it is the basis for a claim of defamation (if at all unreasonable assumption), or an action for defamation (if it is supported by arguments, able to convince the reader of the veracity of the information). It should be noted that the initiation of proceedings for contempt in this situation is usually ineffective.

You can select a particular kind of existence of this information - information that are not a mystery and are not defamatory, but known to most people, which communicates with an object (such can be regarded as information on previous conviction person).

Dissemination of such information can lead not only the moral harm to the object, but also can significantly change his life. (Not realized).

With respect to information of a personal nature, the disclosure is considered to be not only the publication of such information, but also their distribution among a fairly narrow circle of people and in some cases - to send it to one person.

- Information, regardless of their degree of reliability, the content of which is personal, medical, etc. secret.

The main difference from the above secrets stigmatizing information that the confidential information is by nature of their origin and not by content. In modern legal systems are protected by numerous mysteries of an individual, covering the most diverse aspects of his life [11, p.52]. That is, it can be stated that under the right to privacy means inalienable, though not absolute right of the individual to conceal from third parties related to the self-manifestation and self-discovery entity in society. Especially if the information is classified as secret or if the media is right to take certain measures to ensure that certain information was not disclosed.

Given all the above, we can say the level of the risk of unauthorized dissemination of information about the private life of the person with the most global network in the world - the Internet.

Very often when you order products or services online requires filling out numerous forms and questionnaires, where we enter their personal data. Sometimes the seller is limited to the name and email address, but often we leave your phone number, address and even the details of the bank card. Filling in these information fields, remember: even in the case of lawful acquisition of information when it is made with our consent - guarantee proper preservation of the data, in practice, are not always followed.

Most often, information about themselves online people leave voluntarily and in great numbers: first of all, in numerous social networks, forums. The behavior model of the modern Internet user assumes permanent placement and update personal data: photos, videos, information about the place of study and work, the current location of the user. It is necessary to realize that the way a man can inflict self-harm and the information of this kind can be used by hackers.

Personal data, once published on the Internet, with great complexity amenable to any control. Indicative experience Austrian law student. Checking with the social

network Facebook all the information about himself, he found out: Facebook is stored on the servers of its numerous personal data, including previously deleted them as photos and messages.

In other words, online services store much more information about us than we sometimes assume. The question of how this information is used, why and how long the company store it - remains an open question.

The above problems can be resolved as the legal instruments of protection and by enhancing the users' attention to the protection of personal data. As for the legal regulation for the implementation of the right to privacy established requirements for the protection of personal data and ensure their confidentiality. Such requirements should be clear and understandable to all stakeholders, in accordance with international standards and to provide the appropriate level of protection of personal data and the right to privacy. There should also be closely monitored by the State unquestioning compliance with legal requirements in the area of personal data protection.

Going public relations, complicated sphere of information, on a completely new phase, characterized by a high rate of development of information technology, creating conditions for the empowerment of action with information identifying the person in the system of social relations that led to the need for and the importance of forming a complex structure of the constitutional right to privacy a new element - the right to protection of personal data.

In addition, we have shown that the content of the right to protection of personal data is the exclusion of any act of personal data without the consent of the subject of such data, as well as providing the possibility of personal data to monitor the actions of operators handling their personal data. The right to confidentiality of personal data is a part of the constitutional right to privacy, the content of removing the possibility of the spread of such data by the operator of their treatment in the absence of consent from a personal data. And in this case, explained that obtaining personal data processing carried out by operators with the consent of the carrier or by any other lawful means.

In other words, we must adopt a new legal instrument, the effect of which would be directly aimed at protecting the right to privacy and the prevention of any attempts to violate this right. However, given the objective of adopting a new legal instrument, it is possible to propose some amendments to the already existing criminal laws of the Republic of Kazakhstan.

In this regard, there is a need of creating and adopting a legal instrument aimed at direct combat crime in the global communication networks, particularly the Internet.

This need is confirmed by such factors as: roumerskoe fraud, theft of telephone traffic connections, unauthorized access to telecommunications resources, digital PBX, the illegal provision of telecommunication services with access to obschegosudar – tively telephone network, the collection and dissemination of information about the private lives of persons copying and distribution of bank accounts and other information directly related to the mystery of the private lives of citizens.

The practice of the national legislation of the Republic of Kazakhstan testimony is that arising in the fight against crime by data problems are caused by imperfections in the criminal law, their contradictory interpretations, the lack of scientific guidelines, formal guidelines for clarification on the qualifications of the acts or proof of such crimes.

## **CONCLUSIONS**

The rapid development of information technology in various spheres of Kazakh society in its transition to a new stage in the development of complex actualized threat of violation of the constitutional right to privacy of citizens and accelerated the formation of a new structure in its element - the right to protection of personal data.

A positive feature of the legal institution of personal data protection in the Republic of Kazakhstan is its integration into the state of information security, providing personal security to balance the interests of individuals, society and the state in the field of automated information processing.

The legal institution for the protection of personal data in the Republic of Kazakhstan was formed quite chaotic, its provisions did not include provisions aimed at creating a single mechanism for the protection of the right to privacy, worn blanket, uncertain. Due to this negative aspect in Kazakhstan formed arrays of personal information of citizens who are in free access, including through the global communication networks.

The adoption of the Law of the Republic of Kazakhstan "On informatization" of 11 January 2007 was the first step in the development of legislation aimed at protecting the right to privacy and personal data of citizens of the Republic of Kazakhstan. However, a turning point in the development of legal regulation of

personal data protection in the Republic of Kazakhstan, due to the establishment of personal data for a particular type of legal regime of restricted information, the confidentiality of which is a constitutional nature, the adoption of such laws as the Law "On Personal Data" and the Law "On Amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of personal data "for the protection of the right to privacy in the automated processing of personal data. (Restated).

To sum up, it is worth noting that the state regulation of operators of global communication networks and the development of computer-based information systems play a leading role in the mechanism of protection of the right to privacy in the processing of personal data in these systems.

Ensuring adequate protection of the law is to ensure the value of Kazakhstan's national interests in the global information industry.

Therefore, as the results of research in the Republic of Kazakhstan, located on the path of integration into the global information society, attempts concrete steps in the mechanism of protection of the constitutional right to privacy as a necessary element of legal and democratic state. In this case, at the level of national legislation and regulations were shortcomings in ensuring the right of this mechanism, greatly reducing its effectiveness.

Thus, to improve the mechanism of protection of the right to privacy in global communications networks require an analysis of legislation in the field of automatic processing of personal data, which will highlight the following measures of the state to protect the right to privacy in the automated processing of personal data and the procedures of their application:

- The account statements to process personal data in the public register;
- Control of security requirements in the processing of personal data in automated information systems;
- Licensing and monitoring of compliance by licensees of the respective requirements and conditions for the implementation of technical protection of personal data as a form of restricted information;
- Suspension or revocation of the license of the operator handling organization in breach of the confidentiality of personal data, if the condition of a license is a ban on the transfer of personal data to third parties without the written consent of the data subject; administrative suspension or termination of the processing of personal data carried out in violation of the law;

- The state protection of the right to privacy in the automated processing of personal data as a state activity in the face of its bodies, with special competence application of legal measures to exclude the possibility of any action involving personal data without the consent of the data subject, as well as providing the possibility of personal data to monitor the actions of operators handling their personal data.
- Involvement of those responsible for violations of the legislation in the sphere of protection of personal data in civil, administrative and criminal liability; publication of reports on the state of protection of personal data in the Republic of Kazakhstan in the media.

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