A. Laws and Regulations

1) What laws apply to protection of privacy issues in your legal system? Are there civil code/legislative/common law provisions that protect individuals against privacy violations regarding:

a) In the Public Sector
   - Access by individuals to information collected by various government agencies about them?
   - Protection from disclosure of that information to third parties?
   - Access by the media or members of the public to government records, for example, those regarding government decision-making and action, and limitations put on that access?
   - Limitations put on information sharing between government agencies?

b) In the Private Sector
   - Protection from disclosure to third parties of personal information collected in the world of e-commerce, for example
     - personal information provided through the use of credit/debit cards and other electronic transfers of funds;
     - personal information in relation to credit reporting and banking transactions;
     - records of a customer’s usage (telephone; online activity);
     - records kept for insurance coverage and other social services benefits provided by the private sector?
   - Protection from surreptitious collection of information via the internet, for example, through internet electronic surveillance technologies such as “spyware” or “adware”?

2) What laws apply with respect to the investigation and enforcement of privacy rights?

   - How strong is the protection?
   - Are the laws binding or advisory?
   - How does an individual make a complaint when a private actor or government breaks privacy laws?
   - Who prosecutes or enforces – for example, a privacy commissioner, administrative body, such as a privacy tribunal?
   - Is there a right to a court remedy?
   - Are there out-of-court dispute resolution options?

Regulatory legal acts of Kazakhstan contain a number of provisions on protection of privacy. In particular, there are constitutional provisions that protect individuals from privacy violation.

Thus, according to Article 18 of the Constitution of Kazakhstan, everyone has a privacy right, right to personal and family secret, protection of his/her honor and dignity. Everyone has a right to a secret of personal deposits and savings, correspondence, telephone...
conversations, mail, wire and other messages. Limitations of this right are assumed only in cases and according to the procedures directly established by the Law. Public bodies, non-governmental organizations, officials and mass media are obliged to provide each citizen with an opportunity to familiarize him/herself with the documents, decisions and sources of information related to his/her rights and interests.

According to the Resolution of the Constitutional Council of the Republic of Kazakhstan dated August 5, 2002 No. 5 on Conformance of the Constitution of the Republic of Kazakhstan with the Law of the Republic of Kazakhstan on Amendments to Some Regulatory Legal Acts of the Republic of Kazakhstan on the Issue of Procuracy Supervision resulting from para 3 Article 18 of the Constitution of the Republic of Kazakhstan, right of every person to familiarization with documents, decisions and sources of information affecting their rights and freedoms as well as obligation of public bodies and officials to secure this right are implemented in a systematic connection with other constitutional provisions, in particular, with provisions of para 2 Article 20 and para 1 Article 39 of the Constitution, which say that “every person has a right to freely get information by any means not prohibited by the law. List of data being a state secret of the Republic of Kazakhstan is stipulated by the law”, “Rights and freedoms of a person and citizen may be limited only by the laws and inasmuch as it is required for the purpose of constitutional system protection, maintenance of public order, human rights and freedoms, population health and morality.” Rights envisaged by Articles 18 and 20 of the Constitution are not in the list of rights and freedoms which are not subject to limitation in any form (para 3 Article 39 of the Constitution).

A number of provisions of the current legislation aimed at protection of privacy are stipulated in codified and sectoral statutes:

Thus, Article 144 of the Civil Code ensures the right to protection of individuals’ personal life privacy, including privacy of correspondence, telephone conversations, diaries, notes, memos, intimacies, adoption, birth, medical, legal and bank deposits secrecy.

Disclosure of private life secret is possible under the law in cases stipulated by legislative acts.

Articles 145, 146 of the Civil Code provide for the right to personal image and inviolability of residence.

Article 13 of the Law dated November 27, 2000 “On Administrative Procedures” stipulate the requirements set to information exchange. Subpara 3) para 2 Article 15 of the Law specifies the procedures of citizens’ rights implementation which envisage inadmissibility of possible disclosure of private life information, personal and family secret without citizens’ consent. Article 44 of the Law on Informatization provides for the protection of personal electronic information resources. According to this Law, owners or possessors of information systems having received electronic information resources containing personal data are obliged to take measures on their protection from disclosure.

Guarantees of observing individual rights and freedoms when conducting criminal investigation are contained in Article 5 of the Law on Criminal investigation. According to para 3 of this Article, a person whose guilty in preparing or committing a crime is not proven in due course of law is entitled to request from the body conducting criminal investigation the data being a basis for checking him/her and on the nature of information related to him/her within the limits excluding disclosure of state or other secret protected by the law.

As for protection of privacy, legal relations arising in public sector are regulated most of all. The Law on State Secrets specifying a range of data referring to state secrets as well as procedure of providing this data to public bodies and organizations, rules of providing officials, Kazakh citizens and foreigners with access to state secrets and other issues.
There are provisions in the Law on State Statistics securing the rights of respondents in the field of statistics, in particular, the right to require state statistical agencies observe primary statistical data confidentiality.

The Law on Mass Media regulates the issues of journalists’ and mass media access to state records and other data.

As for the private sector, there is a number of provisions contained in various legislative acts.

For example, the Law on Banks and Bank Activity specifies obligation of a bank to disclose general conditions of conducting operations, gives a definition of a bank secret which includes data on existence, owners and numbers of depositors’, clients’, correspondents’ bank accounts, balances and monetary movements on these accounts, and accounts of the bank itself, bank operations (excluding general conditions of conducting bank operations), and data on existence, owners, nature and cost of the client’s property stored in bank safe boxes, cases, and strong rooms.

Article 11 of the Law on Private Entrepreneurship contains a provision on protecting information on private enterprise. Commercial secret protection means prohibition of illegal receiving, dissemination or use of information regarded as a commercial secret. A private enterprise identifies a number of persons having a free access to information regarded as a commercial secret and takes measures to protect its confidentiality. Persons having illegally got, disclosed or used information being a commercial secret are obliged to compensate for a damage in accordance with civil legislation.

A private enterprise or a person authorized by it is entitled to require from its employees a written undertaking not to disclose information being a commercial secret and notice the persons auditing it about responsibility according to the legislation.

A private enterprise has a right not to provide public bodies and officials performing registration, controlling and other functions access to information being a commercial secret, except for the information which is required for performing their functions under the laws of Kazakhstan. Any information on private enterprise received by public body during performance of its functions is not subject to disclosure and dissemination, except for the cases of transferring information to another public body according to the laws of Kazakhstan.

Law enforcement bodies are entitled to request for and receive any required information, including commercial secret, both from a private enterprise and public bodies possessing this information based on the public prosecutor’s authorization, investigation bodies’ resolution on institution of criminal proceeding or based on the court resolution.

At the same time, there is no detailed regulation of legal mechanisms with respect to protection from disclosure to third parties of personal information collected in world of e-commerce or protection from surreptitious collection of information via the internet.

When investigating violations related to right of personal life, administrative and criminal legal laws are used providing quite a strong protection and having a generally binding nature.

Illegal collection or distribution of information about an individual’s private life being his/her personal or family secret without his/her consent, having inflicted harm to rights and legitimate interests of the person affected, by a person abusing his/her official position or via mass media; unlawful violation of secrecy of correspondence, telephone conversations, mail, wire or other messages of individuals, illegal making, production, sale or purchase for the purpose of selling special equipment designed for clandestine information acquisition; disclosure by a health worker without any occupational or service need of information on diseases or medical examination results; illegal entry of a dwelling against the will of a person living there inflict criminal responsibility under the Articles 142-145 of the Criminal Code.
Article 86-1 of the Code on Administrative Offences provides for the responsibility for illegal collection and (or) distribution of information about the private life of an individual being a victim of domestic violence being his/her personal or family secret without his/her consent if these actions do not contain any signs of criminally punishable act.

Besides, the mentioned Code contains provisions envisaging administrative responsibility for unrightful refusal to provide documents and materials collected in accordance with the applicable procedure and related to individual’s rights and freedoms or provision to an individual of incomplete or deceptively misdescriptive information, and classifying generally available information as information with limited access as well, and for illegal restriction of right to information resources access.

In case of violation of right to personal life by any person or the government, an individual is entitled to address a complaint to the superior body, prosecuting agency, prosecutor's office and court. Moreover, a person has a right to apply to the Human Rights Commission and other similar bodies which however do not have a right to apply enforcement measures against a person having violated the law.

There are no any specialized bodies, such as confidential commissioner or confidential tribunal in the system of State agencies of Kazakhstan.

The right for defence in court is a constitutional right of every person which is secured by the laws of procedures as well. At the same time the disputing parties have an opportunity to resolve disputable issues without any court procedures by concluding an agreement certified by the public notary. At the same time, the work is conducted on introduction of alternative ways of resolving legal conflicts (for example, mediation introduction).

B. Private-Sector Initiatives

1) Do particular companies, industries or professional associations in your country govern themselves regarding the protection of privacy? For example, are there privacy policies, professional codes, voluntary industry standards?

2) Who or what body, if any, ensures that these standards are met?

As a rule, privacy policy in this area aims at protection of interests of the enterprise itself and its employees. The issues of protecting the rights of citizens to private life, as a rule, are covered by Professional Regulations or Codes of Ethics.

For instance, the Code of Ethics of the Professional Accountants, members of NGO “Chamber of Professional Accountants of the Republic of Kazakhstan” contains a rule under which a professional accountant shall observe confidentiality of the information received as a result of professional or business relationships, and shall not disclose such an information to third parties without having corresponding authorities, except for the cases when such disclosure is imposed by his/her legal or professional rights or obligations. Generally, compliance with set rules is regulated by the body having approved such rules.

C. International and Cross Border Issues

1) How is privacy protected when information is exchanged or transferred to other countries?

2) Are there any agreements, laws or international treaties or protocols, to protect privacy issues in this situation?

3) Does your country limit its exchange of information to countries with similar protections of privacy?

The issues of international cooperation in the field of privacy protection are governed by corresponding regulatory legal acts as well.

Thus, the Law of November 28, 2005 ratifies the International Covenant on Civil

Kazakhstan is a party to a number of international covenants containing provisions on information privacy protection.

Thus, Article 9 of the Convention of the Commonwealth of Independent States on the Human Rights and Fundamental Freedoms (Minsk, May 26, 1995) specifies that every person has a right to respect for his/her private and family life, inviolability of home and correspondence. There should be no government intervention in the use of this right, excluding the cases when such intervention is legally provided and required in the democratic society in the interests of the national and public security, public order, public health and morality protection or other persons’ rights and freedoms protection.

Besides, Kazakh public bodies in their activity are guided by the international legal acts related to the issues of protection of the citizens’ rights to personal privacy: Strasbourg Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of January 28, 1981, Resolution of the Council of Europe Parliament Assembly on the Right to Privacy No. 1165 (1998), Video Surveillance in Public Places No. 1604 (2008), and other.

The Supreme Court has got no data on limitations of exchange of information to countries with similar protections of privacy.

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