

Guarantee Of the Right to Privacy: The Experience of The CIS And the Republic of Uzbekistan

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Abstract

In this article, the author analyses the legal aspects of the right to privacy in the CIS countries and the Republic of Uzbekistan. The author points out that the concept of personal life is fixed at the level of the law to prevent different interpretations in practice and in the courts. The author believes that personal life is an area of human activity that relates exclusively to his personality, information about which a person tries to keep secret. The article concludes that freedom of thought, conscience and expression is also inextricably linked to the right to privacy. Everyone has the right to freedom of thought and expression of their beliefs, provided that this does not violate the rights and freedoms of others. Restrictions on these rights should be established only in cases provided for by law and be necessary in a democratic society.

Keywords: *privacy, private life, post-Soviet space, guarantee of rights, personal integrity.*

INTRODUCTION

In the CIS countries, the right to privacy is one of the fundamental human rights that is recognized and protected by international law, as well as many national constitutions and laws. It provides each individual with a sense of intimacy and freedom in relation to his personality, personal affairs and communications.

The right to privacy means that everyone has the right to freedom from unlawful intrusion into their personal sphere. This includes protection from the arbitrariness of the State, individuals or organizations that may try to violate the privacy, privacy and family life of a person. The right to privacy also guarantees the right to preserve intimate information, secrets and confidentiality.

One of the important aspects of the right to privacy is the protection of personal data. In the modern information society, there are many technologies that allow you to collect, store and process personal information about people. The right to privacy requires that such data processing takes place in accordance with the law, as well as taking into account the principles of proportionality and necessity.

Freedom of thought, conscience and expression is also inextricably linked to the right to privacy. Everyone has the right to freedom of thought and expression of their beliefs, provided that this

does not violate the rights and freedoms of others. Restrictions on these rights should be established only in cases provided for by law and be necessary in a democratic society¹.

In addition, the right to privacy includes the right to family life. This means that the State and other institutions must respect and protect family relations, marriage, parental rights and children's rights. Restriction or interference in family life must be provided for by law and have a legitimate purpose.

Failure to respect the right to privacy can have serious consequences for a person. This can lead to a violation of his freedom, infringement of his dignity and damage to his psychological and emotional well-being. Therefore, the protection of the right to privacy is essential to ensure freedom and justice in society.

Azerbaijan. Article 32 of the Constitution of Azerbaijan guarantees the right of every citizen to personal and family privacy, inviolability of home and inviolability of personal and family life. This means that Azerbaijani citizens have the right to protect their privacy from interference by the State, individuals or organizations.

In addition, Azerbaijan has a law on the protection of Personal Data, which regulates the collection, storage, use and disclosure of personal data of citizens. This law establishes requirements for the processing of personal data and protects the rights of citizens to the confidentiality and security of their personal data.

The judicial system of Azerbaijan also protects the right to privacy of citizens. If a violation of the right to privacy has occurred, a citizen has the right to go to court and demand compensation for the damage caused.

In general, the legislation of Azerbaijan recognizes and protects the right of citizens to privacy, including the right to personal and family secrets, inviolability of the home and confidentiality of personal data.

Armenia. Article 23 of the Constitution of Armenia establishes that everyone has the right to privacy, as well as to preserve and protect their honor and dignity. The State is obliged to ensure the protection of these rights.

In addition to the Constitution, there are other legislative acts in Armenia that regulate the right to privacy. For example, the Law "On the Protection of Personal Data" establishes rules for the processing, storage and use of personal data of citizens, ensuring their confidentiality and protection.

In case of violation of the right to privacy, Armenian citizens have the right to go to court and demand protection of their rights and compensation for the harm caused. The courts consider cases involving violation of personal life and take appropriate measures to restore violated rights.

It is important to note that in each specific situation, the exercise of the right to privacy may be restricted in cases provided for by law, for example, to ensure national security, prevent crimes or protect the rights and freedoms of others. However, such restrictions must be reasonable, lawful and proportionate to the objectives, and must also take into account the general principles of justice and fairness.

Belarus. The main law regulating this area is the Constitution of the Republic of Belarus, adopted in 1994. Article 30 of the Constitution guarantees the right of citizens to personal and family secrets, inviolability of private life, protection of honour and dignity.

In addition to the Constitution, some aspects of the right to privacy are also regulated by other laws of Belarus, such as:

¹ Toriqlul I. A Brief Introduction to the Right to Privacy – An International Legal Perspective, 2022. // https://www.nyulawglobal.org/globalex/Right_To_Privacy_International_Perspective.html#_edn103.

The Law of the Republic of Belarus "On Measures to ensure the safety of Citizens and Society" establishes rules for the processing and protection of personal data, including measures to prevent and suppress illegal access to information contained in information systems.

The Law of the Republic of Belarus "On Personal Data Protection" regulates the processing of personal data and establishes rules for their protection, including requirements for the collection, storage, use and transfer of personal data.

The Criminal Code of the Republic of Belarus contains norms concerning the inviolability of the private life of citizens and establishes liability for violation of personal life, including illegal entry into homes, illegal use of personal information and other crimes related to violation of the right to privacy.

It should be noted that the provisions of the legislation of Belarus on the right to privacy may change, therefore it is recommended to contact relevant regulations and legal consultants to obtain accurate information.

Kazakhstan. Article 18 of the Constitution of the Republic of Kazakhstan guarantees the right of everyone to privacy, personal and family secrets, protection of their honour and good name.

The Civil Code of the Republic of Kazakhstan: The Civil Code contains provisions concerning the protection of personal life and private property, including the right to inviolability of the home and the secrecy of correspondence.

The Law of the Republic of Kazakhstan "On Information and its protection": This law regulates the processing and protection of personal data, including the rules for the collection, storage, use and disclosure of personal information.

The Law of the Republic of Kazakhstan "On the secrecy of medical care and guarantees of patients' rights": This law regulates relations between patients and medical institutions, ensuring the confidentiality of medical information.

The Law of the Republic of Kazakhstan "On Banking Secrecy": This law regulates the confidentiality of information received by banks from their customers and establishes restrictions on its disclosure to third parties.

The Law of the Republic of Kazakhstan "On Labour": The law regulates relations in the field of labour, including the protection of personal data of employees and the confidentiality of information obtained during work.

In general, the legislation of Kazakhstan provides for the protection of the right to privacy of citizens and establishes measures to protect their privacy, personal data and private information².

Kyrgyzstan. One of the main laws guaranteeing the right to privacy is the Constitution of the Kyrgyz Republic. According to article 26 of the Constitution, everyone has the right to the inviolability of his personality, including the protection of his life, honour and dignity, intimate and family life, the right to freedom of movement, to choose a place of stay and to leave Kyrgyzstan.

The Law of the Kyrgyz Republic "On the protection of personal data" is also important for protecting the privacy of citizens. This law establishes rules for the processing of personal data, as well as restrictions on their use without the consent of the data subject.

In addition, Kyrgyzstan is a party to various international treaties that also guarantee the right to privacy, such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

It should be noted that Kyrgyz legislation also restricts the right to privacy in order to ensure public safety, prevent crimes and protect the rights and freedoms of others³.

² Tatarinova L.F. Problematic aspects of the implementation of the human right to privacy in the Republic of Kazakhstan (in Russian). Bulletin of the Treasury. The series is legal. No. 3 (51). 2. – pp. 64-66.

³ <https://media.kg/consultations/neprikosnovennost-chastnoj-zhizni-v-kyrgyzstanskom-zakonodatelstve/>

In general, the legislation of the Republic of Kyrgyzstan recognizes and protects the right to privacy of citizens, but it is important to take into account that specific norms and restrictions can be established in accordance with the public interests and circumstances of each specific case.

Russian Federation. The right to privacy in the legislation of the Russian Federation is protected at various levels. Here are some basic laws and regulations that regulate the right to privacy in Russia:

The Constitution of the Russian Federation: Article 23 of the Constitution of the Russian Federation guarantees everyone the right to privacy, personal and family secrets, protection of their honour and good name. This right may be restricted only in cases provided for by federal law.

The Civil Code of the Russian Federation: The Civil Code establishes the legal protection of the honour, dignity and business reputation of individuals. The personal life and personal dignity of a person are inalienable and inviolable.

Federal Law "On Personal Data": This law regulates the processing of personal data of Russian citizens. It establishes requirements for the collection, storage, use and disclosure of personal data, as well as the rights of citizens to protect their personal data.

The Criminal Code of the Russian Federation: The Criminal Code contains norms that establish liability for violation of privacy, illegal receipt and disclosure of personal data, as well as other crimes related to violation of the right to privacy.

The Law "On Mass Media": This law contains norms that protect the right to privacy from unlawful disclosure of information. It establishes requirements for the confidentiality of personal data of citizens when carrying out journalistic activities.

These are just some examples of laws and regulations that regulate the right to privacy in the Russian Federation. The protection of personal life can also be ensured by court decisions and other legislative acts aimed at protecting the rights and freedoms of citizens⁴.

Thus, the experience of the CIS countries shows that the right to privacy is an inalienable constitutional right of every person. It guarantees the protection of the individual sphere and freedom of each person from illegal intrusion. The protection of the right to privacy is based on the principles of justice, freedom and respect for the individual.

The Republic of Uzbekistan, as an independent and sovereign State, has created a reliable legal framework for the protection of personal rights and freedoms within the framework of the Constitution.

The Republic of Uzbekistan, as a Member of the United Nations (UN) and a signatory to several international human rights treaties, is taking consistent measures to improve mechanisms for the protection of individual rights and freedoms, develop national mechanisms for their implementation, suppress cases of violations of constitutional human rights and ensure reliable legal protection of personal life.

At the same time, several issues remain relevant, including the legal protection of personal life, and timely action against violations in this area.

In the Republic of Uzbekistan, the right to privacy is recognized and protected by law.

The legislative framework in the field of protection of personal life in Uzbekistan consists of the following normative legal acts:

- The Constitution of the Republic of Uzbekistan;
- The Civil Code of the Republic of Uzbekistan;
- The Criminal Code of the Republic of Uzbekistan;
- The Code of the Republic of Uzbekistan on Administrative Responsibility;

⁴ Solgalov S.V. Constitutional and legal foundations of the right to privacy in the Russian Federation (*in Russian*), Moscow, 2010. – p. 77.

- Law of the Republic of Uzbekistan dated April 24, 1997 No. 400–I "On guarantees and freedom of access to information";
- Law of the Republic of Uzbekistan No. 439–II of December 12, 2002 "On principles and guarantees of freedom of information";
- Law of the Republic of Uzbekistan dated December 11, 2003 No. 560–II "On Informatization";
- Law of the Republic of Uzbekistan dated September 8, 2017 No. LRU–444 "On the protection of children from information harmful to their health";
- Law of the Republic of Uzbekistan dated July 2, 2019 No. LRU–547 "On Personal data";
- Law of the Republic of Uzbekistan dated April 15, 2022 No. LRU–764 "On Cybersecurity".

Let's briefly consider the norms of these laws in terms of guarantees of the right to a person's privacy.

The Constitution of Uzbekistan recognizes the inviolability of the personal life of every citizen. **Article 31 of the new version of the Constitution of the Republic of Uzbekistan** guarantees the right to personal and family secrets, as well as the inviolability of the home⁵. The updated Constitution provides for a number of new guarantees:

- Private life (personal and family secrets) is recognized as a constitutional human right;
- the confidentiality of communication and the inviolability of the home are recognized;
- the right to personal data, including the right to be forgotten, is established;
- violation of the inviolability of communications and housing is allowed only by law, and restriction of the right to secrecy of communications and search requires the consent of the court⁶.

The Civil Code of the Republic of Uzbekistan recognizes the protection of personal life through the prism of intangible benefits⁷. Thus, article 99 of the Civil Code of the Republic of Uzbekistan explicitly prescribes that personal rights belong to a citizen from birth or by virtue of law, and therefore this category of rights is not alienated or transferred to other persons. In addition, article 100 of the Civil Code of the Republic of Uzbekistan provides for the possibility of protecting these rights.

The Code of Administrative Responsibility⁸ and the Criminal Code⁹ of the Republic of Uzbekistan provide for liability (administrative and criminal, respectively) for the following offenses and crimes that infringe on personal life:

- Sexual harassment (Article 41¹ of the Code of Administrative Responsibility);
- violation of the inviolability of the home (Article 45 of the Code of Administrative Responsibility and Article 142 of the Criminal Code);
- disclosure of information that may cause moral or material damage to a citizen (Article 46 of the Code of Administrative Responsibility);
- violation of the secrecy of correspondence, telephone conversations, telegraphic or other communications (Article 143 of the Criminal Code);
- violation of privacy (Article 46¹ of the Code of Administrative Responsibility and Article 141¹ of the Criminal Code);
- violation of the legislation on personal data (Article 46² of the Code of Administrative Responsibility and Article 141² of the Criminal Code);
- disclosure of information that infringes on the honor and dignity of the individual and reflects the intimate aspects of human life (Article 141³ of the Criminal Code).

⁵ The Constitution of the Republic of Uzbekistan // <https://lex.uz/docs/6451070>.

⁶ UNHRHC, «Annual Reports», United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/EN/Issues/Privacy/SR/Pages/AnnualReports.aspx>.

⁷ The Civil Code of the Republic of Uzbekistan (in Russian // <https://lex.uz/docs/111181>).

⁸ The Code of the Republic of Uzbekistan on Administrative Responsibility // <https://lex.uz/docs/97661>.

⁹ The Criminal Code of the Republic of Uzbekistan // <https://lex.uz/docs/111457>.

The Law of the Republic of Uzbekistan dated April 24, 1997 No. 400–I "On guarantees and freedom of access to information" defines a number of guarantees regarding the protection of personal life during the circulation of information:

- information about personal life is not subject to disclosure to third parties (Article 9 of the Law);
- if a person signed under a pseudonym, then it cannot be disclosed without a court decision (Article 10 of the Law)¹⁰.

The Law of the Republic of Uzbekistan dated December 12, 2002 No. 439–II "On principles and guarantees of freedom of information" establishes the importance of providing information about personal life as a means of implementing personal information security. Article 13 provides that personal information security includes the protection of confidentiality and privacy of private life, as well as protection from various unlawful information and psychological influences (for example, blackmail or extortion).

In addition, this Law contains a number of other guarantees:

- information about personal life is not provided, and the request is refused (Article 10);
- information about personal life is subject to protection (Article 11 of the Law);
- Protection of personal information security is part of State policy (Article 12 of the Law)¹¹.

The Law of the Republic of Uzbekistan dated December 11, 2003 No. 560–II "On Informatization" establishes the duties of a blogger to prevent encroachment on a person's personal life. Article 12¹ of this law states that illegally posted information about a person's personal life must be deleted. If a person has been harmed because of this, then he has the right to apply to the court in a general manner to protect his rights¹². We are talking about civil proceedings.

The Law of the Republic of Uzbekistan dated September 8, 2017 No. LRU–444 "On the protection of children from information harmful to their health" establishes standards for the protection of children. In particular, article 16 of the Law prohibits the turnover of products that contain any personal information or information about the private lives of children who have suffered as a result of illegal actions (family or domestic violence, crimes, etc.)¹³.

The legislation of Uzbekistan also establishes restrictions on the collection and use of personal data of citizens. In accordance with *the Law of the Republic of Uzbekistan dated July 2, 2019 No. LRU–547 "On personal data"*, the collection and processing of personal data require the consent of the data subject or are permissible only in certain cases established by law¹⁴.

Another important law is *the Law of the Republic of Uzbekistan dated April 15, 2022 No. LRU–764 "On Cybersecurity"*. This law includes in the category of cybersecurity the level of protection of information about private life, namely information about personal life processed in the virtual space created by information technologies¹⁵.

In general, we can say that the relevant legislation has been formed to ensure the protection of human privacy in Uzbekistan. However, work in this direction should be continued in terms of strengthening responsibility, specifying the conceptual framework and improving law enforcement practice.

¹⁰ The Law of the Republic of Uzbekistan dated April 24, 1997 No. 400–I "On guarantees and freedom of access to information" // <https://lex.uz/docs/2118>.

¹¹ The Law of the Republic of Uzbekistan dated December 12, 2002 No. 439–II "On principles and guarantees of freedom of information" // <https://lex.uz/docs/52709>.

¹² The Law of the Republic of Uzbekistan dated December 11, 2003 No. 560–II "On Informatization" // <https://lex.uz/docs/82956>.

¹³ The Law of the Republic of Uzbekistan dated September 8, 2017 No. LRU–444 "On the protection of children from information harmful to their health" // <https://lex.uz/docs/3333805>.

¹⁴ The Law of the Republic of Uzbekistan dated July 2, 2019 No. LRU–547 "On personal data" // <https://lex.uz/docs/4396428>.

¹⁵ The Law of the Republic of Uzbekistan dated April 15, 2022 No. LRU–764 "On Cybersecurity" // <https://lex.uz/ru/docs/5960609>.

References

1. Solgalov S.V. Constitutional and legal foundations of the right to privacy in the Russian Federation (in Russian), Moscow, 2010. – p. 77.
2. Tatarinova L.F. Problematic aspects of the implementation of the human right to privacy in the Republic of Kazakhstan (in Russian). Bulletin of the Treasury. The series is legal. No. 3 (51). 2. – pp. 64-66.
3. The Civil Code of the Republic of Uzbekistan (in Russian // <https://lex.uz/docs/111181>).
4. The Code of the Republic of Uzbekistan on Administrative Responsibility // <https://lex.uz/docs/97661>.
5. The Constitution of the Republic of Uzbekistan // <https://lex.uz/docs/6451070>.
6. The Criminal Code of the Republic of Uzbekistan // <https://lex.uz/docs/111457>.
7. The Law of the Republic of Uzbekistan dated April 15, 2022 No. LRU–764 "On Cybersecurity" // <https://lex.uz/ru/docs/5960609>.
8. The Law of the Republic of Uzbekistan dated April 24, 1997 No. 400–I "On guarantees and freedom of access to information" // <https://lex.uz/docs/2118>.
9. The Law of the Republic of Uzbekistan dated December 11, 2003 No. 560–II "On Informatization" // <https://lex.uz/docs/82956>.
10. The Law of the Republic of Uzbekistan dated December 12, 2002 No. 439–II "On principles and guarantees of freedom of information" // <https://lex.uz/docs/52709>.
11. The Law of the Republic of Uzbekistan dated July 2, 2019 No. LRU–547 "On personal data" // <https://lex.uz/docs/4396428>.
12. The Law of the Republic of Uzbekistan dated September 8, 2017 No. LRU–444 "On the protection of children from information harmful to their health" // <https://lex.uz/docs/3333805>.
13. Toriqul I. A Brief Introduction to the Right to Privacy – An International Legal Perspective, 2022. // https://www.nyulawglobal.org/globalex/Right_To_Privacy_International_Perspective.html#_edn103.
14. UNHRHC, «Annual Reports», United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/EN/Issues/Privacy/SR/Pages/AnnualReports.aspx>.
15. <https://media.kg/consultations/neprikosnovennost-chastnoj-zhizni-v-kyrgyzstanskom-zakonodatelstve/>