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THE CONCEPT, CONTENT AND CONSTITUTIONAL-LEGAL CHARACTERISTICS OF THE RIGHT TO PERSONAL INVIOABILITY

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Reliable provision of human rights and freedoms is one of the basic principles of a modern legal state and democratic society. In the system of these rights, the right to personal inviolability has a special importance as one of the fundamental constitutional rights ensuring the physical and mental integrity, personal freedom, dignity and security of a person. It is this right that forms the necessary legal basis for the effective implementation of other human rights and freedoms. Therefore, the scientific determination of the concept, content and constitutional-legal characteristics of the right to personal inviolability is considered one of the urgent problems of modern constitutional law.

In modern times, the right to personal inviolability has evolved not only as a classical

constitutional-legal institution that ensures the protection of a person from unlawful arrest and detention, but also as a complex constitutional-legal institution aimed at ensuring the physical and mental integrity, dignity, free will in relation to medical interventions, biological integrity and safety of a person. Scientific and technological progress, the development of innovative technologies in the field of biomedicine and genetics, the integration of artificial intelligence into the healthcare system, the expansion of digital healthcare services, and the intensive processing of biometric data necessitate a revision of the traditional content of the right to personal integrity, an expansion of its scope of application, and the improvement of constitutional and legal protection mechanisms in line with modern challenges.

One of the main factors determining the relevance of the topic is the lack of a unified scientific approach to the concept and legal content of the right to personal inviolability in legal science. Different legal systems include different elements in the content of this right, and its interaction with personal freedom, privacy, human dignity, the right to consent to medical intervention and other fundamental rights is explained on the basis of different theoretical concepts. This

necessitates a comprehensive study of the legal nature, structural elements and functional characteristics of the right to privacy in a comparative-legal aspect.

The study of the constitutional and legal characteristics of the right to personal inviolability is of significant scientific and practical importance in terms of determining the content of the state's negative and positive constitutional obligations related to the implementation, protection and prevention of violations of this right. The negative constitutional obligations of the state express its duty to refrain from unlawful and unjustified interference with fundamental rights, while positive constitutional obligations express its duty to take the necessary legislative, institutional and practical measures for the effective implementation, protection and prevention of violations of those rights.

A.P. Korkin states that "negative status represents a set of interconnected rights and freedoms belonging to a citizen, protected from the intervention of the state or other legal entities, and not subject to change or restriction by any legal entity" [9, p. 27]. We believe that although the stated position correctly reflects the essence of the concept of "negative status" from a scientific and legal point of view, it cannot be applied to the concept of "negative obligations". Because negative obligations do not express the content of rights and freedoms, but the duty of the state to refrain from unlawful interference with those rights and freedoms, as well as not to create unjustified obstacles to their free exercise.

In the context of the right to personal inviolability, negative obligations express the duty of the state and other legal entities to refrain from unlawful interference with the freedom and integrity of the individual, to restrict this right only within the framework of the grounds and procedures provided for by law, and to prevent unjustified interference.

According to N.A. Bobrova and V.V. Stepanova, it is unacceptable to overextend the concept of positive constitutional responsibility, to the extent of theoretically developing the institution of legal responsibility itself and specific constitutional-legal sanctions [2, p. 102].

We consider it necessary to state that the concepts of "negative obligations" and "positive obligations" are not established as terminological expressions in the Constitution of the Republic of Azerbaijan dated November 12, 1995 [4]. However, these concepts are legal concepts that have been formulated and widely applied in constitutional law and human rights doctrine, as well as in the case law of the European Court of Human Rights.

In the context of modern constitutionalism, the state is not only obliged to refrain from unlawful interference with the right to personal inviolability, but also to protect this right from unlawful interference by third parties, to create the necessary legal and institutional mechanisms for its effective implementation, to ensure effective judicial protection, to effectively investigate violations of the law, and to form adequate legal liability mechanisms. In this regard, scientific research into the transformation of the right to personal inviolability from a classical right of defense into a complex right requiring active state activity in accordance with the concept of a social legal state is of great importance.

One of the main factors determining the relevance of the topic is the dynamic development of international human rights standards and their increasing influence on national legal systems. The Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948 [16], International Covenant on Civil and Political Rights, adopted by the UN General Assembly on 16 December 1966 [8], Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted

by the UN General Assembly on 10 December 1984 [5], Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 [6], as well as the case law of the European Court of Human Rights has enriched the interpretation of the content of the right to personal inviolability, clarified the standards of its application, and formed new legal criteria that determine the limits of the negative and positive obligations of states in the field of ensuring this right. The study of the interaction of international human rights standards with national constitutional law, as well as their impact on the legal system and law enforcement practice of the Republic of Azerbaijan, is considered one of the priority research areas of modern constitutional law.

Strengthening the protection of human rights in the Republic of Azerbaijan has been identified as one of the main priorities of state policy. The Constitution of the Republic of Azerbaijan, while establishing the right to personal inviolability as a fundamental right, determines that interference with or restriction of this right is possible only within the framework of the grounds and rules provided for in the Constitution and laws. In addition, there are legal norms regulating individual aspects of the right to personal integrity in criminal procedural, administrative, civil, and health legislation. However, there is a need for scientific research to systematically define the concept, content, and constitutional and legal characteristics of this right, to clarify its interaction with other constitutional rights and freedoms, to scientifically substantiate the constitutional and legal criteria for restricting the right, as well as to assess the compliance of existing legislation with international human rights standards.

Thus, the theoretical, comparative-legal and international legal aspects of the concept, content and constitutional-legal characteristics of

the right to personal immunity, the determination of the place and functional purpose of this right in the system of constitutional rights, the preparation of scientifically substantiated proposals for improving the legislation of the Republic of Azerbaijan, taking into account international standards and the legal experience of foreign states, are among the main factors determining the theoretical and practical relevance of the topic.

The idea of the right to personal inviolability has ancient roots in legal history. Although the legal systems of antiquity contained certain legal institutions aimed at protecting the freedom and physical integrity of the individual, they did not have a systematic character consistent with the modern concept of fundamental human rights. The formation of the modern constitutional content of the right to personal inviolability is primarily associated with the English Great Charter of Liberties (*Magna Carta Libertatum*) of 1215. D. Poldnikov notes that the English king John Lackland (reigned from April 6, 1199 to October 19, 1216 according to the modern calendar) adopted the *Magna Carta*, which confirmed the ancient rights and freedoms of his subjects.

Article 39 of the Charter states that no free person can be arrested, deprived of his liberty or deprived of his rights except on the basis of the laws of the country and the lawful judgment of his peers [10].

Scientific literature shows that a number of fundamental elements of the institution of basic rights and freedoms enshrined in modern constitutions were already present in the embryo of the *Magna Carta* of 1215 [11, p. 1]. The *Magna Carta* had a significant impact on the formation of the institution of habeas corpus and the constitutional guarantees of the right to personal immunity in later periods. In the later historical stage, the institution of habeas corpus, which was formed in the English common law system, became one of the most important procedural guar-

antees of the right to personal inviolability, especially after the adoption of the Habeas Corpus Act of 1679 by the English Parliament [7]. This institution ensured that the detained person was brought before a court and that the legality of his deprivation of liberty was reviewed promptly by judicial review.

The legal acts of the American and French revolutions adopted in the late 18th century, especially the Virginia Declaration of Rights of June 12, 1776, and the United States Constitution of 1787 [13], the Bill of Rights of December 15, 1791, consisting of the first 10 (ten) amendments to the United States Constitution, and the Declaration of the Rights of Man and of the Citizen of 1789 [14] created a solid legal basis for the development of the right to personal inviolability in the 19th century.

Article 7 of the Declaration of 1789 states that no one can be accused, arrested or detained except in the cases provided for by law and in the manner prescribed by law. This provision made a significant contribution to the constitutional recognition of the principle that personal freedom should be limited only in accordance with law and to the formation of the concept of a legal state in later periods.

The 19th century is characterized as a period of extensive development of the ideas of a legal state and the rule of law. The constitutional acts adopted during this period significantly developed the constitutional-legal content and system of guarantees of the right to personal inviolability, strengthened procedural guarantees against unlawful deprivation of liberty, and served to limit the activities of state power within legal frameworks.

The Swedish Constitution (Instrument of Government) of June 6, 1809, is considered one of the first constitutional acts that played an important role in the development of the right to personal inviolability in the 19th century [15].

This Constitution, in addition to strengthening the principles of separation of state powers, legality and legal responsibility, has also made a significant contribution to the development of constitutional guarantees of personal freedom. The constitution provided legal guarantees aimed at protecting the individual from unlawful arrest and arbitrary deprivation of liberty, an approach that had a significant influence on the development of subsequent Scandinavian constitutionalism.

One of the important stages in the development of the right to personal integrity at the constitutional level at the beginning of the 19th century was the adoption of the Spanish Constitution of March 19, 1812 (Constitution of Cádiz) [1]. This Constitution is considered one of the first and most important examples of liberal constitutionalism in Europe. The Constitution establishes that a person may be arrested only on the grounds and procedures provided for by law, as well as the inadmissibility of unlawful deprivation of liberty. At the same time, it is envisaged that restrictions on personal freedom will be carried out on the basis of judicial control and the principles of legality. The legal approaches enshrined in this Constitution had a significant impact on the development of liberal constitutionalism and constitutional guarantees of fundamental rights in later European states.

The Norwegian Constitution of 17 May 1814 marked an important milestone in the constitutional development of the right to personal integrity [3]. This document, known as the Eidsvoll Constitution (named after the town of Eidsvoll in Norway where it was adopted), is considered one of the most liberal and democratic constitutions of its time. It includes constitutional guarantees for the protection of personal liberty, the prohibition of unlawful arrest, and the right to be tried only on the grounds and in accordance with procedures established by law. The Constitution

of the Netherlands, adopted in the same year (the aforementioned Constitution was significantly revised in 1815 and replaced by the Constitution of the Kingdom of the Netherlands), also contained provisions that served to strengthen the legal protection of personal freedom and limit state power within legal frameworks.

One of the most important documents of 19th-century European constitutionalism is the Belgian Constitution of February 7, 1831 [12]. This Constitution systematically establishes both substantive and procedural legal guarantees of personal freedom and inviolability. The Constitution prohibits unlawful arrest and stipulates that a person may be deprived of his liberty only on the grounds and procedures established by law. In addition, the inviolability of the home, the secrecy of correspondence, the principle of legal jurisdiction and other procedural guarantees were also constitutionally protected. The Belgian Constitution of 1831 subsequently had a significant impact on the constitution-making of a number of European states and the development of liberal constitutionalism.

The Frankfurt Constitution of 1848 is considered the first document in German constitutional history to systematically establish fundamental rights. The section of that Constitution entitled "Fundamental Rights of the German People" established personal freedom, protection from unlawful arrest, the inadmissibility of deprivation of liberty without a court order, and the principle of the rule of law. Although the Frankfurt Constitution did not remain in force for long, its legal ideas had a significant impact on the development of German constitutionalism.

The Albertine Statute (Statuto Albertino) of 4 March 1848 was adopted in the Kingdom of Sardinia and established the main constitutional guarantees of personal freedom. After the creation of the Kingdom of Italy in 1861, this Statute was applied as the Constitution of the new state and retained its legal force until the entry

into force of the Italian Constitution of 1948. The Statute allowed personal freedom to be restricted only within the grounds and procedures established by law. The Danish Constitution of 5 June 1849 and the Prussian Constitution of 31 January 1850 also played an important role in the development of constitutional guarantees of personal liberty and security in the 19th century. Both Constitutions established the protection of the individual against unlawful arrest, the possibility of deprivation of liberty only on the grounds and procedures established by law, and the principles of due process and due process.

In the 20th century, especially after the Second World War, the right to personal inviolability became one of the important subjects of international legal regulation. International legal documents adopted during this period formed universal standards that determined the content, guarantees and protection mechanisms of this right.

After gaining independence, the Republic of Azerbaijan integrated international legal standards on the right to personal inviolability into its Constitution and integrated them into the national legal system.

The right to personal inviolability means the right of everyone to be free from arbitrary arrest, detention or deprivation of liberty, as well as from torture, inhuman or degrading treatment or punishment, and from other forms of physical and mental violence.

The doctrine distinguishes two main approaches to the concept of the right to personal inviolability. According to the narrow approach, the right to personal inviolability is perceived only as a guarantee of a person's physical freedom and mainly includes his protection from unlawful arrest, detention and deprivation of liberty. According to the broad approach, the right to personal inviolability includes not only physical freedom, but also the physical and mental integrity of a person, as well as the right to freely decide about his life and body.

In modern constitutional-legal doctrine, a broad approach is considered more justified, since this approach recognizes that the right to personal inviolability is not limited only to the protection of physical freedom, but also provides legal protection for the physical and moral integrity of a person, as well as the right to freely decide about his own life.

The right to personal inviolability does not exist in isolation. It is closely interconnected with the right to protection of honor and dignity, the right to privacy, the right to inviolability of housing, freedom of movement and choice of residence. Together, these rights constitute a single system of constitutional and legal guarantees that ensure the inviolability of a person's personal sphere.

The content of the right to personal inviolability consists of a system of interrelated legal elements and guarantees that ensure their implementation. The content of this right covers the main elements that ensure the physical freedom of a person, his physical and moral integrity, as well as their legal protection from unlawful interference by the state and other persons. The main elements that make up the content of the right to personal inviolability can be conditionally systematized into several functional blocks. These blocks include the prohibition of unlawful deprivation of liberty, procedural guarantees of personal freedom, the prohibition of torture, cruel, inhuman or degrading treatment or punish-

ment, protection from forced involvement of a person in medical and scientific experiments, as well as remedies for violated rights. However, we believe that determining the content of the right to personal inviolability cannot be limited only to the analysis of its substantive and legal elements. The constitutional and legal content of this right should be assessed on the basis of the mutual unity of substantive and legal elements (physical freedom, physical and moral integrity), procedural guarantees (legality, judicial control and legal remedies), as well as the negative and positive obligations of the state. It is this three-component approach that allows us to fully and systematically explain the content of the right to personal inviolability.

In the constitutions of many modern states, including the Constitution of the Republic of Azerbaijan, the right to personal inviolability is enshrined in a separate constitutional norm. This right is recognized as one of the fundamental rights of man and citizen, and the state is obliged to ensure its implementation, organize its protection, as well as provide effective legal protection and restoration mechanisms in cases of violation. The constitutional establishment of the right to personal inviolability provides it with a supreme legal guarantee, excludes the unjustified restriction or alteration of the essence of this right by ordinary legislative acts, and at the same time allows it to be limited by law only on the basis of the criteria and principles established by the Basic Law.

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Bayramova Pərvanə Bayram qızı,
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ŞƏXSİ TOXUNULMAZLIQ HÜQUQUNUN ANLAYIŞI, MƏZMUNU VƏ ONUN KONSTITUSİYA-HÜQUQİ XARAKTERİSTİKASI

XÜLASƏ

Azərbaycan Respublikası Konstitusiyasının 32-ci maddəsi şəxsi toxunulmazlıq hüququnun tənzimlənməsində əhəmiyyətli fiziki azadlığın müdafiəsi ilə məhdudlaşmayaraq, şəxsi həyatın toxunulmazlığını, rəhbərliyini və fərdi məlumatların müdafiəsini vahid konstitusion norma çərçivəsində əhatə edən kompleks hüquqi tənzimləmə modelini təsbit edir. Bununla belə, maddədə şəxsi toxunulmazlıq hüququnun maddi-hüquqi məzmununun sistemli şəkildə müəyyən edilməməsi, bu hüquqa müdaxilənin konstitusion meyarlarının tam və aydın ifadə olunmaması, habelə fərdi məlumatların emalının əsas prinsiplərinin konstitusiyə səviyyəsində birbaşa təsbit edilməməsi həmin normanın təkmilləşdirilməsini zəruri edir.

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ПОНЯТИЕ И СОДЕРЖАНИЕ ПРАВА НА ЛИЧНУЮ НЕПРИКОСНОВЕННОСТЬ И ЕГО КОНСТИТУЦИОННО-ПРАВОВАЯ ХАРАКТЕРИСТИКА

РЕЗЮМЕ

Статья 32 Конституции Азербайджанской Республики закрепляет комплексную модель правового регулирования права на неприкосновенность личности, не ограничиваясь традиционным подходом к защите физической свободы, а охватывая в рамках единой конституционной нормы неприкосновенность частной жизни, тайну коммуникаций и защиту персональных данных. Вместе с тем отсутствие в данной статье системного определения материально-правового содержания права на неприкосновенность личности, недостаточно полное и четкое закрепление конституционных критериев вмешательства в это право, а также отсутствие прямого закрепления на конституционном уровне основных принципов обработки персональных данных обуславливают необходимость совершенствования указанной нормы.

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