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**Formation and development of the right to personal immunity
in the legislation of Azerbaijan**

Abstract: The study examines the main historical and legal stages of the formation and development of the right to personal inviolability, starting from the period of the Azerbaijan Democratic Republic, through the Soviet era, the restoration of state independence in 1991, the legal developments following the adoption of the 1995 Constitution, and within the context of modern legislation. The study analyzes the evolution of the right to personal inviolability from its physical and spatial spheres into a broader system of legal guarantees encompassing private and family life, communication, and information. Particular attention is paid to the specification of constitutional guarantees through sectoral and procedural legal norms, as well as the establishment of judicial control over operational-search activities. As a result of the research, the main patterns in the historical development of the right to personal inviolability within the legal system of Azerbaijan, its modern scope, and the distinctive characteristics of its legal protection mechanisms are identified.

Keywords: Human rights, state, freedom, immunity, legislation.

The ensuring of human rights and freedoms is not only one of the fundamental characteristics of a modern law-governed state, but also a crucial prerequisite for determining the legal status of an individual in their relations with the state and society. Among these rights, the right to personal inviolability holds particular significance. Personal inviolability is a system of fundamental legal guarantees that ensures the protection of an individual's physical and psychological integrity, private and family life, as well as their individual sphere from unlawful interference. In modern legal systems, this right is not restricted solely to the protection of an individual's physical liberty; it also encompasses various legal elements such as the privacy of personal and family life, the protection of personal data, the secrecy of correspondence and communications, and defense against unlawful surveillance and other forms of interference. However, the contemporary substance of the right to personal inviolability within the legal system of Azerbaijan did not emerge overnight. The normative formation of this right has occurred in close correlation with the historical development of Azerbaijani statehood and its legal system. Therefore, to achieve a deeper understanding of the existing constitutional and legislative substance of the right to personal inviolability, examining the stages of its historical-legal development is of paramount importance.

It is appropriate to initiate the historical development of the right to personal inviolability in Azerbaijani legislation from the period of the Azerbaijan Democratic Republic. The primary reason for this is that with the establishment of an independent Azerbaijani state in 1918, the legal foundations of state power and the legal status of citizens were determined on the basis of new political-legal principles. The Declaration of Independence, adopted by the National Council of

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Azerbaijan on May 28, 1918, constituted the legal foundation for the establishment of the Azerbaijan Democratic Republic. Although this document cannot be formally and legally equated with a modern constitution, it functioned as a fundamental act of constitutional significance that defined the core political and legal principles of Azerbaijani statehood. In the electronic materials of the National Library of Azerbaijan named after M.F. Akhundov, the Declaration of Independence is presented not only as the first legal document of the Azerbaijan Democratic Republic but also as a fundamental act possessing a constitutional character [12].

The provision of the Declaration of Independence that is significant for the historical investigation of the right to personal inviolability is reflected in its fourth paragraph. According to that provision, the Azerbaijan Democratic Republic guaranteed legal-political and citizenship rights to all citizens living within its borders, regardless of nationality, religion, class, estate, or gender. Nevertheless, from the perspective of modern constitutional law, it would be incorrect to directly equate this provision with the right to personal inviolability. The “right to personal inviolability” was not enshrined as a distinct legal category in the Declaration of Independence, and specific provisions regarding the secrecy of private and family life, the protection of personal data, the secrecy of communications, and other modern legal institutions were not envisaged. From this point of view, it is more reasonable to characterize the fourth paragraph not as a full normative enshrinement of the right to personal inviolability in the modern sense, but as a general legal principle that held significance for the subsequent development of that right. Concurrently, this provision expressed the principle that the state recognizes and guarantees the rights of citizens residing within its territory, irrespective of their national, religious, social, and gender affiliation. The aforementioned approach was of vital importance in terms of the state's recognition of an individual's legal status and the universal nature of fundamental rights and freedoms. In this sense, the provision can be evaluated as one of the factors that established the constitutional-legal groundwork for the formation of the right to personal inviolability.

The fifth paragraph of the Declaration of Independence provided for the creation of opportunities for the free development of all nationalities living in the territory of Azerbaijan. The provision in question complemented the general constitutional approach aimed at recognizing the rights of various groups, regardless of their national or other affiliations. Nonetheless, the conclusion that it expresses a component of the general constitutional guarantee of rights and freedoms, rather than a specific element of the right to personal inviolability, is more well-founded.

Consequently, from the perspective of the legal heritage of the Azerbaijan Democratic Republic period, the main feature characterizing this stage of the development of the right to personal inviolability was the formation of its constitutional-legal foundations prior to the distinct and systematic normative enshrinement of the right. The declaration of the ensuring of citizens' rights in the Declaration of Independence established a normative foundation for the future emergence of more concrete forms of legal protection for the individual against the interference of state power. For the indicated reason, the period of the Azerbaijan Democratic Republic can be characterized as a stage in which the right to personal inviolability was not directly enshrined in Azerbaijani legislation, but its constitutional-legal foundations were formed.

Following the collapse of the Azerbaijan Democratic Republic, a fundamental change occurred in the political and legal system of the country, and from April 1920, Azerbaijan was incorporated into the Soviet state structure. In connection with this, the development of the right to personal

inviolability began to continue in a legal-political environment distinct from the previous national statehood tradition.

In the early years of Soviet rule, the legal guarantee of the right to personal inviolability was highly restricted in nature. No separate provision regarding the right to personal inviolability was envisaged in the Constitution of the Azerbaijan SSR dated May 19, 1921. The same situation was observed in the Constitution of the Azerbaijan SSR dated March 26, 1927. It is noted that the criminal legislation of this period also did not establish any liability for the violation of private life and the inviolability of the home [1, p. 68].

A clearer expression of the right to personal inviolability at the constitutional level has been observed since the 1930s. Article 127 of the USSR Constitution dated December 5, 1936, guaranteed the inviolability of the person of citizens, establishing that an individual could be arrested solely on the basis of a court decision or with the sanction of a prosecutor. Article 128 of the same Constitution stipulated that the inviolability of the home and the secrecy of correspondence were protected by law [4].

The noted constitutional approach assumed a more concrete normative substance in the Constitution of the Azerbaijan SSR dated March 14, 1937. Chapter XI of the Basic Law – “Fundamental Rights and Duties of Citizens” - was dedicated to the separate regulation of citizens' rights and freedoms. The substance of Articles 134 and 135 of that Constitution substantially coincided with the guarantees provided for in Articles 127 and 128 of the USSR Constitution dated December 5, 1936 [6].

Thus, in the 1937 Constitution, three important elements of personal inviolability-inviolability of the person, inviolability of the home, and secrecy of correspondence - were distinguished from one another at the constitutional level for the first time and became subjects of legal protection.

In addition to the constitutional recognition of personal inviolability, the criminal law protection of its individual elements has also been gradually specified. As a result of the codification carried out in the Soviet legal system in the 1960s, specific norms aimed at the criminal law protection of individual aspects of fundamental human rights were formulated. Article 132 of the Criminal Code of the Azerbaijan SSR, adopted on December 8, 1960, and entered into force on March 1, 1961, provided for criminal liability for the violation of the inviolability of citizens' homes, while Article 133 provided for the violation of secrecy of correspondence [2, p. 696]. These norms constituted one of the important means of criminal law protection of personal inviolability in the spheres of housing and correspondence.

The adoption of the Constitution of the USSR on October 7, 1977, marked the beginning of a new stage in Soviet constitutionalism in terms of systemizing the fundamental rights and freedoms of citizens [5]. Based on this constitutional model, the new Constitution of the Azerbaijan SSR was adopted on April 21, 1978 [7]. Compared to previous constitutional acts, the aforementioned Constitution allocated a broader scope to citizens' fundamental rights and freedoms. The provisions relating to personal inviolability encompassed legal guarantees such as inviolability of the person, inviolability of the home, protection of private life, and ensuring the secrecy of correspondence, telephone conversations, and information transmitted via other means of communication (Articles 52–55 of the Basic Law). Thus, the various elements of personal inviolability were codified within a more systematic constitutional framework for the first time.

In the period following the adoption of the 1978 Constitution of the Azerbaijan SSR, the legal regulation of the right to personal inviolability developed against the backdrop of the final stage of the Soviet constitutional system and the legal changes occurring in connection with the restoration of

Azerbaijan's state independence. The characteristic feature of this stage was that personal inviolability was no longer limited to the protection of individual legal interests, but gained a broader scope as an essential element of the system of constitutional guarantees for human rights and freedoms.

The restoration of the state independence of the Republic of Azerbaijan in 1991 marked the beginning of a new stage in the constitutional-legal regulation of personal rights. However, in the Constitutional Act "On the State Independence of the Republic of Azerbaijan" dated October 18, 1991, the right to personal inviolability was not specified as a separate constitutional norm. Nevertheless, under Article 16 of the Act, respect for human rights and fundamental freedoms was established as one of the key principles governing the international relations of the Republic of Azerbaijan. At the same time, according to Article 4 of the Act, the provisions of the 1978 Constitution of the Azerbaijan SSR that were not contrary to the Constitutional Act remained in force [9]. In this regard, the 1991 Constitutional Act was characterized not by the direct regulation of the right to personal inviolability, but by defining the legal framework for establishing a new constitutional-legal system grounded in human rights for the independent state of Azerbaijan.

Thus, by defining the protection of human rights as one of the primary directions of the legal system of independent Azerbaijan, the 1991 Constitutional Act laid an important legal foundation for subsequent constitutional development. During the early independence period when this legal foundation was being formed, the issues of ensuring and restricting human rights, including the right to personal inviolability, under state-of-emergency conditions also became a subject of separate regulatory framework. In this regard, the Law of the Republic of Azerbaijan "On State of Emergency" dated February 4, 1992, consisting of 31 articles, constitutes a significant historical-legal document in terms of regulating human rights - including the right to personal inviolability - under emergency regimes. According to item 9 of Article 17 of the said Law, checking documents in places where citizens assemble, and in exceptional cases, if there is information regarding the possession of weapons, personal searches, as well as searches of belongings and vehicles, were provided for [23]. Doctrinally, a personal search constitutes a direct interference with the sphere of an individual's physical inviolability. The legislator established the availability of information regarding the possession of weapons and the application of such measures only in exceptional cases as specific conditions legitimizing this interference.

At the same time, according to items 1 and 6 of Article 17, establishing a special transit regime and applying a curfew result in restricting an individual's spatial inviolability and freedom of movement. Such restrictions envisage the state regulation of an individual's movement in public spaces under emergency conditions within a specific legal framework.

The aspects of personal inviolability related to private life and the exchange of information are covered by the restrictions set forth in items 7 and 18 of Article 17 of the Law. The implementation of prior censorship on the press and the establishment of a special regime for the use of communication channels entail the restriction of an individual's ability to obtain, disseminate information, and use means of communication under state supervision.

One of the essential guarantees of the right to personal inviolability is the protection of an individual against arbitrary arrest and detention. Articles 21 and 23 of the Law specifically outline the procedural grounds for restricting personal liberty and detention during a state of emergency. The detention of individuals who violate curfew requirements and do not carry identity documents for up to three days (up to 72 hours) was permitted (Article 21).

While under ordinary legal regimes detaining a person without a court order is restricted by strict legal conditions, expanding the duration and grounds for detention under emergency conditions granted broader powers to administrative and law enforcement agencies. Nevertheless, the requirement for cases involving offenses to be reviewed by a judge within three days (Article 23) indicates that a judicial guarantee mechanism was provided for the procedural protection of detained persons.

According to international human rights treaties, particularly Article 4 of the International Covenant on Civil and Political Rights, derogation from certain rights and freedoms is impermissible even when a state of emergency is declared [13]. In terms of international law, these rights serve as guarantees that are absolute in nature and cannot be restricted by the state even under emergency conditions. The provisions set forth in Articles 18 and 19 of the aforementioned Law also serve to reflect this international-legal approach in domestic legislation.

According to R.M. Ismayilov, the restriction of human and civil rights and freedoms constitutes an essential aspect of the relations between the state and the individual. Restrictions serve to establish a balance between public and state interests and the interests of the legal subject [14, p. 173].

Article 18 of the Law of February 4, 1992, required that measures implemented during a state of emergency be limited strictly to the extent required by the exigencies of the situation, comply with international human rights obligations, and involve no discrimination. Article 19 prohibited restrictions on the right to life, freedom of thought, conscience, and religion, as well as torture and degrading treatment, and excluded the retroactive application of laws establishing or aggravating criminal punishment.

One of the vital guarantees of the right to personal inviolability during a state of emergency is the preservation of judicial protection. Article 26 of the Law provided that justice during an emergency regime be administered solely by legally established courts, ruling out the creation of extraordinary courts and the application of expedited judicial proceedings.

At the same time, Article 25 of the Law categorized the unlawful use of force, abuse of official powers, and the violation of citizens' personal inviolability guarantees by internal affairs, national security, and military personnel as acts entailing legal liability.

Thus, an analysis of the 1992 Law of the Republic of Azerbaijan "On State of Emergency" demonstrates that the right to personal inviolability was regulated as a right subject to temporary restriction under emergency conditions. Nevertheless, these restrictions were not entirely discretionary; they were framed by legally prescribed conditions and procedural guarantees. The impermissibility of torture and degrading treatment, the prohibition of derogation from certain rights, the preservation of judicial guarantees, and the ban on extraordinary courts constituted the key elements of individual legal protection. From this perspective, the said Law can be evaluated as an important historical-legal source defining the legal regime of the right to personal inviolability under state-of-emergency conditions in the legal system of independent Azerbaijan.

We deem it necessary to state that the Law of the Republic of Azerbaijan "On State of Emergency" dated February 4, 1992, established the initial legal grounds for the state of emergency regime and was subsequently subject to several amendments. With the adoption of the new Law "On State of Emergency" on June 8, 2004, the legal regulation of the institution of emergency state began to be carried out on a new legislative basis [24]. By the Law dated February 24, 2023, the words "and social emergency environment" were added to the title of the Law "On State of Emergency" after the word "emergency".

Although the Law of the Republic of Azerbaijan “On Martial Law” dated January 6, 1994, consisting of 17 articles, did not regulate the right to personal inviolability as a separate legal institution, it formed the initial normative grounds for interference with this right within a special legal regime by providing for the restriction of individuals' freedom of movement, detention under certain circumstances, and the application of other compulsory measures [20].

The next and more critical stage in this direction began with the adoption of the Constitution of the Republic of Azerbaijan on November 12, 1995 [8]. In the new Constitution, human and civil rights and freedoms were systematically enshrined in a separate chapter, establishing their constitutional guarantees. Within this framework, the right to personal inviolability was recognized as an independent right, acquiring a new dimension in the constitutional legal system of independent Azerbaijan. Paragraph I of Article 12 of the Basic Law established the securing of human and civil rights and freedoms as the highest objective of the state, while Article 24 outlined the fundamental principles of human rights and freedoms.

The constitutional substance of the right to personal inviolability is directly enshrined in Article 32 of the Constitution of the Republic of Azerbaijan. According to Part I of the said Article, everyone has the right to personal inviolability. Part II of the Article defines the protection of private and family confidentiality as a constitutional guarantee, rendering interference with private and family life impermissible except in cases prescribed by law. Furthermore, everyone is granted the right to protection against unlawful interference with their private and family life. Thus, the 1995 Constitution did not limit personal inviolability merely to protection against interference with an individual's physical sphere, but also linked the protection of private and family life to the constitutional guarantees of this right.

The subsequent parts of Article 32 of the Constitution also cover the informational aspect of personal inviolability. Thus, the collection, storage, use, and dissemination of information about a person's private life without their consent are prohibited, and it is provided that the scope of personal data, as well as issues regarding their processing, collection, transmission, use, and protection, shall be established by law. This approach created a constitutional foundation for developing the right to personal inviolability as a legal mechanism that encompasses new forms of interference arising from the development of information technologies.

S. Ligthart, E. Dore-Horgan, and G. Meynen note that the development of modern technologies makes it difficult to reliably protect a person's inner mental sphere from external interference as before, and under these conditions, ensuring the legal protection of mental privacy (protecting information about a person's thoughts, mental state, and other inner mental processes from external intrusion) acquires particular relevance [26, p. 86]. While demonstrating that the substance of the right to personal inviolability expands as a result of technological advancement, this approach also increases the importance of establishing the legal grounds for interference with that right.

The constitutional guarantees of personal inviolability are not limited to Article 32. Article 31 of the Basic Law establishes everyone's right to live in safety and prohibits infringement upon a person's life, physical and mental health, or home, as well as the use of force against them, except in cases provided by law. Article 33 specifically enshrines the right to inviolability of the home. The interplay of these norms creates a system of legal guarantees that complements the constitutional protection of a person's physical, personal, and spatial spheres.

According to K.A. Jafarov's approach, effective implementation of constitutional rights should not merely rest on their general affirmation, but must also encompass defining specific and

exceptional cases for restricting those rights. Substantiating his position through the example of the inviolability of the home, the author suggests a more specific formulation of the grounds on which the inviolability of the home may be breached under Article 33 of the Constitution of the Republic of Azerbaijan [15, pp. 32-33].

In the period following the adoption of the 1995 Constitution, alongside the constitutional recognition of the right to personal inviolability, the legislative mechanisms for its implementation and protection were gradually specified. In this context, the Law of the Republic of Azerbaijan “On Operational-Search Activity” dated October 28, 1999, carries particular significance. Article 3 of the Law establishes that operational-search activity is based on the principles of legality, humanism, and respect for human rights and freedoms [25]. Thus, the protection of personal inviolability was enshrined as a general legal principle to be observed during law enforcement activities.

Article 4 of the said Law outlines guarantees directly aimed at protecting personal inviolability. Under this article, it is prohibited to disseminate information obtained in connection with operational-search activities regarding the inviolability of a person's private life without their consent, including secrecy of personal and family life. At the same time, any temporary restriction of human and civil rights and freedoms in connection with the application of operational-search measures is permitted only in cases specified by law and within the framework of legitimate objectives related to crime prevention, detection, and search operations.

Article 10 of the Law is of special importance regarding the right to personal inviolability. It specifies operational-search measures capable of interfering with an individual's private and family life, secrecy of communication, and inviolability of the home, such as wiretapping telephone conversations, inspecting postal, telegraphic, and other transmissions, extracting information from technical communication channels, entering and inspecting living quarters, monitoring residences, and surveillance of individuals. It was established that several of these measures that involve significant interference must be carried out on the basis of a court decision, subject to specific statutory exceptions.

Article 13 of the Law sets forth the conditions for applying operational-search measures involving restrictions on the secrecy of information transmitted via correspondence, telephone conversations, postal-telegraphic, and other communication methods, as well as the inviolability of the home. The application of these measures is tied to statutory purposes, such as the preparation and commission of certain crimes, identifying wanted persons, and locating property acquired through criminal means. Additionally, during the application of operational-search measures, the interference is required to be proportionate to the public danger that the criminal attempt may pose.

Another important milestone in the development of legal guarantees for personal inviolability was the legislative enactment of judicial control over operational-search activities on March 5, 2004. By the Law of that date, Article 19-1 titled “Judicial Control over Operational-Search Activity” was added to the Law “On Operational-Search Activity”, establishing that judicial control over this activity shall be carried out in accordance with the Criminal Procedure Code of the Republic of Azerbaijan. This amendment created an essential procedural guarantee for protecting the right to personal inviolability. Within the framework of the provisions on judicial control under the Criminal Procedure Code, operational-search measures capable of restricting rights related to personal inviolability, inviolability of the home, personal confidentiality - including family life, correspondence, telephone conversations, postal, telegraphic, and other information secrecy - were brought under judicial review. The significance of this mechanism lies in the fact that it was no longer

sufficient for interference with a person's constitutional rights merely to be provided by law; verifying the legality and justification of that interference by a court became an integral part of the legal guarantee mechanism.

The importance of this mechanism regarding the right to personal inviolability was expressed more specifically in the Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated March 12, 2015. The Decision states that judicial control aims to review the legality, justification, proportionality, expediency, and urgency of restrictions placed on human rights and freedoms by subjects of operational-search activity. In the operative part of the Decision, it was established that decisions to conduct operational-search measures must be reviewed under judicial control to ensure legality and justification from the standpoint of securing human rights and freedoms [11].

The Criminal Procedure Code of the Republic of Azerbaijan dated July 14, 2000, holds major significance in developing legal guarantees for the right to personal inviolability [10]. Articles 1.2.3, 12–17, 147, 148, 199, and 442 of the Code outline various aspects of protecting the right to personal inviolability, the legal grounds for its restriction, and procedural guarantees associated with interference with this right.

The Law of the Republic of Azerbaijan “On Electronic Signature and Electronic Document” dated March 9, 2004, also holds certain relevance in shaping the informational aspect of personal inviolability [18]. While the Law does not directly regulate the right to personal inviolability, it serves to protect information in the digital environment by establishing legal guarantees regarding the security of electronic document circulation and electronic signature data. From this perspective, the legal regulation of electronic signature and electronic document institutions allows for placing risks related to individual identification in the digital space, executing legally significant transactions on their behalf, and preserving the integrity of electronic data within a legal framework. In other words, the aforementioned Law acts as a normative act that establishes indirect legal guarantees for personal inviolability by ensuring the security of electronic data and digital document turnover.

A more direct and systematic legal regulation of the informational aspect of personal inviolability is reflected in the Law of the Republic of Azerbaijan “On Personal Data” dated May 11, 2010 [21]. The purpose of the said Law is not only to establish rules for the collection, processing, and protection of personal data, but also to ensure the protection of the right to keep private and family secrets. In this context, the protection of personal data becomes a vital element of exercising personal inviolability in the modern informational and digital environment. Article 5 of the Law enshrines the principle of confidentiality of personal data. The protection of confidential information must be ensured, and except in cases provided by law, it shall not be disclosed to third parties without the consent of the subject. At the same time, Article 7 of the Law grants data subjects the right to obtain information regarding the existence of data about themselves, the legal grounds for its collection and processing, to access such data, as well as to appeal to the relevant state body or court if their rights are violated.

Article 8 of the Law establishes the consent of the data subject as one of the key legal prerequisites for the collection and processing of personal data. In addition, Article 9 provides that data shall be collected and processed solely for lawful, predetermined, and declared purposes, that its volume shall correspond to those purposes, and that data must be destroyed when the necessity for it ceases to exist. More stringent legal conditions are set for processing special categories of data, including information concerning an individual's physical and biological characteristics.

From the perspective of protecting personal inviolability, one of the crucial guarantees is the obligations imposed on owners and operators regarding data security. Pursuant to Article 10 of the Law, they must ensure the legality and security of personal data collection and processing. If material or moral harm is inflicted on a person as a result of unlawful collection, processing, or failure to ensure an adequate level of data protection, the issue of compensation for such harm is tied to the legal liability mechanism.

Thus, the provisions of the Law demonstrate that personal inviolability is not limited merely to its physical and spatial aspects, but also encompasses an individual's ability to maintain control over information about themselves and protection against unlawful collection, processing, and dissemination of information regarding their private life. From this viewpoint, personal data protection serves as one of the key developing directions of the right to personal inviolability in the informational and digital environment under Azerbaijani legislation.

The Code of Administrative Offenses of the Republic of Azerbaijan dated December 29, 2015, enshrines norms that allow interference with the right to personal inviolability and establish the legal-procedural grounds for such interferences [3]. On the one hand, the legislator empowers authorized state bodies to apply enforcement measures for the purpose of preventing administrative offenses, identifying the offender, ensuring the proper and timely conduct of proceedings, as well as securing the execution of adopted decisions; on the other hand, it restricts the exercise of these powers within defined legal and procedural limits.

One of the main normative pillars of this mechanism is the principle of respect for human and civil rights and freedoms embodied in Article 5 of the Code. This principle implies recognizing rights and freedoms as the highest value, with state bodies, institutions, and officials bearing responsibility for their protection and the prevention of their violation. Furthermore, it is stipulated that decisions and actions that degrade human dignity shall not be permitted when applying measures to secure administrative proceedings.

In terms of personal inviolability, the significance of the Code is particularly reflected in establishing the legal grounds for procedural enforcement measures such as administrative detention, personal search, seizure of items and documents, vehicle inspection, and other procedural security measures. Although such measures create the potential for interference with an individual's physical freedom and personal sphere, their application is linked to the objectives of administrative offense proceedings and subject to legally prescribed procedural rules. In this context, the Code of Administrative Offenses not only demonstrates that the right to personal inviolability is not absolute, but also forms mechanisms aimed at creating a legal balance between the state's powers of coercion and the protection of individual rights and freedoms.

Articles 6, 87, 88, 89, 91, 92, 94, and 96 of the said Code set forth norms that establish the legal grounds for securing personal inviolability, protecting an individual's legal status within administrative proceedings, and applying specific procedural coercion measures.

Ensuring and potentially restricting personal inviolability under conditions of martial law are regulated within a special legal regime under the Law of the Republic of Azerbaijan "On Martial Law" dated February 14, 2017 (the Law of the same name dated January 6, 1994, was repealed on the day this Law entered into force) [19]. That Law defines martial law as a special legal regime permitting partial and temporary restrictions on constitutional rights and freedoms. Regarding the informational and communication aspects of personal inviolability, Article 1.0.3 of the said Law defines military censorship as a measure encompassing control over correspondence, broadcasts,

telephone and radio conversations, as well as information on the internet and social networks. Article 10 provides for subjecting the materials of media entities to military censorship.

One of the vital guarantees of the Law is maintaining a connection with international legal mechanisms for the protection of human rights. Thus, according to Article 25 of the Law, the Secretaries General of the UN and the Council of Europe must be notified of restrictions placed on human rights during martial law. At the same time, the declaration of martial law does not lead to the suspension or restriction of the Ombudsman's activities (Article 24 of the Law).

Thus, while regulating personal inviolability as a right subject to temporary restriction within legally defined limits during martial law, the Law "On Martial Law" also establishes the legal framework for these interferences and the institutional guarantees for human rights protection.

The application of a special quarantine regime constitutes a distinct stage in the development of Azerbaijani legislation regarding the restriction of the right to personal inviolability. Based on Article 25 of the Law "On Sanitary-Epidemiological Safety" [22], decisions adopted by the Cabinet of Ministers during the COVID-19 pandemic implemented measures such as isolation, medical observation, and, where necessary, hospitalization of infected persons and their contacts, as well as restricting the movement of the population. In particular, decisions adopted in 2020 regarding the tightening of the special quarantine regime - imposing restrictions on movement in certain areas and introducing a permit mechanism for leaving one's place of residence - directly affected the sphere of personal liberty. These measures demonstrate that the right to personal inviolability is not absolute and can be temporarily restricted within legally established grounds and procedures for legitimate aims such as protecting public health and the life and health of others.

In 2024–2025, the development of digital technologies gave new substance to the legal guarantees of the right to personal inviolability. Alongside traditional physical and spatial aspects, the collection, processing, transmission, and secure storage of personal data in information systems have become crucial directions of legal protection. An important milestone in this development was the amendments made to the laws "On Personal Data" and "On Information, Digitization and Protection of Information" by the Law dated June 28, 2024 [17]. These amendments regulate the provision of personal data via the E-Government Information System, as well as the assessment of information system security and the testing of their technological infrastructure. That is, guarantees of personal inviolability in the digital environment encompass not only data confidentiality, but also lawful access, information security, and control over processing.

In this direction, the "Regulations on the E-Government Information System" approved by Decree No. 472 dated August 12, 2025, hold major significance [29]. In addition to regulating the legal, organizational, and technological foundations of the E-Government Information System, data exchange among state bodies, and the provision of electronic services within a unified system, the Regulations also establish the collection, processing, and protection of personal data in compliance with legislation.

The Regulations foresee aligning the use of digital data with security requirements. Among the duties of the owner of the E-Government Information System, protecting personal data and ensuring the information security of the system are defined. In other words, digitalization not only organizes public services but also creates legal obligations regarding the protection of personal data.

In 2025, the expanding integration of state information resources and systems further strengthened this process. Conducting data exchange through the E-Government Information System and using personal data in compliance with legislation establishes the legal and security foundations

for their movement among state information systems. On this plane, securing personal inviolability at the current stage requires reconciling two directions: enhancing the efficiency of public services through digital technologies and preventing unlawful interferences with an individual's digital identity and personal data. Consequently, cybersecurity and personal data protection serve as essential legal guarantees of personal inviolability in the digital environment.

Within the framework of this process, legal developments in this direction expanded in 2026 toward regulating the risks associated with the application of artificial intelligence and other emerging technologies. Institutional mechanisms for digital development and artificial intelligence were reinforced through the Artificial Intelligence Strategy for 2025–2028, approved on March 19, 2025 [27], and the Decree dated February 27, 2026 [28].

From the perspective of personal inviolability, because artificial intelligence, big data, and biometric identification enable individual identification, behavioral analysis, and large-scale processing of personal data, they bring issues of lawful data usage, security, and consent to the forefront. In Azerbaijani legislation, biometric data is protected as a special category of personal data. Furthermore, legislative amendments dated April 21, 2026, established additional legal protection against the creation and dissemination of synthetic, non-real materials (deepfakes) generated via artificial intelligence using a person's image or voice without their consent [16].

Thus, the conducted research leads to the following conclusions:

The historical trajectory of the right to personal inviolability in Azerbaijani legislation demonstrates that the substance of this right has been updated in parallel with transformations in the state's political and legal structure. The investigation across various historical periods reveals that individual legal provisions concerning the protection of the person were progressively integrated into a broader system of legal guarantees, ultimately forming a multifaceted legal protection mechanism that encompasses an individual's physical, mental, spatial, and informational spheres.

Although the legal-political documents adopted during the period of the Azerbaijan Democratic Republic did not establish a complete legal model of personal inviolability in the modern sense, they created an essential initial normative foundation in terms of recognizing legal status and accepting the equality of citizens' rights and freedoms. In the subsequent Soviet period, legal protection of the individual was specified along various lines in constitutional and sectoral legislation, with the protection of inviolability of the home, secrecy of correspondence, and other personal rights being guaranteed through criminal-law mechanisms. Nevertheless, during that era, legal guarantees for personal rights were conditioned by the characteristics of the existing state-legal system, and the comprehensive structuring of personal inviolability as a unified, independent constitutional right was not ensured.

The modern stage of historical development is characterized by the right to personal inviolability transcending the traditional boundary of protection against physical interference to encompass an individual's private and informational spheres. Matters such as acquiring, storing, and disseminating private life information, protecting electronic communications, processing personal data, and identifying individuals in the digital environment impart new legal substance to the traditional concept of inviolability. In this regard, technological advancement necessitates defining not only new legal tools for protecting the right to personal inviolability, but also new criteria for assessing the legitimacy of interferences.

The analysis reveals that the development of the right to personal inviolability in the legislation of the Republic of Azerbaijan proceeds along three primary directions: constitutional recognition of

the right, specification of instances of interference through sectoral legislation, and the establishment of procedural-judicial guarantees against such interferences. This evolutionary line shows that personal inviolability is not a static legal category, but a dynamic legal institution requiring new protective mechanisms as social relations, state legal institutions, and the technological environment evolve.

In conclusion, the future development of the right to personal inviolability necessitates adapting existing constitutional guarantees to new forms of interference, particularly strengthening mechanisms for protecting personal data and private life in the digital environment, ensuring effective judicial control over legal interferences by state bodies, and enhancing the efficiency of legal remedies.

References

1. Alizade N.E. Approach to offenses against the right to inviolability in Soviet criminal law // - Baku: Qanun, 2021. No. 09, - pp. 68-73. (in Azerbaijani).
2. Almanac. Collection of Criminal Laws (1920–2000). – Baku: Legal Publishing House, – 2014. – 1184 p. (in Azerbaijani).
3. Code of Administrative Offenses of the Republic of Azerbaijan dated December 29, 2015. <https://e-qanun.az/framework/46960> (in Azerbaijani).
4. Constitution (Basic Law) of the USSR of December 5, 1936. Available at: <https://www.hist.msu.ru/ER/Etext/cnst1936.htm> (in Russian).
5. Constitution (Basic Law) of the USSR of October 7, 1977. Available at: https://constitution.garant.ru/history/ussr-rsfsr/1977/red_1977/5478732/ (in Russian).
6. Constitution of the Azerbaijan SSR dated March 14, 1937. Available at: <https://e-qanun.az/framework/57042> (in Azerbaijani).
7. Constitution of the Azerbaijan SSR dated April 21, 1978. https://anl.az/el/emb/Konstitusiya_suverenlik/pdf/1978.pdf (in Azerbaijani).
8. Constitution of the Republic of Azerbaijan of November 12, 1995. <https://e-qanun.az/framework/897>
9. Constitutional Act of October 18, 1991 “On the State Independence of the Republic of Azerbaijan”. <https://e-qanun.az/framework/6693> (in Azerbaijani).
10. Criminal Procedure Code of the Republic of Azerbaijan dated July 14, 2000. <https://e-qanun.az/framework/46950> (in Azerbaijani).
11. Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan “On Interpretation of Certain Provisions of Articles 137 and 445.2 of the Criminal Procedure Code of the Republic of Azerbaijan” dated March 12, 2015. <https://constcourt.gov.az/en/decision/1159> (in Azerbaijani).
12. Declaration of Independence of 1918. https://www.anl.az/el/emb/Konstitusiya_suverenlik/istiqlal_beyannamesi.htm? (in Azerbaijani).
13. International Covenant on Civil and Political Rights // Adopted by the UN on December 16, 1966. <https://www.ohchr.org/sites/default/files/ccpr.pdf>
14. Ismailov R.M. Restriction of human rights and freedoms: some notes on the improvement of de lege lata legislation // - Baku: Juridical Sciences and Education, - 2019. № 60. – pp. 173-184.

15. Jafarov, K.A. (2020). Improving the mechanism of legal regulation of human and civil rights and freedoms under the Constitution of the Republic of Azerbaijan. // Dnipropetrovsk: Pravo i Suspilstvo, № 1, - pp. 29–34.

16. Law of the Republic of Azerbaijan “On Amendments to the Criminal Code of the Republic of Azerbaijan, the Criminal Procedure Code of the Republic of Azerbaijan, and the Laws of the Republic of Azerbaijan “On Information, Digitization and Protection of Information” and “On Media” dated April 21, 2026. <https://president.az/az/articles/view/72311> (in Azerbaijani).

17. Law of the Republic of Azerbaijan “On Amendments to the Family Code of the Republic of Azerbaijan and the Laws of the Republic of Azerbaijan “On the Identity Card of a Citizen of the Republic of Azerbaijan”, “On Information, Digitization and Protection of Information”, and “On Personal Data” dated June 28, 2024. <https://president.az/az/articles/view/66497> (in Azerbaijani).

18. Law of the Republic of Azerbaijan “On Electronic Signature and Electronic Document” dated March 9, 2004. Available at: <https://e-qanun.az/framework/5916> (in Azerbaijani).

19. Law of the Republic of Azerbaijan “On Martial Law” dated February 14, 2017. Available at: <https://e-qanun.az/framework/35170> (in Azerbaijani).

20. Law of the Republic of Azerbaijan “On Martial Law” dated January 6, 1994. Available at: <https://e-qanun.az/framework/8984> (in Azerbaijani).

21. Law of the Republic of Azerbaijan “On Personal Data” dated May 11, 2010. Available at: <https://e-qanun.az/framework/19675> (in Azerbaijani).

22. Law of the Republic of Azerbaijan “On Sanitary-Epidemiological Safety” dated November 10, 1992. Available at: <https://e-qanun.az/framework/7916> (in Azerbaijani).

23. Law of the Republic of Azerbaijan “On State of Emergency” dated February 4, 1992. Available at: <https://e-qanun.az/framework/7003> (in Azerbaijani).

24. Law of the Republic of Azerbaijan “On State of Emergency” dated June 8, 2004. Available at: <https://e-qanun.az/framework/6193> (in Azerbaijani).

25. Law of the Republic of Azerbaijan on Operational-Search Activity dated October 28, 1999. Available at: https://e-qanun.az/framework/2938#_edn34 (in Azerbaijani).

26. Lighthart, S., Dore-Horgan, E., & Meynen, G. (2025). Minds, Freedoms and Rights: On Neurorehabilitation in Criminal Justice. Cambridge: Cambridge University Press. 214 p.

27. Order of the President of the Republic of Azerbaijan on the approval of the “Artificial Intelligence Strategy of the Republic of Azerbaijan for 2025–2028” dated March 19, 2025. Available at: <https://e-qanun.az/framework/59218> (in Azerbaijani).

28. Order of the President of the Republic of Azerbaijan on the approval of the “Action Plan for Accelerating Digital Development in the Republic of Azerbaijan for 2026–2028” dated February 27, 2026. Available at: <https://e-qanun.az/framework/61416> (in Azerbaijani).

29. Regulations on the “E-Government” Information System // Approved by Decree No. 472 of the President of the Republic of Azerbaijan dated August 12, 2025. Available at: <https://e-qanun.az/framework/60355> (in Azerbaijani).

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Azərbaycan qanunvericiliyində şəxsi toxunulmazlıq hüququnun formalaşması və inkişafı

Xülasə: Tədqiqatda şəxsi toxunulmazlıq hüququnun formalaşması və inkişafının əsas tarixi-hüquqi mərhələləri Azərbaycan Xalq Cümhuriyyəti dövründən başlayaraq, sovet mərhələsi, 1991-ci ildə dövlət müstəqilliyinin bərpası, 1995-ci il Konstitusiyasının qəbulundan sonrakı hüquqi inkişaf və müasir qanunvericilik kontekstində araşdırılır. Şəxsi toxunulmazlıq hüququnun fiziki və məkan sferasından başlayaraq şəxsi və ailə həyatı, rabitə və informasiya sahələrini əhatə edən daha geniş hüquqi təminatlar sisteminə çevrilməsi təhlil edilir. Konstitusion təminatların sahəvi və prosessual qanunvericilik normaları ilə konkretləşdirilməsinə, habelə əməliyyat-axtarış fəaliyyəti üzərində məhkəmə nəzarətinin formalaşmasına xüsusi diqqət yetirilir. Tədqiqat nəticəsində şəxsi toxunulmazlıq hüququnun Azərbaycan hüquq sistemində tarixi inkişafının əsas qanunauyğunluqları, onun müasir məzmunu və hüquqi müdafiə mexanizmlərinin səciyyəvi xüsusiyyətləri müəyyən edilir.

Açar sözlər: İnsan hüquqları, dövlət, azadlıq, toxunulmazlıq, qanunvericilik.

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Формирование и развитие права на личную неприкосновенность в законодательстве Азербайджана

Аннотация: Анализируются основные историко-правовые этапы формирования и развития права на личную неприкосновенность, начиная с периода Азербайджанской Демократической Республики и охватывая советский этап, восстановление государственной независимости в 1991 году, а также правовое развитие после принятия Конституции 1995 года в контексте современного законодательства. В исследовании проанализирована трансформация права на личную неприкосновенность из концепции физической и пространственной защиты в комплексную систему правовых гарантий, охватывающую тайну личной и семейной

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жизни, а также сферу коммуникаций и информации. Особое внимание уделено детализации конституционных гарантий нормами отраслевого и процессуального законодательства, равно как и становлению института судебного контроля за осуществлением оперативно-розыскной деятельности. В результате исследования выявлены основные закономерности исторического развития права на личную неприкосновенность в правовой системе Азербайджана, раскрыто его современное содержание и охарактеризованы специфические особенности механизмов его правовой защиты.

Ключевые слова: права человека; государство; свобода; неприкосновенность; законодательство.

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