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COMPARATIVE LEGAL ANALYSIS OF THE PROVISION OF THE RIGHT TO PRIVACY

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Abstract

This article analyzes the essence of the right to personal inviolability, its place in international and national law from a comparative legal perspective. The study compares the guarantees of personal inviolability in the new edition of the Constitution of the Republic of Uzbekistan and criminal procedural legislation with the experience of developed foreign countries (USA, Germany, Great Britain).

Keywords: Personal inviolability, human rights, comparative jurisprudence, procedural guarantees, digital law, judicial review.

INTRODUCTION

Article 3 of the Universal Declaration of Human Rights specifically states that everyone has the right to the security of the person, and Article 12 specifically states that everyone has the right to protection by law against such interference or attacks.

Article 17, paragraph 2, of the International Covenant on Civil and Political Rights also states that the right to the security of the person shall be guaranteed by the State.

In international law, the restriction of liberty and physical integrity by an official or another person acting with his consent, in violation of or in violation of the procedural rules established by law, is called "arbitrary arrest".

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The term "arbitrary" does not correspond to the term "unlawful", but should be understood in a broader sense, that is, including elements of impermissibility, injustice and unexpectedness. This means that the lawful arrest or detention of a person must not only be in accordance with the requirements of the law, but also be reasonable in the circumstances prevailing at the time. It must be necessary to prevent escape, tampering with evidence, or reoffend.

MAIN PART

When the partial or complete failure to comply with the standards set out in the Universal Declaration of Human Rights and relevant international instruments is so gross that any deprivation of liberty is arbitrary; iv. when the deprivation of liberty, including pre-trial detention, is carried out on grounds that are vague or open to various interpretations.

The Body of Principles for the Protection of All Persons under Any Form of Arrest or Detention (UN General Assembly, resolution 43/173 of 9 December 1988) is not an international treaty, but has the character of "soft law" and is recognized as a universal human rights standard for all states.

Due to the detailed regulation of issues related to the integrity of the person, many authors of European and UN doctrine (for example, S. Trechsel) have called this document an "international code of human rights".¹

The main purpose of the principles is to protect individuals from arbitrary arrest, detention and imprisonment, to ensure human dignity and personal integrity, to guarantee judicial and prosecutorial control and mechanisms for appeal. In particular, principle 9 guarantees the right to appeal to a court or other body established by law against actions related to arrest or detention.

This document establishes the following basic rules for restricting individual rights:

¹ Trechsel S. The human rights in Criminal Proceedings. Oxford : Oxford University Press, 2005. P. 154—155.

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- The restriction of a right must not jeopardize its content, that is, the right itself must not be denied;
- Any restrictions must be as specific as possible;
- Any doubts must be resolved in favor of the protection of the rights in question;
- All restrictions must be enshrined in national legislation;
- Restrictions cannot be applied for purposes inconsistent with the above international instruments;
- Restrictions must not be applied arbitrarily;
- Effective means of appeal and legal protection must be provided for the application of unlawful restrictions;
- When applying restrictions, the state must not apply measures that would lead to a restriction of rights that is greater than the purpose for which the restrictions were imposed;

The state bears the burden of proving the legality of the restriction of rights.

In accordance with these principles, the main goals for which restrictions on the rights and freedoms of an individual may be permitted are:

- to meet the just requirements of morality, public order and the general welfare;
- to protect the foundations of the constitutional order, the health, rights and freedoms of other persons, and the defense and security of the state;
- to eliminate a serious threat to the health of the population or the health of individuals.

METHODS

In the case of *Jalloh v. Germany* (July 11, 2006), the European Court of Human Rights noted a violation of the physical integrity of a person in a case where a drug addict was given a nasal spray to induce vomiting and cocaine was found in his stomach. The court based its conclusion on the fact that such an operation was potentially dangerous to health, was carried out without a preliminary examination of the suspect, involved force, and was sufficiently painful.

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In the United States, personal integrity is based not on criminal procedural rules, but on the Fourth Amendment to the United States Constitution.

The Fourth Amendment doctrine is based on a number of basic principles:

- 1) Any interference by the state must be reasonable. Reasonableness is a central category.
- 2) “Probable cause” – relying on sufficient grounds, not unfounded suspicion
To restrict the privacy of a person, the police must have sufficient grounds (probable cause), not unfounded suspicion, but solid evidence.
- 3) Warrant requirement – the general rule for searches and arrests is that a warrant is required.
- 4) “Expectations of Privacy” – belief in privacy. The “reasonable expectation of privacy” test for privacy arose from the 1967 Katz case.
- 5) Exclusionary Rule – evidence obtained illegally is inadmissible
Evidence obtained as a result of an unlawful restriction of privacy is considered inadmissible.
- 6) “Fruit of the Poisonous Tree” – the doctrine of the fruit of a poisonous tree
If the original evidence was obtained illegally, derivative evidence derived from it is also inadmissible.

We can see that US courts have been constantly refining the doctrine of privacy in response to technological advances and social relations.

The *Katz v. United States* (1967) precedent, which was accepted as the beginning of digital privacy, equated the tapping of a call from an automatic telephone booth with a search and used the “reasonable expectation of privacy” test for the first time. As a result, the concept of electronic, rather than physical, privacy emerged. In the doctrine of US criminal procedure, the decision of the US Supreme Court in the case of *Rochin v. California*² occupies a special place in the limits of restriction of physical integrity of a person. In this case, when the police entered

² *Rochin v. California*, 342 U.S. 165 (1952), Supreme Court of the United States.

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the house of Alfreda Rochin (Rochin) without a warrant, suspected of possessing drugs, Rochin swallowed a drug capsule that was on the nightstand. The police officers detained him, forcibly took him to the hospital, forced him to vomit through a tube, and removed the capsule from his stomach, and Rochin was convicted on the basis of this evidence. The US Supreme Court found this method to be a violation of the physical integrity of a person and a violation of the US Constitution, equating this method to torture.

RESULTS

The right to personal integrity is enshrined in Article 11 of the Criminal Procedure Code of the Republic of Tajikistan, which is notable for the fact that coercive measures restricting the right to personal integrity include detention, arrest, as well as detention in a medical or educational institution, and that detained and detained persons must be kept in places that are safe for their life and health.

Article 11 of the Criminal Procedure Code of the Republic of Armenia also specifically states that placement in a medical or educational institution is allowed only on the basis of a court decision, and that searches and interrogations are procedural actions restricting the right to personal integrity.

It is noteworthy that Article 11, Part 7, states that no one may be subjected to physical or mental torture, including through the deprivation of medical drugs, hunger, fatigue, hypnosis, or medical care.

In accordance with Article 15 of the Criminal Procedure Code of the Republic of Azerbaijan, personal searches and interrogations, as well as other procedural actions that violate the right to personal inviolability, may not be carried out against the will of a person or without a court decision.

In recent years, a number of significant changes have been made to the criminal procedural legislation of the Republic of Kazakhstan in order to ensure the inviolability of the person.

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In particular, the terms of detention of suspects before being taken into custody have been differentiated, and the term of detention without court sanction has been set at up to 48 hours, for minors - up to 24 hours, and for those who are most dangerous to society and other objective circumstances - up to 72 hours.

The fact that detention is established as an independent procedural coercive measure in Article 129 of the Criminal Procedure Code of the Republic of Kazakhstan is of particular importance from the point of view of the physical inviolability of a person. That is, the fact that the detention of a person is a procedural coercive measure applied for a period of no more than three hours in order to verify the person's involvement in a criminal offense, and the issuance of a certificate on the grounds and time of the detention after the expiration of this period, limits the person's status as a person in a vague legal context and serves to increase the responsibility of officials.³

DISCUSSION

Immunities as a legal and political institution are manifested in different ways in different countries. They can be expressed in the form of legal privileges granted to officials, ranging from personal inviolability, which occupies an important place in the system of human rights, to the exact legal nature and boundaries of this concept. Various scholars have expressed their views on the right to inviolability, and their opinions differ mainly from the point of view of ensuring the balance of human rights, legal status and state power. Below are the views of several prominent jurists and scholars on inviolability: for example, John Locke considered personal inviolability to be one of the natural rights of man.

R.A. Romashov analyzes the concept of parliamentary immunity in his works and discusses its legal foundations and limitations. According to him, parliamentary immunity is not absolute, but its legal mechanisms should be clearly defined. In

³ https://online.zakon.kz/Document/?doc_id=31575852&pos=1856;-37#pos=1856;-37

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addition, Uzbek lawyers Sh. Sharapov, A. Normatov and M. Khamidov also expressed their views. Sh. Sharapov, in his studies on human rights and constitutional rights, defines personal immunity as one of the most important rights. A. Normatov, in his studies on diplomatic immunity, emphasizes that this institution is one of the main guarantees of international law. M. Khamidov, writing about the immunity of judges, emphasizes its importance in ensuring judicial independence. When analyzing the opinions of the above scientists and lawyers, it can be seen that the concept of immunity is assessed, on the one hand, as an integral part of human rights, and on the other hand, as a legal status. Therefore, immunity is a truly complex legal and political institution, the essence of which requires constant study. As a legal institution, immunity is widely used within the framework of human rights. The UN Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights recognize personal immunity as a human right. Article 25 of the Constitution of the Republic of Uzbekistan enshrines the right to personal immunity. The legislation also establishes parliamentary, diplomatic and judicial immunity. Personal immunity is one of the natural rights of a person, whose person, home and property are protected by the state and other persons. This is guaranteed by law and its violation is not allowed. The immunity granted to certain persons can be considered a privilege. The immunity granted to deputies, diplomats and judges serves to independently and freely carry out their activities. However, this immunity is not absolute, it is limited by law. Immunity is not an absolute right and can be limited under certain circumstances. For example, a deputy or diplomat may be deprived of immunity if he or she has committed a serious crime. Personal immunity may also be limited within the framework of the law on criminal cases. The concept of immunity is expressed both as a right and as a status. While personal immunity is a general right, the immunity granted to certain officials is a legal right depending on their status.

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CONCLUSION

The right to personal integrity is one of the most fundamental, natural and inviolable human rights, which constitutes the legal foundation of a democratic society. Within the framework of this study, a comprehensive comparative-legal analysis of national and international legal mechanisms for ensuring the right to personal integrity was carried out. Based on the results and analysis obtained, the following systematic conclusions were drawn:

1. Modern conceptual interpretation of the right to personal integrity

In traditional jurisprudence, the right to personal integrity was understood mainly within the framework of physical integrity (protection from unlawful arrest, torture and violence), but in the era of technological revolution and globalization of the 21st century, the boundaries of this right have expanded to an unprecedented extent. Today, the institution of personal integrity combines four main sub-elements:

- Physical integrity (protection from any unlawful encroachments on the body and life);
- Spiritual and moral integrity (protection of the psychological integrity and dignity of the individual);
- Spatial inviolability (inviolability of residence and personal space);
- Informational (digital) inviolability (protection of personal data, digital identification and confidentiality of correspondence).

Comparative analyses show that in the legislation of developed foreign countries, these four elements are seen as a single system that is inextricably linked to each other. This comprehensive approach has also been reflected in the legislation of Uzbekistan as a result of constitutional reforms in recent years (in particular, Articles 27-31 of the new Constitution).

2. Fundamental conclusions of the comparative legal analysis

A comparative study of international legal standards (Article 9 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil

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and Political Rights) and foreign experience (the legal systems of the European Union and the United States) revealed the following significant differences and similarities:

- The institution of judicial control (Habeas Corpus): In the legal systems of Western Europe and the United States, the system of judicial control over the arrest and detention of a person operates very strictly and promptly. Although the institution of *Habeas Corpus* introduced in the national legislation of Uzbekistan is fully aligned with international standards in legal terms, there is a need to increase the effectiveness of its application in practice and further strengthen the independence of courts from investigative bodies.
- Digital privacy and Personal Data Protection: The European Union's GDPR (General Data Protection Regulation) standard is considered the most advanced model in the world in ensuring the privacy of personal data. It includes the "right to be forgotten" and a system of strict control over cross-border data transfers. Although the Law "On Personal Data" in our national legislation is an important step towards these standards, the mechanisms for ensuring the virtual privacy of citizens in the digital economy have not yet been fully formed.

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5. A. Normatov, "Diplomatic Immunity: Theoretical and Practical Aspects", Tashkent, 2020.
6. This article provides an overview of the legal nature of immunity and its social status, as well as a scientific analysis of the topic.