

# PROTECTION OF HUMAN RIGHTS IN THE CRIMINAL PROCEDURE LEGISLATION OF UZBEKISTAN AND FOREIGN STATES

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This article is devoted to rather legal analysis of procedures of protection of human rights in the criminal procedure legislation of the Republic of Uzbekistan and other foreign states. Besides in article problems of production of investigative actions are opened by law enforcement agencies, and practical recommendations about legislation improvement are submitted, considering experience of the countries of the near and far abroad.

**Keywords.** Protection of human rights, criminal procedure legislation, democratic state governed, the rule of law, a market-economy country, Supremacy of Law, transition period of the economic growth, positive results, manifestations of crime in different countries, feature of investigative actions, the criminal law liberalization policy, extension of humane and nondiscriminatory regulations, not to punish the culprit, protect the rights, legitimate interests of citizens, significance of the investigative actions, the theory of evidence, investigator, prosecutor, appellate court, supervisory authority, math-based environments,

computer-aided technologies, legal culture level of people, mechanism of evidence, realization of the legal and institutional framework, liberalization reform, code of criminal procedure, analysis of juridical legislation of foreign countries, Criminal Procedure Code (CPC) of Switzerland, Austria, France, Italy, Germany, Russian Federation, Kazakhstan and the Republic of Uzbekistan

After gaining independence the Republic of Uzbekistan entered upon the path of formation of a democratic state governed by the rule of law and a market-economy country. To achieve these goals I.A. Karimov, the first President of the Uzbekistan Republic worked out the five guidelines for the development of the republic, one of them was designated as "Supremacy of Law", which shows respectful attitude of Uzbekistan people to the law, justice and law and order.<sup>1</sup>

It is performed in practice that the transition period of the economic growth is characterized by positive results along with manifestations of crime in different countries as well as in our republic. Crime varies not only in quantity but also in quality using more and more sophisticated techniques of commission and cover-up of the socially dangerous acts.

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<sup>1</sup> «Conception of priority directions of reform realization in the sphere of reformation and further liberalization of judicial and law system», adopted as appendix №3 to the ruling of the President of the Republic of Uzbekistan dated from March 10, 2005 № RP-24 on "The program of goals and tasks realization of the democratization, society renewal, reformation and state modernization" // "Fuqarolik jamiyati" - T., "Maxsus son" - p.13-15. The following directly relates to the judicial and law reform: The program of further development of the judicial reform in the Republic of Uzbekistan // "Imenem zakona". Bulletin of the Supreme Court of the Republic of Uzbekistan. 1996. №3-4. - p.92-93; Ordinance of the Oliy Majlis of the Republic of Uzbekistan "of national program on improvement of social legal culture" dated from August 29, 1997 // Vedomosty of the Oliy Majlis of the Republic of Uzbekistan, 1997., №9. - p.227; the decree of the President of the Republic of Uzbekistan dated October 14, 2000. "on the improvement of judicial system of the Republic of Uzbekistan" // "Imenem zakona", 2000, №4 - p.1; "Conception of further development of the judicial and legal reform" dated from November 8, 2002., passed at the session of the Commissions of the Oliy Majlis on the issues of further development of the democratic transformations and formation of the civil society bases in Uzbekistan; Decree of the President of the Republic of Uzbekistan "on abolition of capital punishment in the Republic of Uzbekistan" dated from August 1, 2005. №DP-3641 // Collection of Laws of the Republic of Uzbekistan. - 2005. №30-31. - p.223; Decree of the President of the Republic of Uzbekistan "on delegation of rights of giving sanction for taking into custody to the courts" dated from August 8, 2005. №DP-3644 // Collection of Laws of the Republic of Uzbekistan. - 2005. №32-33. - p.242; Instruction of the President of the Republic of Uzbekistan «on follow-up actions of legislative and normative legal acts development subject to approval in connection with the abolition of capital punishment in the Republic of Uzbekistan» dated June 29, 2006. №I-2529 // "Vedomosty Palat Oliy Majlisa" of the Republic of Uzbekistan. 2006. №6(1362). - P.355; Ordinance of the session of the Supreme Court of the Republic of Uzbekistan №12 dated September 24, 2004. «Some issues of applying norms of criminal-procedural law on admissibility of evidence» // Bulletin of the session of the Supreme Court of the Republic of Uzbekistan, 2004, №3. - P.22-24. at alias.

Nowadays a new situation arose in which traditional extensive feature of investigative actions tactics improvement as techniques of deriving probative bases fall short of existing situation and there is a need for sudden change in its development by working out new tactical techniques of conducting investigative actions.

Changes of social and political realities leading to reappraisal of values in social life activity favoured the raising of personality significance in all spheres as well as in law. On the basis of these changes, the criminal law liberalization policy of the republic which is aimed at extension of humane and nondiscriminatory regulations, first of all serving the interests of people and society is being realized. Stereotype and attitude to investigation of crimes are being changed subject to these realities, and the main aim of which becomes not “to punish the culprit” but “protect the rights and the legitimate interests of citizens.”

In compliance with these changes it becomes necessary to revise the significance of the investigative actions and the theory of evidence at large, the essence and priorities of which should be concentrated on balanced function of accusation and justification instead of existing treatment when investigator, prosecutor, appellate court and court with supervisory authority being suspicious of any justifying data try to increase evidential basis which incriminates the accused or the prisoner at the bar.

Along with above stated factors, it should be noted that scientific and technical progress brings to sophistication of modus operandi using IT. Following the tendency of humanity transition into the informational era of full computerization, the forensic techniques and court expertise on a broad scale are switched over to the respective technologies, and there are not still means for forensic tactics of investigative actions and the theory of evidence where math-based environments can be used actively as well as computer-aided technologies.

According to the analyses of judicial investigation practice due to the poor technical and forensic provision, lack of legislative regulations of operational-investigative activities and legal culture level of people and the conduct of investigative actions quality as critical component of the mechanism of evidence and their effectiveness are not always characterized as on high level respectively.

“The concept of the priority directions realization of the legal and institutional framework liberalization reform”, adopted by the ruling of the President of the Uzbekistan Republic I.A. Karimov dated from March 10, 2005 № RP-24, as one of the consistent policy display of the country in the

sphere of the country's legal and institutional framework improvement, issued the challenge to enhance the personnel of the judicial and law-enforcement agencies' responsibility while undertaking their activities.

This task appealed to provide enhancement of the constitutional guarantees of rights and freedoms of citizens in conducting investigative actions. In this respect, the seizure and the search being the one which are investigative actions while conducted, civic rights on protection against infringement on private life and immunity of residence secured in the Article 27 of the Uzbekistan Republic Constitution and in the Article 18 of the Uzbekistan Republic code of criminal procedure have to be restricted. The real evidence of the criminal investigation can be found by means of qualitative indicated investigative actions. However, it should be remembered that departure from the norms of the criminal procedure legislation result in process of proof complications, because information or facts won't be accepted as evidence and along with it, constitutional rights and interests of the citizens will be infringed. In this connection it is appropriate to remember the words of the Uzbekistan Republic President I.A. Karimov, who said "the state, all branches of the government justify only if their activity follow protection and safeguarding human rights. This thesis must be recognized as fundamental, and everybody must follow it."<sup>2</sup>

It is expedient to revise international criminal procedure legislation for comprehensive research of execution of the seizure and conducting the search during the pretrial inquest. The analysis of juridical legislation of foreign countries' shows the existence of the definitions to the investigative actions including search and seizure. Particularly in the Article 139 of the Austrian criminal procedure legislation, the definition of the search means "investigative actions where flat or other premises are searched and where hiding and wanted person or documents and the articles relating to the criminal case might be supposedly found." In the next section of the Article - body search is defined as investigative action which includes search the articles and documents relating to the case in the body and clothes of the suspected person.<sup>3</sup>

The Switzerland legislation also contains definitions to "personal search" and "body search." According to the Article 250 of the Criminal Procedure Code (CPC) of Switzerland, the term "body search" is defined as

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<sup>2</sup> I.A. Karimov "Basic principles of socio-political and economic development of Uzbekistan"// "Motherland is sacred for every citizen" V. 3. -T.:Uzbekistan, 1996. - P.15.

<sup>3</sup> Code of criminal procedure of Austria [www.strafverteidiger-friis.at/Strafprozessordnung-StPO/Strafprozessordnung-StPO.pdf](http://www.strafverteidiger-friis.at/Strafprozessordnung-StPO/Strafprozessordnung-StPO.pdf)

physical and psychological search of the body. Meanwhile it is noted in the Article 249 of the Criminal Procedure Code of Switzerland that personal search contains the search in the clothes, luggage, and vehicles as well as on the body without any devices – for the articles and documents relating to the case.<sup>4</sup>

It is noteworthy that in many countries – the vehicle search does not relate to the premises search but to the personal search as it is fixed in the Article 56 of the CPC of France.<sup>5</sup>

It should be noted that functions and tasks of the search coincide in almost all countries. It is indicated in the Article 247 of the CPC of Italy that the search is conducted for retrieval and seizure of the articles which have probative value to the investigation case, and the search is conducted for seeking and arrest of the wanted individuals that is fixed in the Article 103 section 1 paragraph “b”.<sup>6</sup> In item 245 CCP of Switzerland it is fixed, that the search is carried out for search of subjects or the documents important for criminal case, and in item 208 is specified, that the search also is spent for capture of the searched person which presence it is necessary to provide on criminal case.<sup>7</sup> On the analogy of the previous countries, it is fixed in the Article 94 and the Article 102 of the CPC of Germany that the search is necessary to detect and seize any articles and documents which are significant to the investigative case and also to seek hiding individuals from investigation.<sup>8</sup> According to the Article 182 of the CPC of the Russian Federation, the search purposes consist in the search and seize of the articles and documents as well as in finding the wanted individuals.<sup>9</sup>

Along with general features between legislation of different countries there is essential difference in the procedure of conducting a search.

First, there is a difference in the category of individuals who are authorized to conduct a search. According to the Article 190 of the CPC of Switzerland and the search is conducted by the court, public prosecutor and police.<sup>10</sup> According to the Article 56 of the CPC of France, the police officer is authorized to conduct a search, and the court judge personally

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<sup>4</sup> Code of criminal procedure of Switzerland <http://www.admin.ch/ch/f/ff/2006/1373.pdf>

<sup>5</sup> Code de Procédure penale. Trentieme Edition. Jurisprudence Generale dalloz 11. Rue soufflot – 75240 Paris cedex 05. – 1988-1989. – Art.56. – P. 94.

<sup>6</sup> Code of criminal procedure of Italy [www.studioaterno.it/documenti/Codice%20Procedura%20Penale.pdf](http://www.studioaterno.it/documenti/Codice%20Procedura%20Penale.pdf)

<sup>7</sup> Code of criminal procedure of Switzerland <http://www.admin.ch/ch/f/ff/2006/1373.pdf>

<sup>8</sup> Code of criminal procedure of Germany [www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf)

<sup>9</sup> Theoretical and practical commentary to the Code of criminal procedure of Russian Federation / Under general version by V.M. Lebedev, V.P. Bojyeva – 2<sup>nd</sup> edition. – M.: Spark, 2004. – P. 372-373.

<sup>10</sup> Code of criminal procedure of Switzerland <http://www.admin.ch/ch/f/ff/2006/1373.pdf>

conducts a search by separate categories of criminal cases which are different from Switzerland practice.<sup>11</sup> In accordance with the Article 109 of the CPC of Germany, the judicial police conduct a search and all procedures, but in case of arrest post and telegraph corresponds in relevance with the Article 100 of the CPC, this action is conducted only by a judge. Though for urgent reasons, police is assigned to lead apt investigative actions which without familiarization with the mail, seal and bring it to the judge, who personally examine it and defines if the mail should be joined or returned.<sup>12</sup>

Secondly, there are differences relating to the authority of law enforcement bodies, which are authorized to give sanction to conduct a search. Particularly it is fixed in the Article 247 of the CPC of Italy; the Article 183 section 3 of the CPC of the Russian Federation, the Article 240 of the CPC of Switzerland that the searches are conducted by the sanctions or warrants of the court. However in the Article 18 section 2 of the CPC of France there is a reservation that the court informs the public prosecutor about the forthcoming investigative action before releasing a sanction for conducting a search.<sup>13</sup> In the Article 256 of the CPC of Italy the court coordinates the settlement with the chief of Ministers Council of Italy while sanctioning the search relating to the state secrets, the last must provide an answer in 60 days, and in the absence of the answer, the court settles the question itself.<sup>14</sup> In our opinion, the most liberal requirements are fixed in the Article 98 of the CPC of Germany, where conducting a search with the court order, and in case of urgency by authority of the public prosecutor.<sup>15</sup>

Protection guarantees of civil rights in foreign legislation can be foreseen in the following examples. It is indicated in the Article 244 of the CPC of Switzerland that the search may not be conducted during night time from 8 p.m. till 6 a.m., as well as on Sundays and weekends (holidays). This norm is directed to decrease inconveniences for people, though if necessary the search may be conducted at indicated time.<sup>16</sup>

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<sup>11</sup> Code de Procédure penale. Trentieme Edition. Jurisprudence Generale dalloz 11. Rue soufflot - 75240 Paris cedex 05. - 1988-1989. - Art.56. - P. 92-93.

<sup>12</sup> Code of criminal procedure of Germany [www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf)

<sup>13</sup> Code de Procédure penale. Trentieme Edition. Jurisprudence Generale dalloz 11. Rue soufflot - 75240 Paris cedex 05. - 1988-1989. - Art.56. - P. 22.

<sup>14</sup> Code of criminal procedure of Italy [www.studioaterno.it/documenti/Codice%20Procedura%20Penale.pdf](http://www.studioaterno.it/documenti/Codice%20Procedura%20Penale.pdf)

<sup>15</sup> Code of criminal procedure of Germany [www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf)

<sup>16</sup> Code of criminal procedure of Switzerland <http://www.admin.ch/ch/f/ff/2006/1373.pdf>

Moreover, it is stated in the Article 56-1 of the CPC of France, that the search at the defender of the accused can be conducted by the court sanction and with mandatory presence of the head of the Bar, whose presence directed to protect the rights of the defender himself.<sup>17</sup> Similar norm contains in the Article 103 of the CPC of Italy, where it is stated that the search in the office or in the house of the defender is conducted only by the judge or by the entrusted public prosecutor in cases when the defenders themselves are suspected in committing a crime or hiding the articles, documents or the wanted. The peculiarity of the “search at the defender” is that if found documents are the evidential for the protection of the defender’s client and they are not part and target of the crime, they are not to be seized from the defender.<sup>18</sup>

This foreign experience has not been applied yet in the CIS and it demonstrates necessity for criminal procedure legislation to be revised in parts relating to the search. Taking into account above stated circumstances and for ensuring protection of the defenders’ (counselors’) rights themselves while conducting a search against them or their premises, it is expedient to create a new Article 161<sup>1</sup> of the CPC of the Republic of Uzbekistan, stating it in the following form:

“If there are reasons for assuming that the defender (counselor) has objects or documents which are parts or target of a crime, as well as incriminating his accompliceship or for hiding the wanted, by ad sectam of the investigator, the interrogator and the public prosecutor, the search or the seizure is conducted by the judge himself in the dwelling, the office or in other premises of the defender (counselor).

Along with other participants stipulated by the present Code, participation is binding on the head of the Bar by territorial principle when the seizure and the search at the defender (counselor) are conducted.

The articles and documents which are evidence for the client’s protection in criminal case where the defender takes part in are not subject to be seized.”

Our proposing of conducting a search or seizure from the defenders by the judge personally is directed to avoid abuse by the investigators, interrogators or the attorney who are also public prosecutors, and to

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<sup>17</sup> Code de Procédure penale. Trentieme Edition. Jurisprudence Generale dalloz 11. Rue soufflot - 75240 Paris cedex 05. - 1988-1989. - Art.56. - P. 96.

<sup>18</sup> Code of criminal procedure of Italy  
[www.studioaterno.it/documenti/Codice%20Procedura%20Penale.pdf](http://www.studioaterno.it/documenti/Codice%20Procedura%20Penale.pdf)

prevent from possible firsthand view and seizure of exculpatory evidence of the defenders client.

In our view, section 1 of the Article 140 of the CPC of Austria is deserved attention, in compliance with it, the individual who conducts a search has not a right to interrogate at the same time the individual, who is under search and must be interrogated before the search. This practice is not in compliance with the criminalistics practiced in Uzbekistan, where questioning the individual under the search is used to find the articles sought-for.

It is also fixed in the Article 141 of the CPC of Austria that in the presence of reasons, the search is conducted in the house of the judge or the law enforcement official by the officials of the same body in general terms.<sup>19</sup> In our view, Austrian practice complicate ascertainment of the truth on the case because the colleagues can conceal evidence or do not conduct a search, or give him/her notice about upcoming search to save prestige or for *esprit de corps* while conducting a search or seizure at the colleague. In our opinion, it is expedient to engage officials of other bodies in such cases.

Seizure and search in the hardware and other computer sources are ordered in the CPC of foreign countries. In accordance with the Article 97 of the CPC of Germany, computer audio, video and other files containing direct and indirect relation to the case seized with the court order are subject to be searched as well as objects and documents. In the Article 98 (b), it is noted that only data allowing establishing the truth about the case are subject to be attached to the criminal case, and other information seized during the search is subject to be returned. Seizure of the correspondence of the computer environment sources is stated in the Article 99.<sup>20</sup>

Analogic provision is fixed in the Article 243 of the CPC of Switzerland, according to it the objects, audio, video and other electronic documents or computer data as well as software for recording information relating to the case are subject to be seized. It is also stated in the Article 246 that hiring a specialist for finding and seizure of computer data is legal.<sup>21</sup>

Using the computer data as evidence is reflected in the legislation of Kazakhstan. It is stated in the Article 236 of the CPC of Kazakhstan that

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<sup>19</sup> Code of criminal procedure of Austria [www.strafverteidiger-friis.at/Strafprozessordnung-StPO/Strafprozessordnung-StPO.pdf](http://www.strafverteidiger-friis.at/Strafprozessordnung-StPO/Strafprozessordnung-StPO.pdf)

<sup>20</sup> Code of criminal procedure of Germany [www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf)

<sup>21</sup> Code of criminal procedure of Switzerland <http://www.admin.ch/ch/f/ff/2006/1373.pdf>

operative services intercept messages transmitted through computer communication channels, and intercepted information is passed to the investigator.<sup>22</sup> It is obvious from the above given examples that technical innovation is important to be regulated in the legislation to increase efficiency of crime exposure.

It is obligatory to inform competent authorities when search is conducted without an order as stated in the CPC of foreign countries so in the legislation of Uzbekistan. Particularly in the Article 240 section 2 of the CPC of Switzerland reads as follows, when search is conducted without a court order, judicial body must be informed about undertaken investigatory action, though time is not fixed in the regulation during which it is necessary to fulfil the requirement.<sup>23</sup> In contrast to that in the Article 98 section 2 of the CPC of Germany, it is fixed 3 day time for informing the court about the conducted urgent search. In accordance with the Article 100 of the CPC of FRG analogic procedure is practiced during the seizure of correspondence.<sup>24</sup>

On the basis of the given examples of foreign experience and ongoing social-economic reforms, the Criminal Procedure Code of the Uzbekistan Republic needs specific changes which are directed in the first place to protect civil rights and legal interests. Particularly there appear to be sufficient reasons to increase powers of the court in connection with delegation of rights to the courts to give sanctions to conduct a search and other investigatory actions infringing constitutional civil rights, as now sanctions for conducting of all investigative actions stipulated by the Article 29 section 3, the Article 36 section 2, the Article 89 section 1, the Article 148, the Article 382 section 3 paragraph 8 of the CPC of the Republic of Uzbekistan are given by the public prosecutor. Increasing powers of the attorneys especially while conducting investigative actions shall allow extending process of liberalization of the criminal law legislation in the country as well.

In addition, the expected changes can substantially improve evidential functions of the law enforcement bodies of the Republic of Uzbekistan, detect and conduct investigation more effectively as well as extend cooperation with other states in this sphere.

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<sup>22</sup> Code of criminal procedure of the Republic of Kazakhstan [http://base.zakon.kz/doc/lawyer/nph-lawyer.exe?uid=;&uid=4B2491A7-6402-411B-9C97-99B8B3275022&language=rus&doc\\_id=1008442&language=rus&forprint](http://base.zakon.kz/doc/lawyer/nph-lawyer.exe?uid=;&uid=4B2491A7-6402-411B-9C97-99B8B3275022&language=rus&doc_id=1008442&language=rus&forprint)

<sup>23</sup> Code of criminal procedure of Switzerland <http://www.admin.ch/ch/f/ff/2006/1373.pdf>

<sup>24</sup> Code of criminal procedure of Germany [www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf)

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