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Ensuring the interests of citizens in seizure and search procedures

Abstract

This article provides a comprehensive examination of protecting citizens' rights and freedoms during seizure and search procedures in criminal proceedings. These investigative measures, critical for evidence collection, directly impact constitutional guarantees such as personal inviolability and property rights. Strict adherence to legality, justification, and proportionality is essential to safeguard human rights.

The study analyzes procedural norms under the Criminal Procedure Code (CPC) of Uzbekistan and international legal standards. It explores the roles of investigative bodies, judicial oversight, and defense counsel, alongside the repercussions of unlawful actions. Comparative insights from other nations' practices highlight gaps and propose improvements. Recommendations focus on enhancing judicial independence, procedural transparency, and legal protections to prevent violations.

The findings aim to contribute to both academic discourse and practical reforms, strengthening human rights protections and aligning Uzbekistan's criminal justice system with global standards.

Keywords: Criminal procedure, seizure, search, legality, international practice, law, freedom.

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Тәркілеу және тінту кезінде азаматтардың мүдделерін қамтамасыз ету

Аннотация

Бұл мақалада қылмыстық процестегі тәркілеу және тінту процедуралары кезінде азаматтардың құқықтары мен бостандықтарын қорғаудың кешенді сараптамасы қарастырылған. Дәлелдемелерді жинау үшін өте маңызды бұл тергеу шаралары жеке адамның қол сұғылмаушылығы және меншік құқығы сияқты конституциялық кепілдіктерге тікелей әсер етеді. Адам құқықтарын қорғау үшін заңдылықты, негіздемені және пропорционалдылықты қатаң сақтау өте маңызды.

Зерттеу барысында Өзбекстанның Қылмыстық іс жүргізу Кодексіне (ҚЖК) сәйкес іс жүргізу нормалары және халықаралық-құқықтық стандарттар талданады. Ол тергеу органдарының, сот қадағалауының және адвокаттың рөлін, сондай-ақ заңсыз әрекеттердің салдарын зерттейді. Басқа елдердің тәжірибесін салыстырмалы талдау олқылықтарды көрсетеді және жақсартуларды ұсынады. Ұсынымдар бұзушылықтардың алдын алу үшін сот билігінің тәуелсіздігін, процедуралық ашықтықты және құқықтық қорғауды арттыруға бағытталған.

Нәтижелер академиялық дискурсты да, практикалық реформаларды да ілгерілетуге, адам құқықтарын қорғауды нығайтуға және Өзбекстанның қылмыстық сот төрелігі жүйесін әлемдік стандарттарға сәйкестендіруге бағытталған.

Түйінді сөздер: Қылмыстық іс жүргізу, тәркілеу, тінту, заңдылық, халықаралық тәжірибе, құқық, бостандық.

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Обеспечение интересов граждан в процедурах конфискации и обыска

Аннотация

В данной статье рассмотрена комплексная экспертиза защиты прав и свобод граждан при процедурах конфискации и обыска в уголовном процессе. Эти следственные действия, жизненно важные для сбора доказательств, напрямую влияют на конституционные гарантии, такие как неприкосновенность личности и право собственности. Строгое соблюдение законности, обоснованности и соразмерности имеет решающее значение для защиты прав человека.

В ходе исследования анализируются процессуальные нормы и международно-правовые стандарты в соответствии с уголовно-процессуальным кодексом Узбекистана (УПК). Он исследует роль следственных органов, судебного надзора и адвоката, а также последствия незаконных действий. Сравнительный анализ опыта других стран показывает пробелы и предлагает улучшения. Рекомендации направлены на повышение независимости судебной власти, процессуальной прозрачности и правовой защиты для предотвращения нарушений.

Результаты направлены на продвижение как академического дискурса, так и практических реформ, укрепление защиты прав человека и приведение системы уголовного правосудия Узбекистана в соответствие с мировыми стандартами.

Ключевые слова: уголовный процесс, конфискация, обыск, законность, международная практика, право, свобода.

Introduction

Seizure and search are pivotal investigative actions in criminal proceedings, directly affecting individuals' constitutional rights, including freedom and personal inviolability, as guaranteed by Article 26 of Uzbekistan's Constitution [1]. Ensuring these procedures comply with legality, justification, and fairness is critical for protecting citizens' interests and maintaining public trust in the justice system.

The relevance of this issue is underscored by persistent procedural violations. In 2022, the Prosecutor's Office of Uzbekistan reported that 19% of citizen complaints involved improper searches, often due to missing judicial warrants or inadequate documentation [2, s. 48]. Such breaches risk violating personal privacy and undermining evidence admissibility. International norms, including the Universal Declaration of Human Rights and European Court of Human Rights (ECHR) rulings, emphasize robust protections during investigative actions [3].

According to reports from the US embassy in 2013-2017, despite the legislative ban, the Uzbek government in practice often violated the requirements of inviolability of the House. The warrant for the search was issued by prosecutors, but there was no mechanism of judicial control over such decisions, which led to an arbitrary search.

In 2012, the head of the Jizzakh branch of The Independent Society for the protection of human rights of Uzbekistan Uktam Pardayev reported violations during the arrest, including food-free storage and unsanitary conditions, which are associated with detention and search procedures.

Problematic issues in searches and confiscations are the lack of transparent statistics on violations, insufficient judicial control at the initial stage, the ongoing problem of systematic torture and pressures, as well as restrictions on the activities of independent human rights organizations that make it difficult to control compliance with citizens'

rights. These factors are arbitrary and run the risk of not adequately protecting rights in this area.

This research aims to analyze the theoretical and practical dimensions of safeguarding citizens' rights during seizure and search, identify legislative and enforcement shortcomings, and propose solutions to align practices with international standards.

Objectives of the Study

The study pursues the following objectives:

- **Legal Analysis of Seizure and Search:** Investigating the legal framework, procedural requirements, and their impact on citizens' rights.

- **Identifying Citizens' Rights and Protection Mechanisms:** Assessing guarantees of personal inviolability and related safeguards.

- **Studying International Practices:** Comparing Uzbekistan's approach with global models to draw lessons.

- **Identifying Problems in Uzbek Legislation and Practice:** Proposing solutions to address legal and practical gaps.

Materials and Methods

The research draws on the Criminal Procedure Code of Uzbekistan, international human rights conventions, Supreme Court plenary decisions, and legal scholarship. National and international articles, alongside judicial cases from 2020–2023, were analyzed. Methods include:

- Comparative analysis of Uzbekistan's CPC with foreign legal systems.

- Legal comparison to evaluate procedural safeguards.

- Systematic analysis of legislative and practical interactions.

- Generalization, induction, and deduction to synthesize findings.

- Case studies to assess real-world impacts on citizens' rights.

Research Findings

Although seizure and search share similarities as investigative actions, they are

distinct in purpose and execution. Per Article 157 of Uzbekistan's CPC, seizure is authorized when the precise location and possessor of items, documents, or electronic data relevant to a case are known, requiring no search [4]. For example, in a 2022 Tashkent embezzlement case, seizure of financial records from a known office streamlined evidence collection [5, s. 70].

Searches, governed by Article 158, involve compulsory inspections of residences, workplaces, or individuals to locate evidence. A search requires a reasoned decision from an investigator or inquiry officer, typically with judicial approval. In urgent cases, searches may proceed without prior court sanction, but the court and prosecutor must be notified within 24 hours, with the judge assessing legality within 48 hours (Art. 159 CPC). In 2023, in Samarkand, 13% of searches were invalidated due to missing judicial warrants, highlighting enforcement gaps [6, s. 92].

Seizure is an independent action, distinct from search, focusing on retrieving specific items without extensive exploration. It is initiated by a decision from an inquiry officer, investigator, or court, specifying the items and location. For instance, in a 2022 Fergana fraud case, seizure of a suspect's laptop was nullified due to improper protocol documentation [7, s. 60].

Searches aim to both locate and seize evidence, such as weapons, stolen goods, or documents, and may target wanted persons or hidden bodies. Article 158 permits searches when sufficient evidence suggests relevant items are present. In a 2023 Bukhara drug trafficking case, a search uncovered narcotics, but the evidence was excluded due to the absence of witnesses [8, s. 75].

Judicial oversight is critical. Search warrant requests are reviewed by district criminal court judges, with provisions for alternative judges if needed (Art. 159 CPC). Prosecutorial supervision ensures investigators' actions remain lawful without compromising their procedural independence [9, s. 128]. In practice, however, judicial reviews are sometimes perfunctory, as seen in a 2022 Karakalpakstan case where a search was approved without sufficient grounds [10, s. 82].

Seizure requires the original item or document, not a copy, and may involve experts to prevent tampering, especially for complex evidence like accounting records. Searches, conversely, are broader, targeting crime tools, proceeds, or fugitives. Article 329 CPC mandates that searches occur only after a criminal case is initiated, following a review of crime reports within three to ten days [4].

In urgent situations, personal searches or seizures may proceed without prior approval under Articles 224–225 CPC, such as during arrests where suspects may possess weapons or evidence. In a 2022 Tashkent robbery case, an immediate search of a suspect yielded stolen goods, later upheld as lawful [11, s. 68].

Searches serve multiple objectives: recovering crime tools (e.g., firearms, counterfeit documents), seizing criminally obtained property, locating relevant documents, or finding fugitives. Prohibited items, like narcotics or state secrets, must also be seized, regardless of case relevance. In 2023, in Andijan, a search for stolen property uncovered illegal firearms, leading to additional charges [12, s. 87].

Sufficient information is required to justify searches, derived from witness testimonies, citizen complaints, or official reports. Operational intelligence alone is insufficient unless corroborated by case materials [13, s. 40]. Article 160 CPC mandates the presence of the property owner or an adult family member during seizures, or a local government representative if they are unavailable. In a 2022 Samarkand case, the absence of such representatives led to the seizure's invalidation [14, s. 65].

International practices offer valuable insights. In the United States, the Fourth Amendment requires judicial warrants, with exceptions for urgent circumstances or consent-based searches, prioritizing privacy protections [15]. The UK's Police and Criminal Evidence Act (PACE) mandates reasonable suspicion and transparent communication with individuals during searches, often recorded on video [16]. Germany's Code of Criminal Procedure (StPO) requires judicial or prosecutorial approval, with mandatory post-search notifications to affected parties [17].

Uzbekistan's framework, while robust, lacks such transparency measures, contributing to procedural errors.

Analysis of Research Results

Protecting citizens' rights during seizure and search is a hallmark of democratic legal systems. Judicial oversight and procedural compliance are paramount to prevent abuses. Internationally, the U.S. Fourth Amendment and ECHR rulings, such as *Gäfgen v. Germany* (2010), prohibit illegal investigative methods and deem unlawfully obtained evidence inadmissible [15; 18, s. 643]. Similarly, *Mapp v. Ohio* (1961) reinforced this principle in the U.S. [19, s. 110].

Some argue that law enforcement should have greater leeway to combat crime, but this risks human rights violations. Article 12 of the Universal Declaration of Human Rights protects against arbitrary privacy intrusions, a principle Uzbekistan must uphold [20, s. 33]. In practice, procedural lapses, such as missing warrants or inadequate oversight, undermine rights protections. In 2023, in Tashkent, 21% of search-related complaints cited insufficient judicial scrutiny [21, s. 90].

Investigators must operate within strict legal bounds, as emphasized by Article 160 CPC. Uzbekistan's system, while aligned with international norms, requires stronger enforcement to match global benchmarks like the UK's video-recorded searches or Germany's notification protocols.

Conclusions and Recommendations

In order to strengthen the protection of citizens' rights in criminal proceedings and conducting searches, Uzbekistan must overcome practical shortcomings through targeted reforms. The following are measures to increase legitimacy, transparency, and public trust, and to bring these procedures in line with international human rights standards.

Strengthening judicial control: it is necessary to increase the independence of the courts that issued search warrants, forcing them to carefully examine the foundations of the investigation. It is also important to require prosecutors to pre-certify the participation of public representatives in the seizure processes to ensure their legitimacy. For example, in one of the last cases in Tashkent, the arrest was

canceled due to insufficient control, which emphasized the need for a thorough investigation.

Increasing the responsibility of investigators: penalties for procedural violations must be increased, such as conducting an unordered search or ignoring witness requests. Mandatory inspections of investigative actions should be introduced in order to timely identify and eliminate violations. A 2023 study in Samarkand found that disciplinary action is administered less than one-tenth of a time, indicating the need for stricter supervision.

Expanding public and media participation: it is important to create an independent control mechanism that includes journalists, lawyers and human rights activists to monitor seizure and search processes. Conducting public information campaigns on legal guarantees in investigative actions will allow citizens to better protect their rights. In Bukhara, for example, it is possible to start a pilot project that will inform the population about the right to demand a court decision.

The use of digital technology: the introduction of electronic systems of registration and storage of search and seizure protocols ensures transparency and availability. The development of secure digital accounting systems based on international models will help prevent evidence falsification and increase their reliability. The test program at Andijan can test electronic registration to simplify document circulation and increase accountability.

These measures will help to strengthen the legal framework, minimize violations of citizens' rights and increase confidence in the criminal justice system of Uzbekistan. The implementation of the proposed reforms will make it possible to modernize legislation, improve the qualifications of investigators and expand public participation, which will lead to the creation of a more equitable and transparent investigative system.

The problem of confiscation and violation of the rights of citizens during searches in Uzbekistan requires an integrated approach. Citizens must actively defend their rights by requiring compliance with procedures and recording violations, as well as

seek legal assistance through non-governmental organizations such as virtue or similar portals data.gov.uz. public authorities must strengthen judicial control, increase the transparency of Statistics and train employees to comply with human rights. Human rights organizations should continue to monitor and inform the population, while the international

community should support reforms and put pressure on the authorities to address systemic violations. The joint efforts of all parties contribute to the implementation of arbitrariness and the rights of citizens in accordance with the legislation of Uzbekistan and international standards.

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