

**INVESTIGATIVE JUDGE: NEED, OPPORTUNITY AND EFFECT**

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**Annotation:** In this article, in accordance with the procedural legislation in force in our country, most of the evidence regarding the fact that a person has committed a certain crime and his guilt are the inquiry and preliminary investigation processes, and the initiation of a criminal case on the one hand, which works in a diametrically opposite position in these processes ( or termination), information is given on the collection, evaluation and consolidation of evidence in the case.

**Key words:** procedural legislation, evidence, measures and limitations, powers, investigative judges, suspect, social relations.

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It is known that in accordance with the procedural legislation in force in our country, most of the evidence regarding the commission of a certain crime and his guilt is collected and strengthened during the inquiry and preliminary investigation processes. It is in these processes that a party acting in a diametrically opposite position initiates (or terminates) a criminal case, collects, evaluates and consolidates evidence in the case, applies measures and restrictions of a mandatory nature. State officials (investigator, investigator, prosecutor) with priority powers, i.e. the accused (suspect) and his lawyer, i.e. the second party with the accusation, the issue of equal protection is important for determining the truth in the case. is one of the criteria. However, although the necessary powers are defined in the law, it is self-evident that the gap in the mechanism of their implementation will affect the procedural status of the defender, and therefore there will be a need for a procedural person who ensures impartiality and impartiality between the two parties. It can be said that the Institute of Investigative Judges arose as a result of this need. Because protecting the rights and interests of citizens, ensuring the equality of the parties, and restraining the executive power in the preliminary investigation process are among the important conditions for the exercise of judicial power.

It can be seen from the experiences of European countries, in particular, France, Belgium, Spain, Holland, Switzerland, Croatia, that the Institute of Investigative Judges has already passed the stage of formation and is functioning effectively as a form of control over preliminary investigation processes. In other words, certain investigative and investigative actions related to the restriction of the rights of citizens in the mentioned countries, including detention, detention and extension of its term, search, interception of mail and telephone messages, telephone and other communications. measures such as hearing of disputes are allowed only with the appropriate decision of the court.

For example, according to the German criminal procedure law, a special judge (investigating judge) can arrest the suspect as a precautionary measure, place him in a temporary psychiatric institution, allow him to listen to the phone conversations of the accused (suspect), and in urgent cases, kill him without the permission of the court. performs a number of functions, such as confirmation of the legality of the conducted searches. It is important to note that, in order to ensure impartiality and impartiality, the special judge was not given the authority to review cases. As Dr. Heinz Bühler pointed out, it is within the absolute authority of an impartial and impartial

court to allow the above-mentioned investigation and inquiry in accordance with paragraphs 100-128 of the Code of Criminal Procedure of the Federal Republic of Germany.<sup>1</sup>

According to the criminal justice legislation of the Republic of France, the investigating court is a judge of the second-level court (higher instance court) appointed by the President of the Republic for a period of three years. In accordance with Article 137-1 of the Criminal Code of France, mandatory restrictions such as conducting a personal search of a person suspected of committing a crime by police officers and agents on the territory of the country, bringing him in a mandatory manner, arresting him, extending his term and removing him from office are within the authority of the absolute judge.<sup>2</sup>

It should be recognized that in the following decades, this institute was established in former union republics, including Lithuania in 2002 (JPK 158), Moldova in 2003 (JPK 41) and Estonia (JPK 21), 2005 Latvia (Article 210 of the Civil Code), 2013 Ukraine (Article 3 of the Civil Code), 2015 of Georgia (Article 20 of the Civil Code) and the Republic of Kazakhstan (Article 55 of the Civil Code) are being incorporated into the procedural legislation, and a specific practice is being formed.

In accordance with Article 132 of the Criminal Code of the Republic of Ukraine, restrictions on the rights enshrined in the constitution regarding the inviolability of a person and a citizen can be implemented only on the basis of the decision of the investigative judge. In accordance with Article 3, Part 1, Clause 18 of this Code, the investigative judge, who has the authority to exercise judicial control over the provision of rights, freedoms and interests of a person in criminal proceedings, is a judge of the first instance court appointed by election at the general meeting of judges. is considered.<sup>3</sup>

In Latvia, the investigating judge is a judge appointed by the chairman of the district (city) court, and his powers, consisting of 10 points aimed at ensuring the privacy of the person in the preliminary investigation process, dispute processes and ensuring the equality of the parties, are described in detail in Article 40 of the Criminal Procedure Code.<sup>4</sup>

According to articles 54 and 55 of the Criminal Code of the Republic of Kazakhstan, the investigating judge is a judge appointed by the chairman of the court of first instance, who supervises the observance of the rights, freedoms and legal interests of individuals at the stage of proceeding to court.<sup>5</sup>

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<sup>1</sup> Инсоннинг суд оркали ҳимоялаш ҳуқуқи: назария ва амалиёт муаммолари. Т.: 2003. 14–16-бет.

<sup>2</sup> Қаранг: Уголовно-процессуальный кодекс Франции 1958 года : С изменениями и дополнениями на 1 января 1966 года / [Пер. с фр. С. В. Боботова; Под ред. В. И. Каминской]. - М. : Прогресс, 1967. - 322.

<sup>3</sup> [https://continent-online.com/Document/?doc\\_id=31197178#pos=2078;-57](https://continent-online.com/Document/?doc_id=31197178#pos=2078;-57)

<sup>4</sup> Қаранг: <https://lawyer-khroulev.com/wp-content/uploads/2019/09/upz-latvii-prava-i-objazannosti-uchastnikov-ugolovnogo-processa-v-latvii.pdf>

<sup>5</sup> Уголовно-процессуальный кодекс Республики Казахстан от 4 июля 2014 года (по сост. на 16.11.2020). (Электронный ресурс). Режим доступа: <http://base.spinform.ru>

Depending on the level of development of social relations, some aspects of judicial control over the preliminary investigation and inquiry are being studied to a certain extent by legal scholars and practitioners during the reforms that are being carried out step by step in the legal system of our country. "Today, there is a need to re-examine certain provisions of our criminal and procedural legislation related to the strengthening of judicial control over the preliminary investigation and pre-trial process."<sup>6</sup>

Indeed, as defined in Article 20 of the Constitution of the Republic of Uzbekistan, the rights and duties of the citizen of the Republic of Uzbekistan and the state are interrelated. The rights and freedoms of citizens enshrined in the Constitution and laws are inviolable, and no one has the right to deprive them or limit them without a court decision.<sup>7</sup>

Decree of the President of the Republic of Uzbekistan on August 8, 2005 "On Transferring the Right to Sanction Detention to the Courts" regarding the implementation of the provisions of this Constitutional norm<sup>8</sup> on the basis of amendments and additions made to the CPC of the Republic of Uzbekistan<sup>9</sup> the transfer of the right to sanction detention to the courts was one of the first manifestations of the judicial control over the preliminary investigation, a direction of the function characteristic of the executive power.

In recent years, during the judicial reforms related to the additions and changes to the criminal procedural legislation, dismissal of the accused (suspect), placement in a medical institution, application of the amnesty act, house arrest, detention or house arrest extension, extension of the defendant's stay in a medical institution, suspension of the validity of the passport (movement document), interception of postal and telegraphic dispatches, exhumation of the corpse, conducting a search, listening to telephone conversations, issues of permission to carry out investigative actions, such as confiscation of property, were transferred to the jurisdiction of criminal courts.

Of course, although the noted reforms gave the opportunity to exercise judicial control over certain investigative actions of the preliminary investigation bodies, the judge who authorized the conduct of a certain investigative action in a specific criminal case, participates in the substantive consideration of this criminal case later. His arrival was a reason to doubt his impartiality and impartiality.

In this regard, on June 10, 2024, the Decree of the President of the Republic of Uzbekistan No. PF-89 "On measures to further strengthen the guarantees of reliable protection of the rights and freedoms of the individual in the activity of urgent search and investigation"<sup>10</sup> The introduction of the institution of "investigating judge" within the framework of officials responsible for

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<sup>6</sup> Каримов И.А. Бизнинг бош мақсадимиз жамиятни демократлаштириш ва янгилаш, мамлакатни модернизация ва ислох этишидир. – Тошкент: «Ўзбекистон», 2005. 47-бет.

<sup>7</sup> Ўзбекистон Республикаси Конституцияси. Тошкент, «Ўзбекистон», 2023. 9-бет.

<sup>8</sup> Ўзбекистон Республикасининг Қонун ҳужжатлари тўплами. 2005. № 32-33. 242-модда.

<sup>9</sup> Олий Мажлис Палаталарининг ахборотномаси. 2007. № 6. 249-модда.

<sup>10</sup> Қаранг; <https://lex.uz/uz/docs/6964387>

conducting criminal proceedings from January 1, 2025 will further expand the powers and opportunities of judicial control over the preliminary investigation related to the executive branch, and the judge's impartial and was an important factor in ensuring impartiality.

Procedural measures restricting personal privacy in connection with the introduction of the institution of the investigating judge, that is, the use of preventive measures in the form of imprisonment or house arrest and their extension, suspension of the validity of the passport (movement document), exhumation of the corpse, applications for interception of postal and telegraphic dispatches, searches, listening to conversations conducted through telephones and other telecommunication devices, and seizure of property are considered by investigative judges.

Also, applying coercive measures on criminal materials - that is, removing the accused from his position; it is planned to transfer powers such as placing a person in a medical institution, extending his term, considering a request to extend the term of detention up to forty-eight hours, to the investigative judge.

Based on the opinion of proceduralist scientists and the analysis of procedures and procedures established by law, the "new participant" of the criminal process can be defined as follows. That is, the investigative judge - who works at the pre-trial stages of criminal cases, coordinates and controls the actions of the prosecution and the defense, so that they can exercise their rights and powers, and ensure the equality of the parties in the dispute process. responsible official who creates the necessary conditions.

It is known that the classic form of the institution of investigative judges belongs to the Anglo-Saxon family of law. Therefore, it is impossible to ignore the question of how appropriate it can be integrated into the legislation of our country, which is formed in the manner of the Romano-Germanic family of law, and its influence on the general structure of criminal procedural legislation.

The analysis of the criminal procedural legislation of the developed European countries and the republics of the former union shows that the main function of the investigating judge is to strengthen the guarantees of effective protection of the rights and freedoms of the individual in criminal cases before the court, and to fully ensure the principle of equality and dispute between the parties. in order to ensure impartiality and impartiality of justice, they were not given the authority to review cases.

In the above-mentioned decree related to the introduction of the Institute of the investigative judge of our country, the judges of the investigation are given the authority to consider cases of administrative offenses.

In our opinion, the judge of the investigation, taking into account the subject and purpose of the institutinig, questions the impartiality and impartiality of justice to give them the authority to hear cases of administrative offenses.

It is known that about twenty articles of the CEC of the Republic of Uzbekistan provide for criminal liability if a person commits a re-administrative offense for a year. After that, this procedure requires a serious study of how appropriate and appropriate the subject of the investigative judge Institute is to consider cases of administrative offenses. As a solution, taking into account the fact that the judges of the investigation are formed within the district, municipal courts of criminal cases, the implementation of internal specialization in criminal courts, within the framework of current and new state units:



(a) judges of inquiry;

(B) judges in administrative infringement cases;

v) it seems expedient to introduce criminal justice procedures.

After all, the decree established as the main goal “to ensure in practice the principle of equality and dispute of the parties in the conduct of the case before the court, as well as to achieve effective protection of the rights and freedoms of the individual in operational-search and investigative activities.” So, only an investigative judge who is excluded from the substantive review of a case and the exercise of justice in subsequent judicial instances can be an impartial and independent judge in the process of proceeding the case before the court.

We think that in the processes of drafting the law, a thorough study of foreign judicial-investigative practice, a broad discussion of the project between legal scholars and practitioners will result in the perfect development of the investigative judge institui, which is an effective mechanism for judicial control over the preliminary investigation. This made our unspoken country committed to the norms of generally accepted international law and echoed the requirements of Article 9 of the International Covenant on Civil and Political Rights, which was ratified by the Supreme Assembly of the Republic of Uzbekistan in 1996.<sup>11</sup>

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<sup>11</sup> Ҳуқуқни муҳофаза қилиш органларига оид халқаро ҳужжатлар. Тошкент: Адолат, 2004. 23–24-бет.