

SEIZURE AND SEARCH: LEGAL FOUNDATIONS AND PRACTICAL SIGNIFICANCE

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ABSTRACT: This article analyzes the legal foundations of seizure and search during investigative actions, their role in the criminal process, significance in protecting human rights, and practical issues. Recommendations are also provided for the effective and lawful execution of these procedural actions.

Keywords: seizure, search, criminal process, human rights, evidence, lawyer participation, digital evidence.

INTRODUCTION

The criminal procedure is one of the most important legal mechanisms aimed at ensuring the protection of human rights and the administration of fair justice. Within this process, search and seizure constitute the primary investigative actions for collecting evidence. Through these procedural actions, an investigator identifies traces of a crime, discovers objects and documents of evidentiary value, and formalizes them in accordance with the law.

Therefore, search and seizure play a vital role not only in uncovering crimes but also in guaranteeing an individual's constitutional rights. In this regard, the Constitution of the Republic of Uzbekistan recognizes every person's right to the inviolability of their home, which highlights the significance of this right at the state level.

The abolition of the procedure allowing courts to return criminal cases for additional investigation has increased the responsibility of judicial and investigative bodies to identify the facts necessary for establishing the truth and for adopting lawful, well-grounded, and fair decisions. Consequently, since search and seizure are directly related to a person's personal inviolability, state authorities must strictly adhere to the established legal procedures when carrying them out..

METHODS

This article analyzes normative legal acts, in particular, the Criminal Procedure Code of the Republic of Uzbekistan, international legal norms, as well as the judicial practice of the Supreme Court. The research employs comparative-legal, systematic analysis, and logical analysis methods.

DISCUSSION AND RESULTS

From a legal and theoretical perspective, there are certain distinctions between the investigative actions of seizure and search. This can be analyzed based on the definitions provided in Articles 157 and 158 of the Criminal Procedure Code of the Republic of Uzbekistan. According to these provisions, if the location and possessor of objects, documents, or electronic data relevant to a criminal case are already known and there is no need to search for them, the inquirer,

investigator, or court shall carry out a seizure of such items.¹ However, if the inquiry officer or investigator has sufficient grounds to believe that there are objects, documents, or electronic data relevant to the case in a particular dwelling, workplace, production building, or with a certain person, they have the right to conduct a search. Consequently, the main distinction between these two investigative actions depends on whether there is complete or partial certainty regarding the existence of the evidence.

Secondly, in order to conduct a search, the inquiry officer, investigator, or prosecutor must issue a motion for a search warrant, specifying the grounds for conducting the search and attaching the necessary supporting materials. The prosecutor examines the reasonableness of the motion, and if they agree, they forward it along with the decision and relevant documents to the investigative judge of the district (city) criminal court where the pre-trial investigation is being conducted. If the assigned judge is unavailable or has a conflict of interest, the matter is referred to another competent court upon the instruction of the Chairperson of the Supreme Court of the Republic of Karakalpakstan, the regional court, or the Tashkent City Court.

The investigative judge must review the motion within eight hours of receiving the materials in a closed court session, after which a ruling is issued either authorizing or denying the search. The ruling takes effect immediately upon announcement and is handed over to the prosecutor, inquiry officer, or investigator to execute the search.

In contrast, the procedure for obtaining authorization to conduct a seizure is relatively simpler. A seizure may be carried out based on the decision of the inquiry officer or investigator, or by a court ruling. The decision or ruling authorizing the seizure must clearly specify the place and the person from whom the items are to be seized, as well as which specific objects, documents, or electronic data are to be taken.

Thirdly, although the same persons may be present during both seizure and search — such as witnesses (attesting persons) and, if necessary, experts or interpreters — these actions may overlap in practice. For example, if a person voluntarily hands over the evidence during a search, then a record of seizure is drawn up instead of a search record. Conversely, if the sought evidence is not found at the location specified in the seizure decision, a search must be conducted.

The procedural conduct of both actions is almost identical. During a search or seizure, attesting witnesses, and if necessary, experts and interpreters, must be present. The person whose premises are being searched or, at least, one of their adult family members must attend. If this is not possible, a representative of the local government or self-governing citizens' body must be invited. Searches or seizures conducted in enterprises, institutions, organizations, or military facilities must be carried out in the presence of their representatives.

Before commencing, the inquiry officer or investigator must familiarize the person with the decision or ruling authorizing the search or seizure and obtain their signature. The officer may prohibit anyone present from leaving the premises or communicating with others until the procedure is completed. All seized objects, documents, and electronic data must be shown to the

¹ Criminal Procedure Code of the Republic of Uzbekistan (1994), Articles 157-158. Available at: <https://lex.uz/docs/-111460#-254189>

witnesses and other persons present, recorded in detail in the official report (protocol), and, if necessary, sealed. The seals may only be broken later in the presence of witnesses. These measures ensure transparency and help prevent future disputes.

Upon completion, the inquiry officer or investigator draws up a protocol describing in detail where and under what circumstances each item, document, or electronic data was found, whether it was handed over voluntarily or seized forcibly, and noting all identifying features. A copy of the decision or ruling, as well as the protocol, is provided to the person concerned or their adult family members. If they are absent, it is handed over to a representative of the local authority or self-governing body, who must sign a receipt. When necessary, copies of the seized documents may also be given to the person.

Analyses show that in practice, violations of human rights sometimes occur during search and seizure operations. For instance, suspects may not be fully informed of their rights, the protocol may lack required signatures, or the procedure may be conducted without video recording — all of which render the obtained evidence inadmissible. Therefore, it is crucial to ensure harmonization between theory and practice in this field. As noted by legal scholars, “a search is one of the most responsible procedural actions of an investigator; it must not only aim to find evidence but also safeguard the inviolability of the person”.² In this sense, a search is regarded not only as an investigative tool but also as a mechanism that tests the protection of human rights.

In international practice, particularly under the Criminal Procedure Code of the Federal Republic of Germany, a search may be conducted without prior judicial authorization only in urgent cases, when delaying the procedure would be impossible or detrimental to the investigation.³ The Criminal Procedure legislation of the Russian Federation also establishes a similar procedure; however, it specifically provides that the presence of a defense lawyer during the search is mandatory.⁴ In the legislation of the Republic of Uzbekistan, there is no such requirement; however, ensuring the presence of a defense lawyer during the search could serve to strengthen the protection of human rights. This situation demonstrates in practice that any violation of procedural rules may directly affect the reliability of evidence.

Furthermore, it is essential to utilize digital technologies during search and seizure procedures. The seizure of information from electronic devices, computers, or mobile phones must be carried out in accordance with special technical regulations. Otherwise, digital data may be deleted or altered. Therefore, the development of specific procedural norms governing the seizure of digital evidence has become an urgent necessity.⁵

CONCLUSION

² Abdullayev, A. (2022). *Legal Foundations for the Collection of Evidence in Criminal Procedure*. Tashkent: TSUL Publishing.

³ German Criminal Procedure Code (1877), Article 102.

⁴ Criminal Procedure Code of the Russian Federation (2025), Article 182.

⁵ Saidmurodov, N. N. (2023, October). Prospects for the Development of Criminal Law in the Digital Technology Era. *Oriental Renaissance: Innovative, Educational, Natural and Social Sciences*, 3(10), 389. <https://www.oriens.uz>

The investigative actions of seizure and search constitute an integral part of criminal procedure, serving not only to ensure the rule of law but also to protect human rights and freedoms. These procedural measures must be conducted strictly on a legal basis and only with judicial authorization, while the process should be recorded on video and, whenever possible, carried out in the presence of a defense lawyer.

Practical experience demonstrates that violations of procedural rules during these actions may directly affect the reliability of evidence. In the digital era, it is also essential to apply special procedural regulations for the seizure and preservation of digital evidence, as data from electronic devices, computers, or mobile phones may be lost or altered without proper technical safeguards.

In conclusion, the lawful and modern implementation of seizure and search procedures plays a crucial role not only in solving crimes but also in ensuring the dignity, inviolability, and rights of individuals in a democratic society..

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