

Judicial Oversight of Investigative Measures in The Digital Age: Comparative Approaches and Criminal Procedure Reform in Uzbekistan

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Abstract

Judicial oversight of investigative measures is a core safeguard for the protection of human rights in contemporary criminal procedure. The expansion of investigative powers and the increasing reliance on digital evidence have made such oversight particularly important at the pre-trial stage. This article examines the legal nature of judicial oversight of investigative measures and analyzes comparative models of judicial supervision in criminal justice systems. Particular attention is paid to the development of judicial oversight in Uzbekistan and to the need to strengthen procedural safeguards in the digital age. The study combines doctrinal legal analysis, comparative legal methodology, and a review of international scholarship on criminal procedure. The findings suggest that effective mechanisms of judicial oversight enhance procedural fairness, reduce the risk of disproportionate interference with fundamental rights, and reinforce the rule of law.

Keywords: Judicial control, investigative actions, criminal procedure, digital evidence, proportionality principle.

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1. Introduction

Judicial control over investigative actions constitutes one of the most important procedural safeguards in modern criminal justice systems. During the pre-trial stage of criminal proceedings, investigative authorities exercise broad powers, including searches, seizures, interrogations, surveillance, and access to digital communications. Although such measures are indispensable for effective criminal investigation, they may substantially interfere with fundamental rights, including the right to privacy, property rights, and the confidentiality of communications.

For that reason, contemporary systems of criminal procedure rely on mechanisms of judicial oversight

designed to ensure that investigative authorities operate within clearly defined legal limits. Judicial control enables courts to assess the legality, necessity, and proportionality of investigative measures either before their implementation or, where permitted by law, after the fact.

International criminal procedure scholarship has long recognized judicial control as a core element of democratic criminal justice. Ashworth (2002) argues that judicial authorization serves as an essential safeguard against the abuse of investigative powers. Trechsel (2005) likewise emphasizes that judicial supervision is necessary to secure compliance with international human rights standards. Comparative research by Roberts and Zuckerman (2010) further demonstrates that independent

judicial review is crucial to maintaining the legitimacy of criminal justice institutions.

The rapid development of digital technologies has fundamentally transformed criminal investigations. Law-enforcement authorities increasingly rely on digital evidence derived from electronic devices, telecommunications data, and internet-based communications. As Jackson and Summers (2012) observe, the globalization of criminal investigations and the growing use of digital evidence require stronger procedural safeguards to protect individual rights.

Scholars such as Brown (2017) and Thaman (2013) also underline the importance of proportionality as a guiding principle in judicial decision-making concerning investigative measures. Courts must strike an appropriate balance between the public interest in effective criminal prosecution and the protection of fundamental rights.

Despite the growing significance of judicial oversight, a number of theoretical and practical issues remain unresolved in Uzbekistan with respect to judicial control over investigative actions. In particular, the procedural mechanisms governing judicial authorization and the scope of judicial review remain insufficiently defined.

Accordingly, the purpose of this study is to analyze the legal nature of judicial control over investigative actions, examine comparative legal approaches to judicial supervision, and identify possible directions for improving procedural regulation in the digital era.

2. Methods

This study employs a combination of doctrinal, comparative, and analytical methods commonly used in legal scholarship.

First, the doctrinal legal method was used to examine the provisions of criminal procedure legislation governing investigative actions and mechanisms of judicial control. Particular attention was paid to the norms of the Criminal Procedure Code regulating judicial authorization of investigative measures and subsequent judicial review of their lawfulness.

Second, the comparative legal method was applied to examine foreign approaches to judicial control over investigative actions. The study reviews legal frameworks and judicial practice in several jurisdictions, including the United States, Germany, and the broader

European legal space. Particular attention was paid to legal instruments regulating access to digital evidence, such as the Electronic Communications Privacy Act in the United States and the Budapest Convention on Cybercrime.

Third, analytical and interpretive methods were used to assess judicial practice and scholarly literature addressing issues of judicial control, proportionality, and the protection of fundamental rights in criminal proceedings.

The combination of these methods made it possible to identify both theoretical and practical problems in the regulation of judicial control over investigative actions and to formulate proposals for improving criminal procedure legislation.

3. Results

The study identified several significant problems relating to both the legal regulation and the practical implementation of judicial control over investigative actions.

First, the subject matter of judicial control is not clearly defined in the Criminal Procedure Code. The legislation does not establish clear criteria for determining which investigative actions require prior judicial authorization, nor does it clearly delineate the scope of judicial review when courts assess the lawfulness of investigative measures.

Second, the procedural framework for reviewing motions seeking authorization to conduct investigative actions remains underdeveloped. The legislation does not clearly specify whether such motions must be examined in a formal court hearing, what procedural status the participants should have, or whether the court may request additional materials beyond those submitted by the investigative authorities.

Third, the increasing reliance on digital evidence has significantly expanded the range of investigative measures capable of restricting individual rights. The seizure and examination of electronic devices, including mobile phones and other communication technologies, may expose extensive personal data and private communications.

Comparative legal analysis shows that in many foreign jurisdictions access to digital data is subject to strict

judicial control. For example, under the Fourth Amendment to the Constitution of the United States and the Electronic Communications Privacy Act (ECPA), access to electronic communications generally requires a judicial warrant supported by probable cause. Similarly, the Federal Constitutional Court of Germany has recognized the principle of IT privacy, under which interference with an individual's digital sphere requires judicial authorization.

These findings indicate that the current procedural regulation of judicial control over investigative actions in Uzbekistan requires further development in order to ensure effective protection of constitutional rights.

4. Discussion

One of the defining features of the system of investigative actions is its constant evolution in response to objective social and technological developments. Scientific and technological progress, together with changes in social relations, serves as a major driver of that process. Another important source of expansion in the system of investigative actions is operational-search activity. In particular, there is a clear tendency for measures that were traditionally regarded as operational-search activities gradually to be incorporated into the system of investigative actions. This trend is especially visible in the procedural transformation of the interception of telephone and other telecommunications communications, as well as the retrieval of information transmitted through such channels.

Judicial control must develop in parallel with these changes. Given the extent to which new investigative measures may restrict individual rights, the scope of judicial oversight must likewise be expanded in order to ensure adequate protection of fundamental rights.

Judicial control over investigative actions differs in important respects from other forms of judicial oversight, including judicial review of procedural coercive measures.

First, when a motion seeking authorization to conduct an investigative action is considered, only the official who filed the motion—an inquiry officer, investigator, or prosecutor—participates in the proceedings. The individual whose rights may be restricted does not participate and, accordingly, their position is not heard. The position of the requesting authority is already reflected in the decision initiating the motion. In the court

materials examined in this study, only the prosecutor's statement in support of the motion was recorded. In practice, therefore, the court hearing often serves merely to document the time and place at which the motion was considered.

Given the large number of such motions, requiring a full hearing record in every case would unnecessarily increase the workload of the courts. In our view, there is no practical need to prepare a full transcript or record of proceedings for each such motion.

Second, unlike judicial control over procedural coercive measures, preventive judicial control over investigative actions does not presuppose adversarial proceedings or the existence of a legal dispute between opposing parties. In this form of review, the law does not provide for party participation, which reduces the effectiveness of judicial oversight. In such circumstances, the judge does not act as an impartial arbiter in the classical adjudicative sense, but rather as a public authority exercising jurisdictional supervision.

It must also be acknowledged that judges do not always possess sufficient experience to operate effectively in this procedural format. Unlike trial proceedings, judicial control over investigative actions is exercised under conditions of limited information, at a stage when the subject matter of proof and the range of participants in criminal proceedings have not yet been fully determined.

Moreover, the subject matter of judicial control is not clearly defined in the Criminal Procedure Code, and no clarification has been provided by the Plenum of the Supreme Court. As a result, uniform judicial practice in this area has not yet emerged.

Granting a motion to conduct an investigative action, or recognizing an already completed investigative action as lawful, implies that the court has found sufficient grounds for the measure in question. However, the Criminal Procedure Code does not regulate the procedural mechanisms or evidentiary tools through which such a conclusion is to be reached.

The object of the investigative action and the range of persons whose rights are affected directly influence the scope and effectiveness of judicial control. The Criminal Procedure Code provides for subsequent judicial review of investigative actions, under which the court assesses the legality of the measure. Yet the procedural mechanism for such review remains unclear. In

particular, the legislation does not specify whether such review should take place in a hearing or without one, who should participate in the process, what their procedural status should be, or whether the court may request additional materials.

In the absence of clear procedural rules, the lawfulness of an investigative action is often assessed solely on the basis of materials submitted by the investigative authorities. In our view, such an approach may hinder a comprehensive and objective examination of the matter.

The growing reliance on digital evidence has significantly broadened the scope of judicial control in criminal proceedings. Investigative authorities increasingly seek access to telecommunications data, social media accounts, and electronic devices. Because such information may contain highly sensitive personal data, judicial oversight is essential to ensure that investigative measures remain necessary, proportionate, and properly justified.

Comparative legal analysis shows that most European systems of criminal procedure require judicial authorization for intrusive investigative measures involving digital evidence. Courts must assess whether the requested measure is necessary for the investigation and whether it is proportionate to the seriousness of the offense under investigation.

Furthermore, when an inquiry officer or investigator seizes a person's telephone or other communication device and subsequently examines the data stored in its memory, that person's right to privacy—including the confidentiality of correspondence, electronic communications, and telephone conversations—is inevitably affected.

This is because most modern communication devices and messaging applications, such as Telegram, are protected by passwords or other security features. The existence of such protection reflects the user's intention to prevent unauthorized access and demonstrates a clear expectation that the information stored on the device will remain confidential.

At the same time, practice reveals instances in which inquiry officers, investigators, or officials conducting operational-search activities compel individuals, against their will, to unlock communication devices through biometric authentication methods such as Face ID or Touch ID.

Comparative legal analysis indicates that in many foreign jurisdictions the examination of data stored on a person's communication device against their will is subject to judicial control.

Under the Fourth Amendment to the Constitution of the United States and the Electronic Communications Privacy Act of 1986, any search or seizure of electronic data must generally be carried out on the basis of a judicial warrant supported by probable cause.

The ECPA regulates three principal categories of access to electronic communications:

the Wiretap Act, which governs real-time interception of communications;

the Stored Communications Act, which governs access to stored electronic communications, including emails and server-stored data; and

the Pen Register Act, which governs the collection of dialing and routing information, including telephone numbers and IP addresses.

In the landmark case of *Riley v. California* (2014), the United States Supreme Court held that even where police officers lawfully arrest a suspect, a separate judicial warrant is required to search the digital contents of a mobile phone.

Similarly, in Germany, under the principle of IT privacy (IT-Privatheit) developed by the Federal Constitutional Court, interference with an individual's digital sphere is permissible only where serious legal grounds exist and judicial authorization has been obtained.

The Budapest Convention on Cybercrime (2001) of the Council of Europe likewise underscores the importance of judicial oversight in the design of procedural mechanisms governing digital evidence in criminal proceedings.

In practice, however, personal data stored on communication devices are often accessed not only by inquiry officers and investigators but also by experts, and sometimes without prior judicial authorization. Such practices cannot be regarded as fully consistent with the constitutional framework for the protection of individual rights.

The results of this study confirm that mechanisms of judicial control are essential to maintaining the balance

between effective criminal investigation and the protection of fundamental rights. The expansion of investigative powers, especially in the digital environment, increases the risk of disproportionate interference with individual privacy.

The absence of clearly defined procedural rules for judicial review may lead to situations in which courts assess investigative measures solely on the basis of materials submitted by investigative authorities. Such an approach limits the court's ability to carry out a comprehensive and objective review.

Comparative legal experience demonstrates that effective judicial oversight requires clear procedural rules, including authorization procedures, evidentiary thresholds, and mechanisms enabling courts to request additional materials when necessary. Strengthening these safeguards would improve both the protection of individual rights and the legitimacy of criminal justice institutions.

5. Conclusion

This study demonstrates that judicial control over investigative actions plays a central role in safeguarding human rights in modern criminal proceedings. The development of investigative measures, especially in the context of technological change and the growing use of digital evidence, requires a corresponding development of judicial oversight mechanisms. As investigative authorities increasingly rely on electronic devices, telecommunications data, and online communications as sources of evidence, the risk of unjustified interference with privacy and the confidentiality of communications also increases.

The analysis of criminal procedure legislation and judicial practice shows that the existing procedural regulation of judicial control over investigative actions in Uzbekistan remains incomplete. In particular, the Criminal Procedure Code does not clearly define the subject matter of judicial review, the procedural mechanisms for assessing the legality of investigative actions, or the scope of the court's powers when considering motions of this kind. The absence of clear procedural rules governing the participation of interested persons, the procedure for reviewing motions, and the possibility of requesting additional materials may impede a comprehensive and objective assessment of investigative measures.

The study also shows that the expanding role of digital evidence requires stronger procedural safeguards. Comparative legal analysis indicates that in many foreign jurisdictions access to data stored on electronic devices, as well as the interception of communications, is permissible only on the basis of judicial authorization. The experience of the United States, Germany, and the regulatory framework reflected in the Budapest Convention on Cybercrime confirms that judicial oversight is a key mechanism for balancing the interests of effective criminal investigation with the protection of fundamental rights.

The findings of this study suggest that strengthening judicial control should become an important priority of criminal procedure reform. In particular, it is necessary to define more clearly the scope of judicial review over investigative actions, establish detailed procedural rules for the examination of motions relating to investigative measures, and introduce mandatory judicial authorization for access to data stored on communication devices and online platforms.

Strengthening judicial oversight over investigative actions will contribute not only to better protection of constitutional rights but also to greater legitimacy and effectiveness of criminal justice institutions. The development of clear procedural mechanisms for judicial control will ensure a more appropriate balance between the interests of criminal prosecution and the protection of individual rights in the digital era.

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