



The Institute Of The Investigative Judge: Advantages, Problems And Directions For Improving Legislation

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ABSTRACT

The article sets out the grounds and reasons for the introduction of the institution of the investigating judge, its advantages, powers in pre-trial proceedings and at the judicial stage, some problems arising in law enforcement practice, proposals to expand the powers of the investigating judge, improve national legislation, in particular in the issue of exemption of minors from criminal liability at the stage of pre-trial consideration of the case and analyzed the further prospects of this institution.

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In recent years, reforms in the judicial and legal sphere have played an important role in the life of the state and society in implementing fair trials and ensuring the rule of law. In particular, the independence of judges is guaranteed and human rights protection mechanisms are improving, making the judicial system a reliable institution for citizens and society.

Article 20 of the new Constitution states that “The human rights and freedoms, established by the Constitution and the laws, shall be inalienable, and no one shall have the right to deprive or limit them without a court decision.”

In order to further guarantee the reliable protection of the rights and freedoms of a person, the position of “investigating judge” was included in the list of persons responsible for conducting criminal cases by the Decree of the President of the Republic of Uzbekistan “On measures to further strengthen guarantees of reliable protection of individual rights and freedoms in operational search and investigative activities” adopted on June 10, 2024.

As is known, the pre-trial stage of criminal proceedings is one of the most important stages of judicial proceedings.

Some researchers believe that the judge's attempt to evaluate the evidence collected by the prosecution poses a serious threat to the impartiality of the consideration and resolution of the criminal case, and the judge who determines the grounds for the arrest of the suspect or accused cannot decide the issue of his guilt.

Any conclusion of a judge at the initial stage of the trial is in one way or another related to the issue of guilt, which in a sense makes the judge subject to criminal prosecution, regardless of the indication provided by law. It cannot be denied that any conclusion of a judge in the process of exercising judicial control will to some extent affect the impartiality of the judge.

According to the previous version of the CPC, the consideration of the petitions of the responsible body at the pre-trial stage of the case by a judge did not prevent him from considering the case on its merits in the future. In our opinion, only a judge who is relieved of the obligation to consider and resolve the case on its merits can exercise impartial judicial control.

Accordingly, the new law adopted on January 28, 2025, establishes the legal grounds and procedure for considering cases related to the sanctioning of more than ten procedural decisions (petitions) and the application of coercive measures by investigative judges at the pre-trial stage, and the investigative judge who considered the case at the pre-trial stage will no longer consider these criminal cases in the first, appeal, cassation and investigative stages.

According to the amendments and additions to the current Criminal Procedure Code, the powers of the investigating judge are determined, and the investigating judge examines the case alone and exercises judicial control over the observance of the rights, freedoms and legitimate interests of a person at the pre-trial stage of the proceedings. This law also establishes the grounds for conducting searches, intercepting telephone and other telecommunications communications and obtaining information transmitted through them, confiscating property, and considering other petitions established by law.

As is known from judicial practice, the most common type of sanctioning of procedural decisions at the pre-trial stage of criminal cases is cases involving the application of a precautionary measure in the form of house arrest or arrest.

Before the new institution was implemented, cases of this type fell under the jurisdiction of judges of district (city) criminal courts, and in most cases, when applying preventive measures in the form of house arrest or detention, these judges satisfied the petitions without discussing the issue of guilt, based on the level of social danger of the committed crime, that is, the severity of the accusation announced by the inquiry or preliminary investigation body, and the identity of the suspect or accused.

We believe that the investigating judges who consider the case should also be aware that nothing can compensate for the harm a person suffers as a result of a single wrongful arrest, and they should also take responsibility.

Although the position of investigating judge has not been established for a long time, a natural question arises as to whether his powers at the pre-trial stage of proceedings have also changed. It is no secret that despite the introduction of certain amendments and additions to their powers in the Criminal Procedure Code, the procedure for their consideration, in particular, in cases related to the application of a precautionary measure in the form of arrest, continues to be based on the procedure established by previous laws and the Plenum resolution adopted in this area.

Therefore, we need to continue to work on improving the legislation in order to increase citizens' trust in the new structure, ensure transparency and openness in the pre-trial stage of proceedings, and achieve fair decisions. In my opinion, as a first step in this direction, it would be appropriate to establish, in addition to the right of persons involved in the case to appeal to higher courts only in the appellate procedure against the procedural decision made by the investigating judge in the pre-trial stage, the right to appeal to cassation and review procedures, not limited to a single instance (if applicable).

For example, when an investigative judge applies a precautionary measure in the form of arrest to a person, this decision can be appealed, but the law does not provide for an appeal against the appellate ruling. In this case, it would be wrong to limit the right to appeal guaranteed to a person at the Constitutional level to only one stage.

The implementation of judicial supervision by the investigating judge creates a truly adversarial environment in the pre-trial proceedings. This is because the defense attorney's application is no longer considered by the bodies responsible for criminal prosecution and resolution of the case, which creates a balance of power. This, in turn, serves to increase the status of the defense attorney in the criminal process and to ensure his or her right to participate in the process of proving the case. This is because, in cases where a justified application for the discovery and consolidation of evidence is rejected, the investigating judge guarantees the person the exercise of this right.

Thus, in the pre-trial proceedings, on the one hand, the principle of adversarial proceedings is introduced, and on the other hand, the veracity of the evidence is introduced, which together ensure the elimination of possible

disputes between the parties in the court of first instance. In our opinion, there are a number of theoretical and practical problems in the implementation of this new institution, the scientific analysis of which is of urgent importance. Among these problems, we can include the following:

Firstly, in practice, there are cases where the investigating judge superficially considers certain requests, in particular measures such as arrest, house arrest, search, and seizure of property, and fails to adequately analyze the materials. These situations can lead to a decrease in the content and essence of judicial review and its transformation into a mere formal procedural stage.

Secondly, the majority of court rulings on the application of a precautionary measure in the form of arrest contain general phrases such as "a person may hide from the investigation" and "there is a possibility of influencing the evidence," without stating or substantiating the facts that support them, which is causing legitimate objections from some citizens and the public.

Thirdly, in our opinion, some powers of the investigating judge are still not sufficiently clarified in the legislation, in particular, there is no unified procedural approach to evaluating search and rescue materials, checking the admissibility of evidence, and using electronic data. This leads to different legal interpretations in practice.

Fourth, we all know that, regardless of the stage of the criminal process, the equality of the parties and the right to a fair trial are important. However, in some cases, for example, in the pre-trial stage, the lawyer's lack of full familiarity with the case materials, the ability to object in a short period of time, and the limited ability to present alternative evidence hinder the effective exercise of the right to a fair trial. As a result, the principle of adversarial proceedings is not fully ensured.

Fifth, due to the current increasing number of cases involving cybercrimes and digital evidence, a unified practice for investigating judges to evaluate electronic evidence, inspect information systems, and monitor procedural actions related to cryptoassets has not yet been formed, and there is a lack of specialized knowledge and practical skills.

Sixth, the shortage of investigative judges in Tashkent city and regional centers, as well as in densely populated districts (cities) (while the workload in some remote districts (cities) is several times less), is leading to an increase in the workload of investigative judges. Such circumstances, in addition to affecting the quality of cases, lead to untimely recording of court decisions, their untimely uploading to the electronic database, and late execution.

As we know, in addition to pre-trial materials, investigative judges also consider cases of administrative offenses, and we can see that the number of cases in this category is increasing every year, primarily due to the increase in the population, the increase in offenses, as well as the transfer of functions of certain organizations, including some powers in considering cases of administrative liability, to investigative judges. In our opinion, in order to eliminate the above shortcomings, it is necessary to clearly define in the legislation the solution and mechanism for problematic issues encountered by investigative judges in the application of law, introduce uniform standards for substantiating court decisions, develop substantive proposals to improve the legislation to expand the procedural capabilities of the defense, develop special procedural rules on electronic evidence and digital data, train investigative judges by involving specialists with the necessary knowledge and skills in the field of information technologies by introducing the necessary modules (subjects) into the curricula of the Academy of Justice, conduct regular generalizations on issues arising in the activities of investigative judges, and, if necessary, develop and adopt a draft Plenum resolution by the Supreme Court aimed at solving and providing explanations for some problematic issues arising in the judicial practice of investigative judges, as well as review the workload of investigative judges and consider allocating additional judicial staff to regions with a high workload.

Since the investigating judge does not have the authority to hear any criminal cases that come with an indictment or indictment, he must first and foremost be an independent arbiter who will make an impartial and ultimately fair decision on issues that arise during the pre-trial proceedings and fall within his jurisdiction. In practice, some lawyers complain that at the pre-trial stage of the case, the responsible authorities, under various pretexts, obstruct their activities in the implementation of the defense. This is especially common when the operational search activities and the pre-trial proceedings of the case are carried out by the same

body. In such situations, the existence of judicial control over the application of procedural coercive measures allows the restoration of the violated rights of the parties.

It is known that although a defense attorney has the right to collect and present evidence in a criminal case, his or her powers to collect evidence are limited and, unlike the bodies responsible for conducting the case before trial, are not provided with the coercive power of the state.

This situation prevents the principle of equality of arms from working in practice. For example, in cases where a lawyer's well-founded requests for the establishment of the truth are unjustifiably rejected by the inquiry officer, investigator or prosecutor, this issue may be subject to judicial review.

Based on the results of the practical application of judicial control in the judicial practice of the Republic of Kazakhstan, it is proposed to further expand the scope of control, that is, to limit the mechanism for lawyers to address any petition to the investigator and introduce the practice of considering these petitions by the investigating judge. This proposal is also important in that it is aimed at ensuring the equality of the parties and the principle of mutual adversarial proceedings.

In our opinion, the expansion of powers of the investigative judge will put an end to the practice of one-sided collection of evidence, only if the evidence is collected in a contentious environment, their authenticity and reliability will be ensured in practice and will serve to determine the truth in the future.

We believe that expanding the powers of the investigating judge regarding judicial control at the pre-trial stage of the case will not only eliminate investigative actions that restrict the constitutional rights of the individual, but will also allow for effective judicial control over full compliance with procedural law during the collection of evidence, and will help resolve unresolved issues during the inquiry and investigation process.

Therefore, we believe that the investigating judge should also be granted a number of powers related to judicial supervision at the pre-trial stage, in particular:

- to consider complaints against decisions and actions of officials of the bodies responsible for the pre-trial proceedings;
- to decide, at the request of the prosecutor, on the issue of imposing fines on participants in the proceedings who have not fulfilled their procedural obligations;
- to decide on the issue of seized property and material evidence in criminal cases closed in accordance with Article 84 of the Code of Criminal Procedure;
- to consider complaints about the obstruction of the defense attorney in the performance of his duties, ensuring the principle of equality of parties.

These powers do not imply the direct participation of the investigating judge in the process of proving and resolving the case, but would only serve to ensure that the parties fully and lawfully perform their functions.

The introduction of a new institution is the first step towards strengthening judicial control, and in the future we will need to work on further improving this institution, in particular, expanding the powers of the investigating judge to exercise judicial control at the pre-trial stage of the case.

In conclusion, it can be said that the introduction of a new institution will serve to strengthen the independence of the judiciary, ensure reliable protection of the rights and freedoms of citizens, and make investigative processes more transparent.

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