



OPPORTUNITIES FOR FURTHER EXPANSION OF THE HABEAS CORPUS INSTITUTION IN THE REPUBLIC OF UZBEKISTAN (ON THE EXAMPLE OF INVESTIGATING JUDGES):AN ANALYSIS OF NATIONAL LEGISLATION

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Abstract

This scholarly article provides a comprehensive analysis of the theoretical and legal essence of the habeas corpus institution, its content, as well as its role and significance as reflected in and applied within the legislation of the Republic of Uzbekistan. In addition, the article examines the legal nature of the concept of the investigating judge and its powers through a comparative legal analysis based on national legislation and the practice of foreign states. In the course of the research, the importance of this institution in ensuring the reliable protection of citizens' constitutional rights and freedoms, as well as legally protected interests, is substantiated, and the necessity of its further improvement within the national judicial and legal system is scientifically justified.

Keywords: Habeas corpus institution, investigating judge, pre-trial proceedings, judicial supervision, constitutional rights and freedoms, personal liberty and inviolability, fair trial, criminal procedural guarantees.



Introduction

In the process of implementing judicial and legal reforms in the Republic of Uzbekistan, prioritizing the rights and freedoms of individuals, as well as legally protected interests, is advanced as a key conceptual principle. Accordingly, the restriction or deprivation of citizens' constitutional rights and freedoms is carried out solely on the basis of a court decision, which serves to strengthen the rule of law, judicial independence, and guarantees for the protection of human rights. For this reason, it is necessary to briefly address the habeas corpus institution and its content in this scholarly article. First and foremost, it is important to clarify the precise meaning of the term habeas corpus.

The habeas corpus (Latin: habeas corpus – “to bring the body before the court”) institution is recognized as one of the oldest and most fundamental procedural-legal guarantees historically established to ensure the right of an individual subjected to criminal prosecution to a fair trial. More specifically, the term habeas corpus derives from the Latin words habere – “to have” and corpus – “body,” forming part of the expression habeas corpus ad subjiciendum. Conceptually, it signifies “the presentation of a detained person before judicial authority” and embodies a procedural requirement aimed at judicial verification of the legality and justification of depriving a person of their liberty.

According to the Decree of the President of the Republic of Uzbekistan dated August 8, 2005, “On Transferring the Authority to Sanction Detention to the Courts,” the power to authorize the detention of individuals suspected or accused of committing a crime was, as of January 1, 2008, transferred to the jurisdiction of the courts¹.

The Decree further emphasizes that, on the basis of this Decree, detention as a precautionary measure may be applied only in exceptional cases where the use of other precautionary measures provided by law proves ineffective, and solely in accordance with the decision of a court or a military court within their jurisdiction in criminal cases.

On the basis of the Law of the Republic of Uzbekistan dated July 11, 2007, No. LRU-100, “On Amendments and Additions to Certain Legislative Acts of the

¹ Ўзбекистон Республикаси Қонун ҳужжатлари тўплами, 2005 й., 32-33-сон, 242-модда



Republic of Uzbekistan in Connection with the Transfer of the Authority to Sanction Detention to the Courts,” amendments and additions were made to the Criminal Procedure Code of the Republic of Uzbekistan, which was originally adopted on September 22, 1994, under Law No. 2013-XII².

These include, in particular, petitions, complaints, and protests related to the application of a precautionary measure in the form of detention or house arrest, as well as issues concerning the extension of the period of detention or house arrest, which are to be considered with mandatory notification of the court that issued the decision on the application of the precautionary measure³.

These reforms were logically continued with the adoption of the Law of the Republic of Uzbekistan dated September 18, 2012, No. LRU–335, “On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with Further Reform of the Judicial and Legal System.” According to this Law, the consideration of petitions regarding the suspension of an accused from office, the placement of a person in a medical institution, or the extension of the period of stay of the accused in a medical institution was transferred from the prosecutor to the jurisdiction of the court⁴.

By the Law of the Republic of Uzbekistan dated September 4, 2014, No. LRU–373, “On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan,” Article 242¹ “House Arrest” was added to the Criminal Procedure Code of the Republic of Uzbekistan, thereby transferring this authority to the courts⁵. This legislative amendment once again established at the statutory level that the constitutional rights and freedoms of citizens may be restricted solely on the basis of a court decision.

In 2025, within the framework of ongoing judicial and legal reforms, ensuring procedural equality between the parties at the pre-trial stage was designated as

² Ўзбекистон Республикаси Олий Мажлиси палаталарининг Ахборотномаси, 2007 й., 6-сон, 249-модда; Қонунчилик маълумотлари миллий базаси, 29.07.2021 й., 03/21/703/0723-сон

³ <https://lex.uz/docs/111460#253508>

⁴ Ўзбекистон Республикаси қонун ҳужжатлари тўплами, 2012 й., 38-сон, 433-модда; Қонун ҳужжатлари маълумотлари миллий базаси, 30.01.2018 й., 03/18/463/0634-сон; Қонунчилик маълумотлари миллий базаси, 29.07.2021 й., 03/21/703/0723-сон

⁵ Қонунчилик маълумотлари миллий базаси, 24.08.2021 й., 03/21/710/0815-сон, 24.11.2021 й., 03/21/730/1089-сон, 13.04.2022 й., 03/22/763/0306-сон, 21.04.2022 й., 03/22/765/0332-сон; 30.07.2025 й., 03/25/1076/0672-сон



one of the priority and conceptual directions. Previously, certain procedural actions carried out by investigative and rapid-response bodies in criminal cases were insufficiently subject to judicial supervision, which posed specific risks to individual rights and freedoms. At the current stage, mechanisms for protecting human rights through judicial oversight are being systematically improved, and the scope of application of the habeas corpus institution is being expanded. This process is being implemented through the introduction of the institution of investigating judges into national legal practice, serving as a significant institutional innovation aimed at strengthening judicial supervision, ensuring procedural balance between the prosecution and defense, and effectively protecting personal liberty and inviolability.

One of the most significant changes in this regard was the introduction of a separate position of the investigating judge in criminal procedural legislation, established to oversee the conduct of certain investigative and procedural actions.

I consider the opinions of our leadership in this regard to be of significant importance. In particular, in his Address to the Oliy Majlis and the people of Uzbekistan, President Shavkat Mirziyoyev stated⁶:

“The commencement of work by investigating judges in our country marks the next important stage in the application of the internationally recognized habeas corpus institution. Starting from 2026, investigating judges will also be granted the authority to modify and revoke sanctions and compulsory measures.”

Subsequently, several normative-legal acts concerning investigating judges were adopted. An example of this is the Decree of the President of the Republic of Uzbekistan dated June 10, 2024, No. DP–89, “On Measures to Further Strengthen Guarantees for the Reliable Protection of Individuals’ Rights and Freedoms in Rapid-Response and Investigative Activities.”

According to this Decree, as of January 1, 2025, approval was granted for the following proposals:

⁶ <https://president.uz/uz/lists/view/8834>



– Introduction of a procedure whereby the authorization of procedural decisions during the pre-trial stage in criminal cases is to be considered by separate judges — investigating judges – in district and city courts handling criminal cases;

– Establishment of the position of investigating judge in district and city courts handling criminal cases;

– Establishment of a procedure whereby sanctions issued by an investigating judge on procedural decisions during the pre-trial stage in criminal cases are subject to review only at the appellate level by the Supreme Court of the Republic of Karakalpakstan, regional courts, the Tashkent City Court, or the Military Court of the Republic of Uzbekistan, on a single-judge basis;

– Granting investigating judges the authority to consider cases concerning administrative offenses;

– Preservation of the existing procedure for appellate review of cases concerning administrative offenses considered by investigating judges in higher instances⁷. Furthermore, by the Law of the Republic of Uzbekistan dated January 28, 2025, No. LRU–1022, “On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan Aimed at Further Strengthening Guarantees for the Protection of Individuals’ Rights and Freedoms,” Article 31¹ of the Criminal Procedure Code of the Republic of Uzbekistan, titled “Powers of the Investigating Judge,” was added⁸. Under this provision, the investigating judge, acting individually, exercises judicial supervision over the observance of the rights, freedoms, and legally protected interests of individuals during the pre-trial stage in accordance with the procedure established by the Criminal Procedure Code of the Republic of Uzbekistan.

Examining the experience of foreign countries in this regard provides an opportunity to further clarify and expand the legal status and powers of the investigating judge. It is noteworthy that the institution of the investigating judge currently exists in several foreign states, including France, Germany, Kazakhstan, Ukraine, Latvia, and Moldova. In his scholarly article, Z. Omonov emphasizes that this institution has been functioning effectively in the

⁷ Қонунчилик маълумотлари миллий базаси, 11.06.2024 й., 06/24/89/0412-сон

⁸ Қонунчилик маълумотлари миллий базаси, 29.01.2025 й., 03/25/1022/0083-сон



aforementioned countries and plays a significant role in the reliable protection of citizens' rights and freedoms⁹.

Furthermore, it can be observed that the institution of the investigating judge operates in many other countries around the world, including Italy, the United Kingdom, Spain, and the Netherlands¹⁰. In his scholarly article, E. Oraqbaev also specifically notes that the institution of the investigating judge has proven effective within the judicial system. From our perspective, it is now necessary to analyze the powers of the investigating judge and the possibilities for their expansion.

From our perspective, it is now necessary to analyze the powers of the investigating judge and the possibilities for their expansion. According to current criminal procedural legislation, the powers of the investigating judge include the following:

1. Consideration of petitions regarding the application of a precautionary measure in the form of detention or house arrest;
2. Consideration of petitions regarding the extension of the period of detention or house arrest;
3. Consideration of petitions regarding the extension of the period of custody up to forty-eight hours;
4. Consideration of petitions regarding the suspension of the validity of a passport (or other travel document);
5. Consideration of petitions regarding the temporary restriction of the right to leave the territory of the Republic of Uzbekistan;
6. Consideration of petitions regarding the suspension of an accused from office;
7. Consideration of petitions regarding the placement of a person in a medical institution;
8. Consideration of petitions regarding the extension of the period of stay of an accused in a medical institution;

⁹ Омонов, З. 2025. ТЕРГОВ СУДЬЯСИНИНГ ВАКОЛАТЛАРИ (ЎЗБЕКИСТОН ВА ҚОЗОҒИСТОН РЕСПУБЛИКАЛАРИ ҚОНУНЧИЛИГИ ТАҲЛИЛИДА). Современные подходы и новые исследования в современной науке. 4, 3 (фев. 2025), 15–17.

¹⁰ Орақбаев, Е. ТЕРГОВ СУДЬЯСИ ИНСТИТУТИНИНГ ХОРИЖИЙ ДАВЛАТЛАР ҲУҚУҚ ТИЗИМИДА ТУТГАН ЎРНИ. МУ 2025, 3, 29-32.



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9. Consideration of petitions regarding the exhumation of a corpse;
 10. Consideration of petitions regarding the opening of postal and telegraphic correspondence;
 11. Consideration of petitions by the prosecutor regarding the preliminary securing of testimonies from witnesses and victims (civil claimants);
 12. Consideration of petitions regarding searches;
 13. Consideration of petitions regarding the monitoring of conversations via telephones or other telecommunications devices and the collection of information transmitted through them;
 14. Consideration of petitions regarding the seizure of property.

In this regard, Article 7 of the Criminal Procedure Code of the Republic of Kazakhstan provides definitions of the terms used in this Code. In particular, an investigating judge is defined as a judge of a first-instance court who exercises the powers provided for in this Code during the pre-trial stage.

It should be noted that Article 55 of the Criminal Procedure Code of the Republic of Kazakhstan is titled “Powers of the Investigating Judge.” According to this Article, the powers of the investigating judge include the following: Authorization of detention; Authorization of house arrest; Authorization of temporary suspension from office; Authorization of the application of a restraining order; Authorization of detention for the purpose of extradition; Authorization to conduct covert investigative actions, as well as to extend the duration of such covert investigative actions; Termination of covert investigative actions based on a prosecutor’s petition in cases provided for in Part 3 of Article 234 of this Code; Extension of the periods of detention, house arrest, and detention for extradition purposes; Authorization of bail; Authorization to seize property; Mandatory placement of a person not in detention into a medical institution for the purpose of conducting forensic psychiatric and/or forensic medical examinations; In cases where a mental disorder is detected, the authority to order the transfer of a person previously subjected to detention to a specialized medical institution providing psychiatric care, adapted for the confinement of patients under strict isolation conditions; Authorization to exhume a corpse; Declaration of an accused or suspect on international wanted lists; Authorization to conduct inspections; Authorization to conduct searches; Authorization to



carry out seizures; Authorization to conduct personal searches; Authorization to subject a person to compulsory medical examination; Authorization to collect samples by compulsory means¹¹.

Furthermore, the Criminal Procedure Code of the Republic of Kazakhstan establishes that the investigating judge has the following powers:

To consider complaints regarding the actions (or inaction) and decisions of the investigator, the investigative body, the interrogating officer, and the prosecutor;

To consider issues related to the disposal of physical evidence that is perishable or, due to its long-term storage until the resolution of the criminal case on the merits, requires significant material expenditure;

To record the testimonies of victims and witnesses during the pre-trial stage;

To impose monetary penalties on persons who fail to comply with procedural obligations or perform them inadequately during the pre-trial stage, excluding attorneys and prosecutors;

To consider the recovery of procedural costs in criminal cases based on a prosecutor's submission;

At the reasoned request of a lawyer participating as a defense attorney or representative of the victim, to request and attach to the criminal case any information, documents, and objects relevant to the case (excluding information constituting state secrets), in cases where the request was unjustifiably denied or no decision was made within three days;

At the reasoned request of a lawyer participating as a defense attorney or representative of the victim, to consider the appointment of an expert examination or the conduct of other investigative actions by the criminal prosecution body (excluding covert investigative actions), including cases where such a request was unjustifiably denied or no decision was made within three days;

At the request of a lawyer participating as a defense attorney, to order the compulsory summoning of a witness previously questioned, whose presence to give testimony is difficult to ensure, to the body conducting the criminal proceedings;

¹¹ <https://adilet.zan.kz/rus/docs/K1400000231>



At the reasoned request of the pre-trial investigative body, to consider the extension of the notification period regarding covert investigative actions conducted against a person for up to one year;

At the reasoned request of the pre-trial investigative body, to authorize non-notification of a person regarding covert investigative actions conducted against them;

To exercise other powers provided for in this Code¹².

It is noteworthy that significant work is also being carried out in our country to train highly qualified personnel in the field of fair trial. In particular, by the Decree of the President of the Republic of Uzbekistan dated August 21, 2025, No. DP-141, "On Measures for the Comprehensive Improvement of the System for Training Highly Qualified Personnel in the Field of Fair Trial," a system for training highly qualified legal professionals for the judiciary was established. This system aims to further improve the training of personnel in accordance with international standards and to form a professional corps of judges by ensuring the integration of education, science, and practical experience.

Under this Decree, the Academy of the Judiciary of the Republic of Uzbekistan was established on the basis of the Higher School of Judges under the Supreme Council of Judges. Currently, investigating judges undergo six-month professional retraining courses in criminal justice specialization at the Academy of the Judiciary of the Republic of Uzbekistan, funded through state grants¹³.

There is currently no separate specialization for the training of investigating judges. At present, candidates who have successfully completed the criminal justice specialization undertake their activities as investigating judges.

For reference, a total of 241 investigating judges are currently serving in district (city) courts for criminal cases. According to the existing legislation, investigating judges do not exist at the intermediate or higher levels of the judiciary.

Candidates for the position of investigating judge must partially meet requirements that differ from those established in Articles 67–68 of the Law of

¹² https://prg.kz/document/?doc_id=31575852&pos=70;2&doc_id2=31575852&pos2=1497;7

¹³ Қонунчилик маълумотлари миллий базаси, 23.08.2025 й., 06/25/141/0772-сон



the Republic of Uzbekistan “On Courts.” In particular, a candidate for the position of investigating judge must have professional experience in the field of law. In our view, this professional experience should be no less than two years. It should be noted that during the first nine months of 2025, investigating judges considered 18,088 petitions for the application of detention as a preventive measure, of which 939 (5.2%) were denied.

These reforms have significantly strengthened procedural guarantees aimed at reliably protecting individuals’ rights and freedoms during preliminary investigative proceedings and operational-search activities. As a result, the quality of fair trial in the consideration of criminal cases has improved, and the legality and validity of court decisions have been ensured. In particular, the important procedural decisions made under the supervision of investigating judges have reinforced the role of the judiciary and contributed to increasing public confidence in the judicial and legal system.

These institutional changes in this area are evaluated as systematic reforms aimed at ensuring humanitarian principles, legality, and justice consistently in the criminal process.

Based on the information presented above, it can be concluded that the introduction of the investigating judge institution into the national legislative system contributes to elevating the activity of the judicial system to a qualitatively and substantively new level. This institution establishes robust procedural guarantees to ensure the reliable protection of individuals’ rights and freedoms, as well as legally protected interests, by providing effective judicial oversight during the pre-trial stage. At the same time, it facilitates the maintenance of procedural balance between the prosecution and defense, ensures the consistent application of the principles of legality and justice, and strengthens public confidence in the fair administration of justice.

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