



LEGAL ANALYSIS OF ISSUING A SEARCH WARRANT FOR A PERSON IN CRIMINAL PROCEDURE LEGISLATION

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Abstract

This article provides a legal analysis of issuing search warrants for individuals who are evading inquiry and investigation bodies and criminal punishment. The author has developed proposals and recommendations for improving this field.

Keywords: crime, search warrant, criminal punishment, inquiry and investigation bodies.

The Decree of the President of the Republic of Uzbekistan dated January 28, 2022 No. UP-60 "On the Development Strategy of New Uzbekistan for 2022-2026" [1] identifies one of the most important directions as transforming the principles of justice and the rule of law into the most fundamental and necessary condition for development in our country. Additionally, it envisions consistent reforms aimed at reforming the judicial and legal system, ensuring the observance of individual rights and freedoms and the rule of law, combating crime, and ensuring the inevitability of accountability.

The goal of the ongoing reforms is to protect the rights and legitimate interests of every citizen living in our country based on the principle of "For Human Dignity," and to create a free civil society where human dignity is elevated. The most crucial issue here is protecting our citizens from various criminal encroachments. Throughout history and in every society, the free and prosperous life, rights, and legitimate interests of individuals have been damaged as a result of crime and other infringements. Therefore, first and foremost, it is necessary to achieve the rule of law and equality of all before the law. Only then will it be possible to ensure the inevitability of punishment for committed crimes.

It is not without reason that Article 7 of the Universal Declaration of Human Rights states that "All people are equal before the law and have the right to equal protection by law without any discrimination."

According to the principle of the inevitability of responsibility in Article 10 of the Criminal Code of the Republic of Uzbekistan, "every person in whose act the presence of a criminal element is established is subject to liability"[3].

Proper organization of the fight against crime requires the implementation of a number of measures, such as the prevention and detection of crimes, ensuring the inevitability of punishment for persons who have committed crimes, mobilizing all forces and means in this area, and coordinating the efforts of law enforcement agencies. The criminal legislation of the Republic of Uzbekistan is aimed at protecting the rights and freedoms of the individual from criminal encroachments.

In accordance with the Criminal Procedure Code of the Republic of Uzbekistan, the investigator, inquiry officer, and prosecutor shall take all measures stipulated by law to establish the event of a crime, to expose the person or persons guilty of committing the crime,

and the preliminary investigation bodies are obliged to take all necessary measures aimed at establishing the location of the accused.

In turn, legal scholar A.P. Gulyaev noted that "the search for an accused whose whereabouts is unknown is one of the most important search functions of the investigator"[4].

When investigating crimes related to the search, it is important, first of all, to define the concept of "search" and to study the processes of formation and development of this institution, the historical roots of the current rules and regulations.

Referring to the interpretation of the term "search," S. I. Ozhegov connects it with the word "to find," which he defines as "finding after a search"[5]. Search refers to the activity of finding hidden objects in the criminal world, criminals who have committed crimes. The term "search," in turn, denotes "the actions of the seeker, the search for someone"[6].

A search, in turn, also means the search for a hidden person. Until the period of significant changes in the legal system associated with the accession of the Central Asian states to Russia, the search for hiding criminals was carried out by revealing their names, external information, and the nature of the socially dangerous act committed in public places. Persons who indicated their location or otherwise assisted in identifying and detaining the wanted person received appropriate remuneration. The institution of informants, specially designed to provide monetary assistance in the apprehension of persons who have committed crimes and hiding criminals, also provided significant assistance.

Regarding the criminal procedure legislation of the period of the formation of the state of Uzbekistan, Professor G.A. Abdumajidov proposed to systematize it as follows: 1) from 1917 to 1926; 2) from 1926 to 1929; 3) from 1929 to 1959; 4) from 1959 to the present[7].

However, the periodicity associated with the search for hidden criminals can be interpreted differently: 1) the 60s of the 19th century until 1917; 2) from 1917 to 1926; 3) from 1926 to 1929; 4) from 1929 to 1959; 5) from 1959 to 1991; 6) from 1991 to 1994; 7) September 22, 1994 - present.[8]

The expediency of starting periodization from the 60s of the 19th century is associated with the introduction of a new legal system and its significant influence on the criminal procedural relations of state structures in Central Asia[9].

In the early period of the emergence of the institution of searching for persons who committed crimes, a "process of inquisition," which arose in the past, took place. F. M. Mukhitdinov noted that at the final stage, "a trial of the Inquisition (also called a search process) took place"[10].

This indicates the diversity of the search concept. The adoption on December 25, 1958, of the foundations of criminal procedure in the USSR and the Union republics marked the beginning of a new era in the development of the search institute in criminal proceedings. "The investigator has the right to give instructions and directions to investigative bodies to carry out search and investigative actions"[11].

Guided by these rules, the republics were granted the right to amend the Criminal Procedure Code regarding the procedure for conducting a search. Lawyers of Uzbekistan of that time: Academician Kh.S. Suleymanova, Professor G.A. Abdumazhidov, G.P. Sarkisyants, F. Bakirov, G.A. Akhmedov, M.S. Vasikova, Kh.S. Samatova, Sh.Z. Urazaev, I.B. Sternik, and others expressed the opinion on the need for a more detailed regulation of criminal procedure relations.

Therefore, for the first time, Article 40 of the Criminal Procedure Code of the Uzbek SSR dated May 21, 1959, formulated an article on declaring the accused wanted[12]. Article 169 of the Criminal Procedure Code of Uzbekistan, adopted in 1959, defines "declaring a wanted person" as carrying out search activities and taking all necessary measures. Measures to establish the location of the accused, and if the location of the accused is unknown, the investigator, if necessary, declares a search for the accused[13].

Thus, having studied the periods of proper regulation of the search for persons who have committed crimes, it can be noted that in criminal procedure relations, in the first period, search operations were carried out only by internal affairs bodies and other bodies carrying out the inquiry, and investigators investigated criminal cases in which the persons who committed the crimes were already identified. In subsequent periods, until the adoption of the Criminal Procedure Code of 1959, the search was not regulated by criminal procedure law and was carried out by clandestine regulatory legal sources. In the current criminal procedure legislation, in particular, in Article 365 of the Criminal Procedure Code of the Republic of Uzbekistan of 1994, its name remains the same, i.e., "to declare a search." The declaration of a search is regulated as follows: "When the location of the accused is unknown, the investigator is obliged to take all necessary measures to establish his whereabouts, and, if necessary, to declare a search for him. The investigator has the right to declare a search only for a person in respect of whom a ruling has been issued on involvement in the case as an accused. A search may be announced both during the preliminary investigation and after the suspension of the preliminary investigation. If the wanted accused is found on the grounds provided for in Articles 242 and 243 of this Code, a preventive measure in the form of detention may be applied to him by court order"[14].

Article 169 of the Criminal Procedure Code of 1959 established the period within which it is necessary to take all measures to establish the location of the accused, while Article 365 of the Criminal Procedure Code of 1994 indicated the occurrence of the fact that these measures should be taken to establish the location of the accused. Since the location of the accused is unknown in both articles, taking into account the factor of necessity, there is grounds for declaring a search for the accused. Therefore, before searching for the accused, the law stipulates that the investigator must take the necessary search measures to establish the accused's location.

However, the law does not clearly specify what search measures should be taken for such a search. In the law, these measures are simply called "necessary search measures." Therefore, in our opinion, the following should be included in the necessary search measures aimed at establishing the location of the accused.

When it comes to necessary search measures:

- collection of information about the accused (studying his family situation);
- to collect information about the close relatives of the accused;
- gathering information about the accused's close associates;
- to determine whether the accused has any real estate in his name;
- determine at which addresses the accused is permanently or temporarily registered;
- identification of SIM cards of telephone companies, social media accounts registered in the name of the accused;
- Identify phone numbers and correspondence on social media accounts;

- conducting urgent search investigative actions at the identified place of permanent and temporary residence;
- conducting searches and investigative actions at the addresses of close relatives of the accused and persons connected with him;
- placement of information about the wanted accused at the place of permanent and temporary residence of the accused and at border posts;
- taking measures to prevent the accused from leaving the territory of the republic from border posts or by detours and by air;
- formation of a list of bank plastic cards issued in the name of the accused and taking measures to stop money circulation on them;
- Coverage of information about the wanted accused in the media and on social media platforms, as well as the dissemination of his current photographs;
- We can include measures such as conducting inspections and inquiries to ensure that the accused has not encountered any misfortune (i.e., has not died, been hospitalized, or been detained in connection with another case).

A number of articles of the Criminal Procedure Code contain provisions related to the search for persons who have committed crimes, the conduct of investigative and operational-search actions in the direction of the search. It should be noted that they do not sufficiently reflect the procedure and mechanism for searching for persons who have committed crimes. The legislator used different phrases related to certain components of the search. For example, in Article 21 (Participation of the public in criminal proceedings) of the Criminal Procedure Code of the Republic of Uzbekistan, "search for and exposure of perpetrators"; Article 36 (powers of the investigator) "search for persons"; Article 381 (Competence of the Investigator) "search for persons"; Article 392 (powers of the head of the body carrying out the pre-investigation check and his official) "search for hiding suspects"; Article 130 (testimony of the identifier when presenting for identification) states that "the wanted person"; Article 158 (Grounds for Conducting a Search) "finding a wanted person"; Article 236 (Purposes and grounds for the application of preventive measures) states that "may hide from inquiry, preliminary investigation, and court"; Article 242 (Arrest) states that "when the accused, defendant flee from investigation and court"; Article 243 (Procedure for the Application of Preventive Measures in the Form of Arrest or House Arrest) of the Criminal Code of the Republic of Uzbekistan states: "the accused declared wanted"; Article 250 (Collateral for Decent Behavior) states "not to hide from investigation and court"; Article 254-1 (Purpose and grounds for suspension of a passport (travel document)): "accused or defendant declared wanted"; Article 254-3 (Consideration of a petition for the suspension of a passport (travel document)): "the accused or defendant declared wanted"; Article 254-4 of the Criminal Procedure Code (Criminal Procedure Code) states: "to the accused or defendant declared wanted"; Article 262 (Persons subject to compulsory appearance) states that they "have been hiding from investigation and court"; Article 318 (Procedural costs) "search for persons"; Article 365 (Disclosure of a Search) states "disclosure of a search" and "disclosed accused"; Article 370 (Actions of the Investigator after the Suspension of the Preliminary Investigation) "search for hiding accused persons" and "extradition of hiding persons"; Article 381-9 (Suspension of the Inquiry) "declaration of a search"; Article 382 (Competence of the Prosecutor) "search for persons who have committed a crime"; Article 405-7 (Suspension and resumption of proceedings in a criminal case) states: "to declare a search for the accused if he

is found to have fled"; In Article 405-8 (Transfer of a suspended criminal case to the prosecutor), "taking measures to search for the accused"; Article 420 (Suspension of Criminal Proceedings) states that "if the defendant is hiding" and "the search for the hiding defendant is announced by a court ruling"; Article 542 (Procedure for Resolving Issues Related to the Execution of Sentences, Rulings, and Decisions) of the Criminal Code states: "to declare a wanted list in relation to the convicted person"; Article 605 (Detention and imprisonment for the purpose of extradition of a person located in the territory of the Republic of Uzbekistan) defines a person as "person declared wanted." In addition, according to Article 11 of the Law of the Republic of Uzbekistan "On Internal Affairs Bodies," state bodies, bodies of citizen self-government, and other organizations are obliged to "assist internal affairs bodies within their competence in protecting the rights, freedoms, and legitimate interests of citizens, maintaining public order, ensuring public safety, preventing, detecting, suppressing, and solving crimes and administrative offenses, investigating criminal cases, searching for criminals, establishing the location of missing persons, as well as in the prevention of offenses"[15].

Before the amendments to the Criminal Procedure Code of the Republic of Uzbekistan, introduced by the Law of the Republic of Uzbekistan No. 405 of April 25, 2016, the term "carrying out investigative actions" was used in the wording of Articles 36, 39, 343, 355 of the Criminal Procedure Code of the Republic of Uzbekistan[16]. The norms of criminal procedure legislation provide for the implementation of search operations along with investigative actions. However, after the adoption of the Law "On Operational-Investigative Activities," the legislator recognized the need to replace search operations with operational-investigative measures.

General theoretical and practical aspects of the search for persons who have committed crimes have been studied by domestic scientists G.A.Abdumajidov, Z.F.Inogomjonova, F.M.Mukhitdinov, O.Kh.Mukhamedov, M.A.Rajabova, B.Kh.Pulatov, Yu.S.Pulatov, G.A.Tulaganova, A.A.Khamdamov, T.R.Saitbayev, S.N.Gordeev, D.M.Mirazov, B.B.Murodov, I.R.Astanov, R.A.Sayfulov.

According to V.V. Vandyshv, "search is a coordinated activity of the investigator and the inquiry body to establish the location of the accused, regulated by procedural law and by-laws"[17].

According to A.A. Matchanov, "the investigative function is inherent in the activities of the investigator, the inquiry officer, who is responsible for investigating a criminal case, but in reality, this is the activity of the employees of the criminal investigation departments as the main executors, directly searching for the accused after the termination of the criminal case"[18].

Regarding the definition of the investigator's (investigator's) investigative activity, according to S.V. Eremin: "the investigator's investigative activity is an important stage of the investigation necessary for solving the priority tasks of the court, for example, the search for the accused, bringing him to criminal responsibility"[19].

Based on the foregoing, according to the author's definition, the search for the accused in criminal procedure legislation is understood as "the search for a person who, as a result of his actions or inaction, committed a culpable socially dangerous act, against whom he was falsely or directly accused, and who hid from the investigative and judicial authorities in order to destroy evidence or continue his future crime, or to evade punishment and responsibility."



In conclusion, according to Article 64 of the Criminal Code of the Republic of Uzbekistan[20], "A person cannot be held liable if ten years have passed since the commission of a crime that does not pose a great public danger or is less serious, and twenty-five years have passed since the commission of a serious or especially serious crime." This leads to the non-application of the principle of compensation for property, material, and moral damage caused to citizens as a result of escape from liability by a wanted person who has committed a crime that does not pose a great public danger or is not particularly serious, and who has committed a serious or especially serious crime and has not been apprehended within twenty-five years from the investigative and judicial authorities, as well as the principle of the inevitability of liability in Article 10 of the Criminal Code of the Republic of Uzbekistan, according to which "every person in whose act the presence of a criminal element is established must be held accountable"[21]. Therefore, we must determine the whereabouts of each wanted person and ensure the inevitability of responsibility for them.

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9. After the annexation of Central Asia to the Russian Empire in 1868, the Turkestan Governor-Generalship was established with a center in the city of Tashkent, and the Charter of Criminal Procedure of 1864 began to operate in the field of criminal law and proceedings. Before this Charter, there was a search process, which was a historical form of criminal procedure characteristic of the medieval period. The essence of the search process was that various procedural functions were combined in the person of the relevant state representative: the prosecutor and the judge, and he was contrasted with the accused, who served only as the object of the search.
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