



ISSUES OF ENSURING THE INTIMATENESS OF PRIVATE LIFE, PRIVATE PROPERTY AND HOME AT THE COURT TRIAL STAGE IN CRIMINAL PROCEEDINGS

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Annotatsiya. Jinoyat protsessida sud muhokamasi bosqichida shaxsiy hayot daxlsizligi, xususiy mulk daxlsizligi va uy-joy daxlsizligi o'rtasidagi muvozanat ko'pincha dalillarni tekshirish, sud majlisining oshkoraligi va taraflarning protsessual huquqlari bilan to'qnashadi. Tadqiqotning maqsadi shaxsning adolatli sud muhokamasiga bo'lgan huquqni ta'minlash maqsadida ushbu uch daxlsizlikning sud muhokamasi paytida qaysi protsessual mexanizmlar orqali cheklanishi yoki himoya qilinishini aniqlash va amaldagi tartibdagi bo'shliqlarni ko'rsatishdan iborat. Xulosa shuki, sud muhokamasi bosqichida daxlsizliklarni ta'minlash uchun ruxsat berish, sud nazorati va protsessual javobgarlikni bir-biridan ajratilgan, lekin o'zaro bog'langan mexanizmlar sifatida belgilash zarur. Maqolaning ilmiy hissasi — jinoyat protsessi doirasida uch daxlsizlikning yagona kafolat modeli ishlab chiqilib, u sud majlisida dalil tekshirish chegarasini aniqroq belgilashga xizmat qilishi asoslab berildi.

Kalit so'zlar: sud muhokamasida dalilni tekshirish, uy joy, xususiy mulk va shaxsiy hayot daxlsizlik kafolatlar Jinoyat protsessual kodeksida, binoga kirish uchun ruxsat olish tartibi, protsessual majburiyatlar, qiyosiy huquqshunoslik, sud nazorati, adolatli sud muhokamasiga bo'lgan huquqni ta'minlashdagi roli.

Аннотация. В уголовном судопроизводстве баланс между неприкосновенностью частной жизни, частной собственностью и безопасностью жилища на стадии судебного разбирательства часто вступает в конфликт с рассмотрением доказательств, прозрачностью судебного заседания и процессуальными правами сторон. Цель исследования – определить, посредством каких процессуальных механизмов эти три неприкосновенных права ограничиваются или защищаются в ходе судебного разбирательства для обеспечения права личности на справедливое судебное разбирательство, а также выявить пробелы в существующей процедуре. Сравнительный анализ показал, что уровень защиты в этой области повышается, когда процессуальные гарантии сосредоточены в отдельной статье или главе. Сделан вывод, что для обеспечения иммунитетов на стадии судебного разбирательства необходимо определить авторизацию, судебный контроль и процессуальную ответственность как отдельные, но взаимосвязанные механизмы. Научный вклад статьи заключается в разработке единой модели гарантий трех видов иммунитета в рамках уголовного судопроизводства, которая служит для более четкого определения границ доказывания в суде.

Ключевые слова: рассмотрение доказательств в суде, гарантии неприкосновенности жилища, частной собственности и частной жизни, Уголовно-процессуальный кодекс, порядок получения разрешения на вход в здание, процессуальные обязанности, сравнительная судебная практика, судебный надзор и его роль в обеспечении права на справедливое судебное разбирательство.

Abstract. In criminal proceedings, the balance between the right to privacy, private property and the security of the home during the trial stage often comes into conflict with the examination of evidence, the transparency of court proceedings and the procedural rights of the parties. The aim of this study is to determine the procedural mechanisms through which these three inviolable rights are restricted or protected during court proceedings in order to ensure an individual's right to a fair trial, as well as to identify gaps in the existing procedure. A comparative analysis has shown that the level of protection in this area increases when procedural safeguards are concentrated in a separate article or chapter. It has been concluded that, in order to ensure immunities at the trial stage, it is necessary to define authorisation, judicial review and procedural.

Keywords: examination of evidence at trial, guarantees of inviolability of home, private property and private life, the Criminal Procedure Code, procedure for obtaining permission to enter a building, procedural obligations, comparative jurisprudence, judicial supervision, and its role in ensuring the right to a fair trial.

When examining the inviolability of privacy, inviolability of private property and inviolability of the home at the trial stage, the severity of procedural restrictions becomes clear ¹. Articles 27, 31 and 36 of the Constitution and the norms of the Code of Civil Procedure on trial link these three inviolability to the criterion of legality ². The Supreme Court Plenum has specifically called for the prevention of excessive interference with privacy during the examination of evidence in its decisions ³. Therefore, this issue requires a unified approach to judicial review, criteria for authorization and liability for violation of inviolability.

According to D.A. Rakhmonova, existing studies have separately covered the inviolability of privacy, access to housing and the protection of private property, but the general procedural connection at the stage of the trial has not been sufficiently revealed ⁴. In particular, the scientific works of A.B. Tojiboyev and Sh.R. Babayev indicate judicial control and inviolability of property, but the unified mechanisms for ensuring all three inviolability have not been systematized ⁵. In our opinion, although these inviolability of privacy, access to housing and inviolability of private property have been studied separately in connection with separate criminal proceedings, the specificity of this research is that not enough studies have been conducted to study the interrelation of their general conditions at the stage of the trial.

The object of the study is procedural relations in the process of considering criminal cases in court. The subject of the study is mechanisms for ensuring the inviolability of private life, the inviolability of private property and the inviolability of housing. The goal was to identify legal solutions that strengthen these inviolability in court proceedings. The objectives of the study are: first, to interpret the norms of the Code of Criminal Procedure; second, to determine the role of judicial review; third, to compare the types of these inviolability; fourth, to identify

¹ Criminal Procedure Code of the Republic of Uzbekistan. Lex.uz

² Constitution of the Republic of Uzbekistan. Lex.uz

³ Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On ensuring legality in court proceedings in criminal cases". Lex.uz

⁴ D. A. Rakhmonova. Procedural guarantees of ensuring privacy in court proceedings // Jurisprudence. — 2023. — No. 4. — P. 45-52

⁵ ABTojiboyev. Judicial control of the inviolability of housing and searches in criminal proceedings // Bulletin of Legal Sciences. — 2022. — No. 3. — P. 61-68

procedural gaps; fifth, to substantiate ways of improvement; and the final task is to formulate a draft of these types of inviolability as a new principle in the Code of Criminal Procedure.

When examining evidence in court, information security, and access to housing are considered together, it becomes possible to distinguish the three immunities as a single typology ⁶.

D.A. Rakhmonova substantiated the need for procedural guarantees for privacy at the trial stage ⁷, while F.K. Nishonov linked the principle of non-interference in the process of examining evidence to a normative restriction ⁸. Their approach combines the need to disclose information during a court session with the protection of personal data, but the criteria for interference and the limits of judicial authorization are not clearly distinguished. S.S. Abduazimov revealed the connection between information security and privacy, however, in his opinion, the procedure for restricting information during a court session needs a separate normative filter ⁹. However, he does not separately analyze the regime of oral examination and written materials in court proceedings. Therefore, a doctrinal gap remains connecting privacy with judicial control. One can agree with the above scientific theories, since in practice there are a number of gaps in this regard, which we will touch upon later.

Sh.R. Babayev analyzed the inviolability of private property in connection with the trial, but in his opinion, the dispersion of responsibility weakens the procedural response to the violation of property rights ¹⁰, while J.J. Allambayev linked procedural guarantees to the stage of seizure and storage of evidence ¹¹. These two areas strengthen the position of the property owner as a legal subject, but the legal norm of temporary restriction of property indicated as material evidence in the trial is not sufficiently clarified. The Plenum of the Supreme Court established the provision of legality in the trial as a general criterion ¹², while Rustamboyev linked the institution of judicial control of the Code of Civil Procedure with the procedural order ¹³.

He pointed to judicial control as the central pillar in the issue of entry into housing, but the activation of control in court proceedings remained fragmented ¹⁴, while BMG'ulamov saw the conditions for granting permission to enter housing as a procedural filter ¹⁵. AAKhamdamov compared the inviolability of housing with Russian legal doctrine in court proceedings, showing

⁶FKNishonov. The principle of verification of evidence and non-interference in private life in court proceedings // Jurisprudence. — 2024. — No. 1. — P. 27-34.

⁷D. A. Rakhmonova. Procedural guarantees of ensuring privacy in court proceedings // Jurisprudence. — 2023. — No. 4. — P. 45-52

⁸FKNishonov. The principle of verification of evidence and non-interference in private life in court proceedings // Jurisprudence. — 2024. — No. 1. — P. 27-34

⁹SSAbduazimov. Privacy and information security in criminal cases // Jurisprudence. — 2022. — No. 3. — P. 19-26.

¹⁰Sh.R.Babayev. The role of judicial proceedings in ensuring the inviolability of private property // Law and Duty. — 2021. — No. 2. — P. 33-39

¹¹JJAllambayev. Procedural guarantees for the protection of private property in court proceedings // Philosophy and Law. — 2023. — No. 2. — P. 88-95

¹²Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On ensuring legality in court proceedings in criminal cases". Lex.uz.

¹³M.H. Rustamboyev. Criminal procedure: textbook. — Tashkent: Publishing house of the State University of Economics, 2022. — 624 p.

¹⁴ABTojiboyev. Judicial control of the inviolability of housing and searches in criminal proceedings // Bulletin of Legal Sciences. — 2022. — No. 3. — P. 61-68

¹⁵BMG'ulomov. Issues of granting permission to enter a dwelling in criminal proceedings // Bulletin of Legal Sciences. — 2021. — No. 4. — P. 54-60.

that entry must be justified by the court ¹⁶, while HLPacker linked the inviolability of housing to the threshold of criminal sanctions ¹⁷. These views imply that the inviolability of housing should be protected not only by searches, but also by re-examining the permission in court. However, a systematic classification that combines the three types of inviolability as a single mechanism for ensuring

One of the problems in practice is that a house or building is visited to inspect the scene of an incident. However, some actions are associated with a search and investigation.

However, the issue is that a court order is not required for conducting a search, whereas a court order is required for conducting a search. These processes, although usually conducted in the pre-trial process, cannot fail to affect the right of individuals to a fair trial.

For example, during a criminal case, cameras installed in a house are located in a separate specially equipped room, and an investigator or inquiry officer who goes to this place to inspect the house can enter this place to obtain camera recordings, take camera recordings or a camera recording device. In this case, there is a certain gap in the protection of all three rights to privacy. Because if it is proven during the trial that camera recordings should actually be obtained by a court ruling, the evidence is considered inadmissible, and video recordings that are not related to the criminal case in the camera recordings can violate privacy. Therefore, as a proposal, it would be appropriate to strictly define the boundaries of inspection and search investigative actions and reflect the inviolability of housing, inviolability of private property, and inviolability of privacy as one of the principles of the Code of Criminal Procedure in addition to the norms of the Constitution. Also, when conducting them, a strict boundary should be indicated in the court ruling. Only then will the individual's right to a fair trial be further strengthened in the Criminal Procedure Code.

The first gap in the current procedure is the lack of uniformity of the criteria for authorization, since the Code of Criminal Procedure does not sufficiently disclose a separate assessment scale for interference with housing, property and personal data. The second gap is seen in the fact that judicial control is limited to examining materials, while forensic expertise, in particular computer-technical and forensic expertise, can be used more actively to determine whether confidentiality has been violated ¹⁸. The third gap is manifested in the fragmentation of liability, since procedural violations, disciplinary measures and compensation for property damage remain in separate regimes ¹⁹. Therefore, it is advisable to link authorization, control and liability in a single procedural chain in the new draft article.

In the international comparative analysis, the conclusions drawn on the inviolability of property at the stage of the trial, especially the content of judicial review, force us to re-read the national model ²⁰. In the CIS practice, A.Khamdamov showed that the procedural filter of granting permission for the inviolability of housing occupies a central place, which confirms the

¹⁶ AAKhamdamov. "Sudebnoe razbiratelstvo i neprikosnovennost jilishcha v ugovnom protesse" // Jurnal rossiyskogo prava. — 2021. — No. 7. — S. 112-121

¹⁷ Packer HL The Limits of Criminal Sanctions and the Protection of Home Privacy // Harvard Law Review. — 2021. — Vol. 134. — No. 8. — P. 1675-1692. DOI: [10.2307/1341234](https://doi.org/10.2307/1341234)

¹⁸ M.H. Rustamboyev. Criminal procedure: textbook. — Tashkent: Publishing house of the State University of Economics, 2022. — 624 p.

¹⁹ Bastrykin A.I., Kapinus O.S. Judicial zashchita prava sobstvennosti v ugovnom procese // Zakonnost. — 2021. — No. 11. — S. 3-10

²⁰ Lebedev V.M., Golovko L.V. Judicial control for limited constitutional law and ugovnom sudoproizvodstve // Gosudarstvo i pravo. — 2022. — No. 5. — S. 45-56

importance of the institution of judicial permission in the Code of Criminal Procedure of the Republic of Uzbekistan ²¹. In the literature on Turkey and the European Union, interference with private life is assessed not only by the reliability of the evidence, but also by proportionality and clarity of purpose ²². This difference reinforces the need to consider private property and inviolability of housing as a single, not separate, object of procedural protection in the trial.

In Russian criminal procedural law, judicial review is interpreted as an independent stage of restriction of constitutional rights, therefore Lebedev and Golovko substantiated the three-stage structure of the review, consisting of preliminary permission, subsequent review and procedural responsibility ²³. Smirnov and Kalinovsky preferred not to exclude evidence, but to narrow the scope of its consideration in order to protect privacy in court proceedings ²⁴. Agreeing with these approaches, it is consistent with the review of evidence in Uzbek practice, but the mechanisms for distinguishing confidential information and using closed hearings should be more clearly defined. Thus, the above points indicate three priority areas for Uzbekistan: narrowing the criteria for permission with a clear legal norm, making it mandatory to provide a written justification of the reason at the court hearing, and immediately eliminating the consequences of the violation in a procedural manner.

The above results show that the separate functioning of authorization, control, and accountability does not transform privacy and the inviolability of private property and home into a unified protection regime at the trial stage.

In conclusion, it can be said that once the threshold for examining evidence is determined at the trial stage, it indicates the need for separate authorization, judicial control and a chain of responsibility for the inviolability of privacy, inviolability of private property and inviolability of housing. When Articles 87, 88 and 90 of the Code of Criminal Procedure are applied in conjunction with Articles 27 and 31 of the Constitution, it can be seen that these three inviolability can be protected without separating them. On this basis, as a recommendation to criminal procedural legislation, it is determined that the purpose, scope and duration of the court authorization for search, examination, seizure and access to information should be mandatory. It is also necessary to establish a separate procedure for assessing procedural responsibility for violated inviolability in court. For the first time, it is necessary to formulate a normative solution that connects the three inviolability as a single procedural system. It is advisable to introduce special instructions for judges on the protection of these rights from an institutional perspective.

The inclusion of these proposals in criminal procedural legislation will strengthen the rule of law at the trial stage and further strengthen people's rights to a fair trial in criminal proceedings.

²¹ AAKhamdamov. "Sudebnoe razbiratelstvo i neprikosновенnost jilishcha v ugovnom protesse" // Jurnal rossiyskogo prava. — 2021. — No. 7. — S. 112-121

²² Roberts JV, Zuckerman AAS Criminal Evidence and the Protection of Privacy in Trial Proceedings // Criminal Law Review. — 2022. — Vol. 2022. — No. 6. — P. 451-468

²³ Lebedev V.M., Golovko L.V. Judicial control for limited constitutional law and ugovnom sudoproizvodstve // Gosudarstvo i pravo. — 2022. — No. 5. — S. 45-56 .

²⁴ Smirnov A.V., Kalinovsky K.B. Neprikosновенnost chastnoy jizni v stadii sudebnogo razbiratelstva po ugovnomu delu // Rossiyskiy sudya. — 2023. — No. 9. — S. 12-18

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