

## PROCEDURAL ASPECTS OF SEARCH IMPROVEMENT AT THE PRESENT STAGE IN KAZAKHSTAN

*Balgimbekov D.U.*, Candidate of Law, Associate Professor,  
Professor of the Department of General Legal and Special Disciplines,  
*Yeleubekova N.Ye.*, Master of Law Degree,  
Senior lecturer at the Department of General Legal and Special Disciplines,  
*Kalabina A.B.*, student of the SPD group 21-3

Karaganda University of Kazpotrebooyuz

The ongoing reform of law enforcement agencies in the Republic of Kazakhstan is designed to ensure the democratization of the entire legal system and effective respect for human rights. President of the Republic of Kazakhstan Kassym-Jomart Tokayev, in his Address to the people of Kazakhstan "Fair Kazakhstan: law and order, economic growth, public optimism", pointed out that "One of my main tasks is to make Kazakhstan a territory of comfortable and safe life. Law enforcement and relevant government agencies are tasked with ensuring the comprehensive safety of citizens" [1].

Therefore, the ongoing judicial and legal reform in Kazakhstan is designed to ensure law and order and effective observance of legitimate human and civil rights and freedoms. Currently, crimes of varying severity remain a threat to the state and society, hence the main task is to carry out a protective function in general and bring offenders and criminals to justice. However, as the investigative practice shows, currently the above-mentioned mechanism does not fully ensure the protection of the above-mentioned rights.

Despite the fact that searches are one of the most common investigative actions, their results have remained low in recent years. It should be noted that in the investigation of criminal offenses, a search should be considered one of the most effective methods of detecting, securing and seizing factual data.

Since an important condition for carrying out this investigative action in a criminal case is preliminary preparation, competent application of tactics and procedural recommendations during the search. Its essence consists in the compulsory inspection of premises, areas, and individual citizens in order to find objects relevant to the case.

At the same time, it should be noted that the conduct of these investigative actions involves significant restrictions on the constitutional rights and freedoms of citizens. An analysis of investigative practice indicates that there are a number of unresolved problems. Often, the need for these investigative actions arises at the early stages of the pre-trial investigation when socially dangerous acts are directly detected. As a result, on the one hand, the practice of conducting unauthorized searches has become widespread. On the other hand, there are insufficient grounds for obtaining sanctions from the investigating judge. Accordingly, this led to numerous refusals by the courts to satisfy the investigator's decisions on conducting searches.

Article 25 of the Constitution of the Republic of Kazakhstan states that housing is inviolable. The deprivation of housing is not allowed, except by a court decision. Entry into a dwelling, its inspection and search are allowed only in cases and in accordance with the procedure established by law. [2] This constitutional provision applies entirely to search operations. Everyone has the right to judicial protection of their rights and freedoms. Not only the Constitution, but also the Criminal Procedure Code of the Republic of Kazakhstan strictly regulates the conduct of such an important investigative action as a search [3].

In our article, we will consider proposals for improving the current criminal procedure legislation of our country.

Thus, in order to protect the rights and interests of the searched person, the presence of the searched person is an important aspect during the search, it will help to ensure that the search is carried out lawfully in accordance with the requirements of the CPC RK. It is worth noting that the presence of the searched person in the residential premises helps to speed up the process and increase its efficiency through the voluntary issuance of the required items. It also helps to minimize disputes about the legality of the search. In the absence of the person being searched, the search must be conducted in the presence of the local executive body. The presence of a defender and a lawyer of the person in the premises being searched would also be advisable.

In connection with the above, it is necessary to supplement Article 254, Part 5 of the CPC with an explanation: "A search or seizure in residential premises, premises of organizations is carried out in the

presence of persons specified in parts fifteen and sixteen of Article 220 of the CPC. In exceptional cases, when the absence of the persons specified in paragraphs fifteen and sixteen of Article 220 of the CPC RK is justified by the available data of the criminal case, the search may be conducted without their presence, but with the presence of a representative of the local executive body. Conducting a search in the absence of these persons is a significant violation of the law, resulting in the inadmissibility of the results obtained [4].

In this case, during the search, the person conducting the search is obliged to ensure the presence of his defender or lawyer, and in the absence of such a lawyer on duty, in whose premises the search procedure is being carried out."

In order to protect the rights of the person in the premises being searched, it is necessary to record the absence of the above-mentioned persons during the search in the search report. Recording in the protocol the absence of a person during a search serves as a guarantee that his rights have not been violated, as it is an official document. In this regard, Article 254 h 5.1 of the CPC RK should be supplemented as follows: "The procedure for searching the premises of an organization is carried out in the presence of a local executive body. If his participation in the search turned out to be impossible, this circumstance is recorded in the search report, with the mandatory participation of his defense lawyer or other lawyer."

Unjustified damage to the property of the person being searched may lead to a violation of property rights. Every citizen of the Republic of Kazakhstan has the right to inviolability of his property. If the person's property was not motivated, damaged, the owner has the right to compensation for damage.

Part 9 of Article 254 of the Criminal Procedure Code of the Republic of Kazakhstan does not prohibit opening locked rooms and storages if the owner refuses to open voluntarily, provided there is a justified need to damage the locks of doors and other objects. Accordingly, during the search, the investigator can open any premises, but the law prohibits causing unjustified damage to the property of the person being searched [5]. In order to increase the protection of the rights and interests of the person being searched and minimize the investigative process by involving experienced specialists in the relevant field of knowledge in the criminal process, we propose to clarify Part 9.1 of Article 254 of the Criminal Procedure Code of the Republic of Kazakhstan in the following form: "During the search, it is necessary to eliminate cases of damage to locks, doors and other objects, as well as property that the place to be when carrying out an investigative action. The evidence obtained as a result of non-fulfillment or improper fulfillment of the requirement is invalid."

After conducting a search, the investigating judge determines the validity and grounds for damage to the property of the person being searched. In this case, the judge must first find out if the investigator has the opportunity to apply another method of investigation and damage the object, which in turn will cause the least damage to the property of the person being searched. When deciding by the court on the presence or absence of another method of using an object, it is worthwhile to take into account the actual capabilities of the investigator, taking into account the time, place, identity of the person being searched, the severity of the crime and other data. It is also important to pay attention to organizational difficulties that may lead to undesirable consequences of the effectiveness of the investigative action in question.

In order to increase the level of protection of the rights of a person in a room that has been searched, it is necessary to provide a copy of the resolution and the search protocol, which will allow the person to be notified of the actions of law enforcement agencies and what procedures have been carried out. It is not uncommon for this right to be violated due to the absence of a person at the place of residence registration. Thus, it is necessary to supplement Article 254 with Part 5.2 of the Criminal Procedure Code of the Republic of Kazakhstan as follows: "The pre-trial investigation authorities are required to hand over a copy of the search protocol to the person in the premises where the search procedure was performed. In the absence of the person being searched, a copy of the inspection report is handed over using postal and other communication methods" [6].

It is necessary to supplement Part 7 of Article 254 of the Criminal Procedure Code of the Republic of Kazakhstan in this form: "Previously, before the start of the search, the investigator conducting the process must provide the searched person with a copy of the resolution on the search. In the case of part 1 of Article 254 of the CPC of the Republic of Kazakhstan, provide the person in the premises being searched with a court decision authorizing its conduct." The purpose of this decision is the authorized collection of evidence in a criminal case. The court decision authorizing the search must comply with the procedural rules established by law, as well as with appropriate evidence that indicates the expediency of the search.

Investigative authorities often use the opportunity to conduct a second search based on an earlier ruling, without proper grounds [7]. In order to prevent arbitrary and groundless actions by the investigator, it is necessary to establish stricter rules for conducting repeated searches. The following requirements should be established: "Every repeated search based on a previously issued decision must be carried out exclusively with a court decision, with the consent of the prosecutor." This procedure will increase the level of control of the court and the prosecutor's office over the actions of the investigator, which will lead to an improvement in the quality of work through a detailed study of the validity of the repeated search.

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### **FEATURES OF THE EXAMINATION OF A CORPSE IN CASES OF MURDERS OF WOMEN IN THE FIELD OF FAMILY AND DOMESTIC RELATIONS**

*Balgimbekov D.U.*, Candidate of Law, Associate Professor,  
Professor of the Department of General Legal and Special Disciplines,  
*Yeleubekova N.Ye.*, Master of Law Degree,  
Senior lecturer at the Department of General Legal and Special Disciplines,  
*Gaivaronskaya I.V.*, student of the SPD group 21-3

Karaganda University of Kazpotreboyzuz

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Therefore, the choice of the research topic was determined by the need to study the problems of pre-trial investigation of murders of women in the field of family and domestic relations. Article 15 of the Constitution of the Republic of Kazakhstan states that everyone has the right to life. No one has the right to arbitrarily take a person's life. Article 17 of the Basic Law states that human dignity is inviolable, and paragraph 2 of the same article stipulates that no one should be subjected to torture, violence, or other cruel, degrading treatment [2]. This constitutional provision fully applies to cases of personal security from attacks in the family. Everyone has the right to judicial protection of their rights and freedoms. Not only the Constitution, but also the Code of Criminal Procedure of the Republic of Kazakhstan provides for the right of every person to judicial protection of their rights and freedoms [3].

Domestic violence against women in our country is one of the serious problems of modern society. Often, victims (in 60% of cases) refuse to file applications upon the arrival of police officers, which is