



TERMS OF DETENTION AND RULE OF LAW INDEX

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ABSTRACT

In the article, the comparative legal analysis of ensuring the rule of law in the criminal proceedings was conducted, suggestions and recommendations were scientifically substantiated in order to achieve the fairness and speed of conducting criminal proceedings.

The World Justice Project (WJP) is an international civil society organization promoting the rule of law worldwide. It is one of the independent organizations engaged in analysis in various fields on a global scale. The World Justice Project (WJP) operates on an ongoing basis through three core programs: Research and Scholarship, Rule of Law Index and Commitment. With their activities in these areas, the organizers aim to convey to the general public how important the rule of law is in society, and to support the implementation of social reforms at the state level.

The organization was founded in 2006 by William H.N.¹ with the initiative of the President of the American Bar Association and the support of twenty one partners. Its offices are located mainly overseas and operate in Washington, D.C., Seattle, Mexico City and Singapore. This organization forms its annual reports based on the opinions and experiences of experts and

representatives of the general public from different parts of the world. For example, the 2019 ranking of the Rule of Law Index was based on more than 120,000 questionnaires from 126 countries of the world, and the opinions of about 3,800 experts².

The World Justice Project (WJP), an international independent non-profit organization, has announced the 2019 Rule of Law Index rankings. In it, Uzbekistan took 94th place among 126 countries. For information, it should be said that the Rule of Law Index has been published by this organization since 2009. Information about Uzbekistan has been reflected in reports since 2012³.

The following eight indicators are used to determine the rating:

1. Limited powers of the government;

² Rule of Law Index.
<https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf>

³ Meeting of Minister of Justice R. Davletov with representatives of the World Justice Project.
<http://www.minjust.uz/ru/press-center/news/89896>

¹ https://en.wikipedia.org/wiki/World_Justice_Project



2. Level of corruption;
3. Government openness;
4. Protection of fundamental rights;
5. Order and security;
6. Law enforcement practice;
7. Fairness of civil proceedings;
8. Fairness of criminal proceedings.

Each of these indicators is evaluated in a 100-point system, and when the total score is compared to the number of indicators, the country's position among other countries is determined by the index. The overall result of the Republic of Uzbekistan on this index also achieved relatively high positions in some of the above indicators. In particular, our country ranks 67th among 126 countries in terms of the state of justice in criminal cases (indicator 8). There is another aspect of the matter that the above indicators contain criteria that cause them. The criminal justice multiplier is formed based on the following criteria:

- 1.1. Effectiveness of investigative activities;
- 1.2. Speed and efficiency of hearing the case in court;
- 1.3. Effectiveness of the penal system;
- 1.4. Impartiality of criminal proceedings;
- 1.5. Corruption-free conduct of criminal proceedings⁴;
- 1.6. Freedom of criminal proceedings from government influence;
- 1.7. Ensuring the rights of the accused person and determining the appropriate procedural procedure.

In 2019, our country scored 0.51 points according to the criterion of the effectiveness of investigative activities, which means that it ranks 19th in the ratio

of points, 34th in the ratio of countries, that is, the number of countries that have paid more points than us is 33. Therefore, it is recommended to study the criminal-procedural legislation of these 33 countries when studying foreign experience in matters of pre-trial proceedings:

⁴ Alov U., Rozimova Q. What Model of Anti-Corruption Body is needed for Uzbekistan? The American Journal of Social Science and Education Innovations (ISSN-2689-100x.). Published: August 28, 2020. Pages: 399-407.



No	Name of States	Scored points	Place
1.	Singapur	0.82	1
2.	United Arab Emirates	0.71	2
3.	Canada	0.70	3
4.	Hong Kong Special Administrative Region	0.70	3
5.	Great Britain	0.68	4
6.	Australia	0.68	4
7.	USA	0.67	5
8.	Japan	0.66	6
9.	Denmark	0.66	6
10.	Norway	0.65	7
11.	Austria	0.65	7
12.	Czechia	0.63	8
13.	Malaysia	0.62	9
14.	Finland	0.61	10
15.	Republic of Korea	0.60	11
16.	Federal Republic of Germany	0.60	11
17.	Belgium	0.60	11
18.	New Zealand	0.59	12
19.	France	0.59	12
20.	Estonia	0.59	12
21.	Spain	0.58	13
22.	People's Republic of China	0.57	14
23.	Romania	0.56	15
24.	Belarus	0.56	15
25.	The Netherlands	0.55	16
26.	Sweden	0.53	17
27.	Poland	0.53	17
28.	Bahamas	0.53	17
29.	Zambia	0.53	17
30.	Senegal	0.53	17
31.	Hungary	0.52	18
32.	Greece	0.52	18
33.	Barbados	0.52	18
34.	Republic of Uzbekistan	0.51	19

In particular, the following criteria were selected when determining the effectiveness of a single investigative activity and ranking countries:

- Correct arrest of the persons who committed the crime;
- The persons who committed the crime were properly charged;



- Freedom from corruption of persons conducting the investigation;
- Competence of persons conducting the investigation.

Therefore, by further improving the above legal institutions, our Republic will be able to gain a higher place in the Rule of Law Index. For this, it is required to study the criminal procedural legislation of the countries that rank higher than us. The main document that regulates criminal-procedural relations in **Singapore**⁵ is the Criminal Procedure Code, which describes in detail the basis and procedure for arresting a person for a crime. Any police officer has the right to arrest a person in the following cases:

- If he is suspected of involvement in the committed crime, or if a reasonable complaint has been filed against him, or if reliable information has been received indicating his involvement in a crime;
- It is a device used by a person for illegal entry into a house, and he cannot prove that he is the legal owner of this item;
- If an announcement has been made against a person.

When arresting a person with a warrant, the warrant issued for the person's arrest is usually sent to the Commissioner of Police or the head of a law enforcement agency. If this document is sent to the Commissioner of Police, its execution will be carried out by a police officer or other person designated by the Commissioner. If the warrant is sent to the head of the law enforcement agency, its execution will be ensured by any person designated by the head. The court may send the warrant to one person or several citizens, indicating the name and place of work, and the

citizens specified in it will ensure the execution of the warrant.

If the warrant is sent to several persons for execution, all or one of them can execute the execution. A person to be arrested shall be apprehended by a police officer or other person authorized by a warrant. A warrant issued by a court provided for in the Code shall be drawn up in writing and signed by a Magistrate or District Judge under the seal of the court, and in cases of a superior court by a Superior Court judge or a Clerk of the Supreme Court. The warrant remains in effect until it is executed or revoked. The police officer or other person responsible for the execution of the warrant must explain the contents of the warrant to the citizen to be arrested, and if required, show the warrant itself or a copy. A police officer or other person responsible for the execution of the warrant must bring the arrested person to court. The general rules of arresting a person with or without a warrant are also reflected, and in the process of arresting a person, if the person to be arrested does not obey despite being warned by a police officer or another person through a word or action, they can physically affect the body of this person.

In the United Arab Emirates, an investigating police officer has the right to arrest a person with a warrant if they have sufficient evidence that a crime has been committed:

- 1) On serious crimes;
- 2) if he is suspected of having committed a crime with a high level of social danger and a punishment other than a fine;
- 3) In the case of crimes for which a type of punishment other than a fine is provided and the level of social danger is not high, if the person is under observation or there is a risk of escape;

⁵ <https://sso.agc.gov.sg/Act/CPC2010#P1VI-P21->



4) Theft, cheating, breach of trust, violent acts, forceful resistance to state authorities, violation of moral rules, crimes involving weapons, narcotics and psychotropic substances.

If the accused in the case does not appear, the investigating police officer will issue a warrant for his arrest and bring him to court. This document is executed by an official of the state authority. The investigating police officer must hear the arguments of the arrested person, and if he cannot provide sufficient evidence, he will send the arrested person to the competent prosecutor within 48 hours. The prosecutor must interrogate the accused within 24 hours and make a decision to detain or release him from custody. A person who is a direct witness of the commission of a crime must arrest the person who committed the crime without a warrant and hand it over to the nearest representative of the state authority⁶.

Looking at Canadian law, as in many developed countries, there are two types of arrests: with a warrant and without a warrant. A public order officer may arrest a person without a court warrant in the following cases:

- 1) If the person has committed an act considered a crime;
- 2) If there is reasonable information that a person has committed a crime or intends to commit it;
- 3) If the responsible staff determines that the person is committing a crime⁷.

According to Section 101 of the **Hong Kong** Criminal Procedure Law, any person who has reasonable knowledge that someone

has committed a crime can arrest him without a warrant. The arrested person can be immediately handed over to a police officer or taken directly to the Magistrate. In addition, a warrant for the arrest of a person is issued even if the person accused of committing a crime does not appear when summoned to court. If the person under arrest resists, the police officer must take all necessary measures to prevent his escape⁸.

Under the UK Criminal Procedure Code, a warrant can be issued for a person's arrest in several situations: when a witness fails to appear in court despite being summoned, when an accused person fails to appear in court despite being summoned, and when it is necessary to detain a person⁹.

In cases where there is sufficient evidence to convict a person of a crime in **Belarus**, the investigator makes a decision to involve a person as an accused in a criminal case. The participation of a defense attorney is mandatory in the process of indicting a person, and the investigator must take measures to ensure his participation¹⁰.

According to our national legislation, in Article 221 of the Criminal Code, a person suspected of committing a crime may be detained if the following grounds exist:

- 1) a person is caught in the act of a crime or immediately after committing it;

⁶ <https://legaladvice.com/legislation/156/uae-federal-law-35-of-1992-concerning-criminal-procedural-law>

⁷ <https://robichaudlaw.ca/ontario-criminal-court-procedures/detention-arrest-and-criminal-charges/>

⁸ <https://youth.elic.org.hk/en/usefulInfo/Arresting-procedure-my-rights-and-obligations/Arresting-a-person/>

⁹ <http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/crim-proc-rules-2015-part-13.pdf>

¹⁰ <http://kodeksy.by/ugolovno-processualnyy-kodeks/statya-240>



2) if the witnesses of the crime, including the victims, directly identify him as the person who committed the crime;

3) if obvious traces of the crime committed are found on him or his clothes, near him or in his house;

4) there is information that gives grounds for suspecting a person of committing a crime, if he wants to flee or has no permanent place of residence or his identity has not been determined.

The period of detention is a maximum of forty-eight hours from the moment of the person's actual detention (the moment of actual restriction of the rights to free movement). Detention may be extended by the court's decision for an additional forty-eight hours when necessary and sufficient grounds are presented by the investigator, investigator or prosecutor.

Currently, taking into account the introduction of modern digital technologies¹¹ into the criminal process and foreign experience, it is appropriate to detain a person by decision for 48 hours in the following cases:

1) On serious and extremely serious crimes;

2) if he is suspected of having committed a crime with a high level of social danger and a punishment other than a fine;

3) In the case of crimes for which a type of punishment other than a fine is provided and the level of social danger is not high, if the person is under observation or there is a risk of escape;

4) Theft, fraud, breach of trust, violent acts, forceful resistance to the representatives of the state authorities, violation of moral

rules, crimes involving weapons, narcotics and psychotropic substances.

In all other cases, it is advisable to hold a person without a decision and his term should not exceed eight hours. The inclusion of these provisions in the Criminal Procedure Code serves to increase the speed¹² and efficiency of investigation and court proceedings and to ensure the fairness of criminal proceedings.

¹¹ Khamitovna K. M. Forms of production research of hardware and software of a computer system//International journal of advanced research. - 2020. –T. 8 №. 2. – C. 312-317.

¹² Khamitovna K. M. Criminal procedural terms in the republic of Uzbekistan //Asian Journal of Multidimensional Research (AJMR). – 2020. – T. 9. – №. 2. – C. 280-287.