

Gaps in Civil Procedural Legislation as a Catalyst for Corruption

D. Khabibullaev ¹

¹ DSc in Law, Professor, Head of the Department of Civil Procedural and Economic Procedural Law, Tashkent State

University of Law

Email: davlatjonxabibullayev@gmail.com

ORCID: 0000-0002-8355-3983

ARTICLE INFO

Keywords:

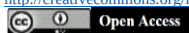
civil procedure,
civil procedural legislation,
legal gap,
contradiction in legislation,
corruption risk,
judicial discretion,
impartiality of a judge,
judicial independence,
procedural time limit,
valid reasons,
electronic evidence,
court order (writ),
digitalisation,
Uzbekistan

Vol. 01, No. 05, 2026

<https://doi.org/10.5281/zenodo.23213712>

Copyright © 2026 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CCBY4.0).

<http://creativecommons.org/licenses/by/4.0/>



ABSTRACT

The effectiveness of justice is determined not only by the lawfulness, validity and fairness of judicial decisions, but also by the extent to which the procedural rules governing civil proceedings leave room for corruption. This article analyses legal gaps, internal contradictions and vague provisions in the Civil Procedural Code of the Republic of Uzbekistan and assesses their impact on the efficiency of civil proceedings and on corruption-related risks. The study combines doctrinal and formal-legal analysis of the Code with comparative legal analysis of the United States, Latvia, Germany and European standards, and uses R. Klitgaard's model, in which corruption risk grows with monopoly and discretion and falls with accountability, as an analytical framework for assessing each provision. Four groups of problems are identified. First, although Article 20 of the Code is titled "Inadmissibility of a judge's repeated participation in the review of a case", parts three and four of the article in fact permit a judge who has heard a case on appeal or in cassation to hear it again at the same level after remand. Second, the evaluative concepts of "valid reasons" for restoring lapsed procedural time limits and "other reasons" allowing a prosecutor to apply to court on behalf of a citizen are not supported by legal criteria, which creates unstructured discretion. Third, mechanisms for requesting evidence from state bodies and for submitting electronic evidence lack fixed forms, time limits and sanctions. Fourth, court-order (writ) proceedings remain manual despite their uncontested nature. For each problem, specific amendments are proposed: closing the repeated-participation gap, introducing an open but criteria-based list of valid reasons, standardising evidence requests, and authorising judicial assistants to issue court orders within a digital procedure. These measures are expected to narrow judicial discretion where it is not needed, increase transparency and strengthen public trust in civil justice.

Introduction

The Constitution of the Republic of Uzbekistan guarantees everyone the right to judicial protection of their rights and freedoms and to the consideration of their case by an independent and impartial court [2]. The ongoing judicial and legal reforms in Uzbekistan necessitate continuous, in-depth theoretical and empirical research into emerging issues in the regulation of civil judicial proceedings. The efficiency of justice is determined not only by the lawfulness, validity and fairness of judicial decisions, but also by the extent to which corruption-related risks in the administration of civil proceedings have been minimised. One of the most effective means of preventing corruption within the judicial system is the identification and elimination of legal norms capable of creating conditions conducive to corruption. This logic underlies the Law of the Republic of Uzbekistan "On Combating Corruption" [5], which lists the anti-corruption examination of legal acts among the main preventive measures, and Article 11 of the United Nations Convention against Corruption, which obliges States Parties to strengthen integrity and prevent opportunities for corruption among members of the judiciary [6].

The international literature on corruption shows that corrupt behaviour is most likely where officials hold monopoly power and broad discretion while accountability is weak [11; 12]. In the judicial

sphere, discretion is unavoidable, since the judge must evaluate facts and apply general norms to specific situations. However, discretion that is not structured by legal criteria becomes a resource that can be traded. E. Buscaglia's empirical analysis of judicial systems in developing countries found that the degree of procedural complexity and the scope of discretionary judicial power are among the strongest predictors of judicial corruption [13]. Transparency International's report on corruption in judicial systems reached similar conclusions [14].

Since its adoption by Law No. ZRU-460 of 22 January 2018, the Civil Procedural Code of the Republic of Uzbekistan [1] has been amended more than twenty times. At the same time, the development of new institutions – digitalisation, electronic and digital evidence, mediation, and free legal aid at state expense – is placing new requirements on procedural legislation. The Short-Term Strategy for Bringing the Judicial System to a Qualitatively New Level for 2023–2026, approved by Decree of the President No. PF-11 of 16 January 2023 [3], names the creation of effective mechanisms for preventing conflicts of interest in the courts as one of its principal areas.

Despite the significance of the problem, the procedural rules of civil proceedings have rarely been examined in Uzbek legal scholarship specifically through the lens of corruption risk; research has focused instead on criminal law and on the organisational independence of courts. The aim of this article is to identify gaps, contradictions and vague provisions in civil procedural legislation that create corruption risks and to develop specific proposals to eliminate them. The research questions are: (1) which provisions of the Civil Procedural Code contain unstructured discretion or internal contradictions; (2) how comparable problems are solved in foreign legislation and international standards; and (3) what amendments would reduce the identified risks without undermining judicial independence.

Materials and methods

The material of the study comprises the Civil Procedural Code of the Republic of Uzbekistan in its current wording [1], the Law "On Courts" [4], the Law "On Combating Corruption" [5], and Decree No. PF-11 [3]. For comparative analysis, the following were used: Title 28 of the United States Code [7], the Civil Procedure Law of the Republic of Latvia [8], the German Code of Civil Procedure (Zivilprozessordnung) and the Law on Judicial Officers (Rechtspflegergesetz) [9], Regulation (EC) No 1896/2006 creating a European order for payment procedure [10], the case law of the European Court of Human Rights [17–19], and soft-law instruments: the Bangalore Principles of Judicial Conduct [15], Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe [16], and the CEPEJ guidelines on the digitalisation of courts [20].

The study applied doctrinal (formal-legal) analysis to identify contradictions between the title and content of norms and gaps in regulation; systemic interpretation to establish the relationship between provisions; and comparative legal analysis to identify tested solutions. As an analytical framework for assessing corruption risk, R. Klitgaard's model was used, according to which corruption equals monopoly plus discretion minus accountability [11]. Each provision was assessed by three questions: does it grant a single actor exclusive control over a procedural outcome (monopoly); does it allow a decision without legally defined criteria (discretion); and is the decision subject to reasoning, review and recording (accountability). In line with H.L.A. Hart's concept of the "open texture" of law [21], evaluative concepts were not regarded as defects per se; a provision was classified as risk-generating only where the absence of criteria is not compensated by other safeguards.

Results

1. Inadmissibility of a judge's repeated participation in the review of a case

In strengthening the authority of the judiciary and ensuring the genuine independence of the courts, the institution of recusal of a judge and other participants in the proceedings occupies a special place. The rule prohibiting a judge's repeated participation in the review of a case is an important guarantee of the impartial and objective resolution of a civil case.

Part three of Article 20 of the Civil Procedural Code provides that "a judge who has taken part in reviewing a case in a court of appellate instance may not take part in reviewing that same case in a court of first instance, cassation instance, or supervisory instance." An analysis of this provision shows that such a judge is barred only from taking part in reviewing the case at other levels. However, if a judgment is quashed by a supervisory instance and the case is remitted for a fresh hearing to the appellate instance, the same judge who previously took part in the appellate proceedings may hear the case again. An identical rule is established in part four of the same article: "a judge who has taken part in reviewing a case in a court of cassation instance may not take part in reviewing that same case in a court of first instance, appellate instance, or supervisory instance."

Proceeding from these provisions, a judge who has heard a case at the appellate level may take part in a repeat review of the same case in appellate proceedings, and a judge who has heard a case at the cassation level may take part in a repeat review in cassation proceedings, since the law contains no prohibition to that effect. Thus, although Article 20 is entitled "Inadmissibility of a Judge's Repeated Participation in the Review of a Case", parts three and four in fact permit such repeated participation. From the standpoint of the Klitgaard model, this creates a situation in which the same decision-maker controls the outcome twice, while the parties have objective reasons to fear that the judge will defend his or her earlier position.

2. Vagueness of the evaluative concepts "valid reasons" and "other reasons"

The Code provides, in connection with the restoration of procedural time limits and failure to appear before the court, that where "valid reasons" exist, the court may restore a procedural time limit or adjourn the hearing. However, while the law affords this opportunity, it establishes no criteria whatsoever for what constitutes a "valid reason". As a result, although the provision formally exists, divergent approaches arise in its application: an identical circumstance may be recognised as valid by one court and rejected by another.

The problem lies not in the independence of the judge, but in the fact that the legal boundaries for the exercise of that independence have not been defined with sufficient clarity. The first precondition for reducing corruption risk in civil procedural legislation is therefore the legal precision of procedural norms.

Likewise, Article 50 of the Code provides that a prosecutor

"shall have the right to apply to the court with a petition to protect the violated rights, freedoms, and legally protected interests of a citizen where, by reason of a state of health, age, or other reasons, the citizen is unable to personally protect his or her rights, freedoms, and legally protected interests in court."

In this provision as well, the legislature has not defined what falls within the scope of "other reasons". Because the prosecutor's decision to intervene materially changes the balance between the parties, an undefined ground for such intervention creates a further zone of unstructured discretion.

3. Requesting and using evidence, including electronic evidence

Evidence is one of the principal institutions of civil procedure, and the proof by the parties of their claims and objections is an essential condition of the administration of justice. In practice, however, the

procedural mechanisms for producing evidence to the court, requesting its production, obtaining electronic data and requesting information from state authorities require further clarification. Corruption risk arises in particular where an item of evidence is in the possession of a specific state authority or organisation and the citizen cannot obtain it independently. In such cases, the timing and outcome of the court's request and of the authority's response depend on informal factors, since the Code does not fix the form of the motion, the time limit for considering it or the consequences of non-compliance.

The use of electronic evidence raises additional questions: the procedure for its submission, the verification of integrity and authenticity, and the allocation of the burden of proof in disputes about authenticity are not regulated in sufficient detail. International doctrine emphasises that, without such rules, the admissibility of electronic evidence becomes a matter of case-by-case judicial discretion [22].

4. Digitalisation and reduction of the human factor in court-order proceedings

The human factor is present at every stage of civil procedure; however, digital technologies make it possible to automate certain procedural actions. Court-order (writ) proceedings, which concern uncontested claims, are the most suitable for this. In Germany, according to judge H. Schnitger, court orders (Mahnbescheide) are issued about six times more frequently than judgments in ordinary claim proceedings. A judge does not take part in this type of proceeding: under the Law on Judicial Officers, the summary procedure is assigned to the Rechtspfleger, a court official who is not a judge, and the Code of Civil Procedure permits automated (machine) processing of applications, which may be submitted online [9]. At the European level, Regulation (EC) No 1896/2006 has established a standardised, form-based European order for payment procedure [10].

The results of the analysis are summarised in Table 1.

Table 1

Corruption risk map of the identified provisions of the Civil Procedural Code

Provision	Nature of the defect	Klitgaard element affected	Proposed solution
Art. 20, parts 3–4	Contradiction between title and content	Monopoly (same judge decides twice)	Extend the prohibition to the same instance
"Valid reasons" (restoration of time limits, adjournment)	Evaluative concept without criteria	Discretion	Open, criteria-based list of valid reasons
Art. 50 "other reasons"	Evaluative concept without criteria	Discretion	Define grounds for prosecutor's application
Requesting evidence from state bodies	No form, time limit or sanction	Discretion, weak accountability	Standardised motion, time limit, liability, reasoned ruling
Electronic evidence	Insufficient rules on submission and verification	Discretion	Procedure for submission and authenticity verification
Court-order proceedings (Chapter 18)	Manual processing of uncontested claims	Monopoly, human factor	Digital procedure; issuance by judge's assistant

Source: developed by the author.

Discussion

Repeated participation and the objective test of impartiality

Foreign experience confirms the need to close the gap in Article 20. In the United States, 28 U.S.C. § 47 provides that "no judge shall hear or determine an appeal from the decision of a case or issue tried by him", and § 455 requires a judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned [7]. Article 18 of the Civil Procedure Law of Latvia establishes that a judge who has taken part in appellate or cassation proceedings may not take part in reviewing the same case in a court of first instance or in appellate proceedings [8].

The case law of the European Court of Human Rights is of particular significance. Since *Piersack v. Belgium*, the Court has applied an objective test of impartiality, under which it must be determined whether there are ascertainable facts that may raise doubts about the judge's impartiality, regardless of his or her personal conduct; "justice must not only be done, it must also be seen to be done" [17; 19]. In *Oberschlick v. Austria* (No. 1), the Court found a violation where a judge who had previously participated in the case sat again in the appeal proceedings [18]. The Bangalore Principles likewise treat impartiality as applying "not only to the decision itself but also to the process by which the decision is made" [15].

Taking into account this experience and the task of preventing conflicts of interest set by Decree No. PF-11 [3], it is proposed that parts three and four of Article 20 of the Civil Procedural Code be restated as follows:

*"A judge who has taken part in reviewing a case in a court of appellate instance may not take part in reviewing that same case in a court of first instance, **appellate**, cassation, or supervisory instance.*

*A judge who has taken part in reviewing a case in a court of cassation instance may not take part in reviewing that same case in a court of first instance, appellate, **cassation**, or supervisory instance."*

An objection may be raised that in small regional courts this rule may complicate the formation of benches. However, the proposed rule concerns only repeat review after remand, which is relatively rare, and the problem can be solved by the automated distribution of cases among judges of neighbouring courts.

Structuring discretion without restricting independence

Evaluative concepts are an inevitable technique of legislation: no list can foresee all life situations [21]. The solution is therefore not to eliminate the concept of "valid reasons" but to anchor it with criteria. It is proposed to establish in the Code an open, non-exhaustive list of circumstances that are to be taken into account as valid reasons – serious illness, natural disaster, a state of emergency, late receipt of a court document, a technical malfunction of an information and communication system, and other circumstances beyond a person's control – together with an obligation of the court to state its reasons for recognising or rejecting a circumstance as valid. Such a rule leaves the final assessment to the judge but makes it reviewable, which corresponds to Recommendation CM/Rec(2010)12, under which judges must give clear reasons for their decisions [16]. The same approach is proposed for the "other reasons" in Article 50: the legislature should define them through objective criteria (for example, disability, being in a state of dependence, or legal incapacity of a family member), with the prosecutor obliged to substantiate the ground in the application.

Evidence and accountability

To reduce corruption risk in the collection of evidence, the Code should clearly establish: the form of a motion requesting evidence; the time limit within which the court is to consider it; the time limit

and liability for an authority or person that fails to produce the evidence; the procedure for submitting electronic evidence and verifying its authenticity; and the obligation to state in the ruling the reasons for accepting or rejecting each item of evidence. These measures increase the "accountability" element of the Klitgaard equation, since every step becomes recorded and reviewable.

Digitalisation as an anti-corruption tool

Digitalisation reduces direct contact between parties and court staff, records every procedural action automatically and makes the distribution of cases independent of individual will. The CEPEJ guidelines on e-filing and court digitalisation note that the electronic processing of standardised claims both reduces judicial workload and increases transparency [20]. Proceeding from the German and European experience, and given that court orders are issued in respect of uncontested claims, it is proposed to introduce into Chapter 18 ("Court Order") of the Civil Procedural Code a provision empowering a judge's assistant to issue a court order within an electronic procedure, while preserving the debtor's right to file objections, which would transfer the case to a judge. This would release judicial time for contested cases and remove the human factor from a mass category of proceedings.

Limitations

The study is doctrinal and comparative; it does not include an empirical analysis of judicial practice or statistics on the restoration of time limits and repeat reviews. Such an analysis, based on the electronic case management system of the courts, would make it possible to quantify the frequency of the situations described and the divergence of judicial approaches, and is a direction for future research.

Conclusion

The analysis shows that a number of provisions of the Civil Procedural Code of the Republic of Uzbekistan contain either internal contradictions (Article 20) or evaluative concepts without legal criteria ("valid reasons", "other reasons"), as well as insufficiently regulated procedures (requesting evidence, electronic evidence) and manual processing of mass uncontested claims (court orders). Each of these features increases either the monopoly or the discretion of a single actor or weakens accountability, and therefore creates corruption risk. The following amendments are proposed: to extend the prohibition of repeated participation of a judge to review at the same instance; to introduce an open, criteria-based list of valid reasons and to define the grounds for a prosecutor's application; to standardise the procedure for requesting and assessing evidence, including electronic evidence; and to digitalise court-order proceedings with the authority of a judge's assistant to issue court orders. Eliminating legal gaps and contradictions, reducing the human factor, ensuring the automatic recording of procedural actions, introducing electronic case management, and ensuring the openness and reasoning of court decisions will significantly increase transparency in the work of the courts and, in turn, strengthen citizens' confidence in the administration of justice.

References

1. Civil Procedural Code of the Republic of Uzbekistan. Approved by Law of the Republic of Uzbekistan No. ZRU-460 of 22.01.2018 (as amended). – URL: <https://lex.uz>
2. Constitution of the Republic of Uzbekistan (new edition adopted by referendum of 30.04.2023). – URL: <https://lex.uz>
3. Decree of the President of the Republic of Uzbekistan No. PF-11 of 16.01.2023, Annex No. 1 "Short-Term Strategy for Bringing the Judicial System to a Qualitatively New Level for 2023–2026". – URL: <https://lex.uz>

4. Law of the Republic of Uzbekistan "On Courts". No. ZRU-703 of 28.07.2021. – URL: <https://lex.uz>
5. Law of the Republic of Uzbekistan "On Combating Corruption". No. ZRU-419 of 03.01.2017. – URL: <https://lex.uz>
6. United Nations Convention against Corruption. Adopted by General Assembly resolution 58/4 of 31 October 2003. – New York: United Nations, 2004.
7. United States Code. Title 28 – Judiciary and Judicial Procedure. §§ 47, 455. – URL: <https://www.govinfo.gov/content/pkg/USCODE-2020-title28/html/USCODE-2020-title28-partI.htm>
8. Civil Procedure Law of the Republic of Latvia (Civilprocesa likums) of 14.10.1998. – URL: <https://likumi.lv>
9. Zivilprozessordnung (ZPO), §§ 688–703d; Rechtspflegengesetz (RPflG), § 20. – URL: <https://www.gesetze-im-internet.de>
10. Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure // Official Journal of the European Union. – L 399. – 30.12.2006. – P. 1–32.
11. Klitgaard R. Controlling Corruption. – Berkeley: University of California Press, 1988. – 220 p.
12. Rose-Ackerman S., Palifka B.J. Corruption and Government: Causes, Consequences, and Reform. 2nd ed. – Cambridge: Cambridge University Press, 2016. – 602 p.
13. Buscaglia E. An analysis of judicial corruption and its causes: An objective governing-based approach // International Review of Law and Economics. – 2001. – Vol. 21, No. 2. – P. 233–249.
14. Transparency International. Global Corruption Report 2007: Corruption in Judicial Systems. – Cambridge: Cambridge University Press, 2007. – 380 p.
15. The Bangalore Principles of Judicial Conduct, 2002. Endorsed by UN ECOSOC resolution 2006/23. – Vienna: UNODC, 2007.
16. Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities. Adopted 17.11.2010. – Strasbourg: Council of Europe, 2010.
17. European Court of Human Rights. Piersack v. Belgium, no. 8692/79, judgment of 1 October 1982.
18. European Court of Human Rights. Oberschlick v. Austria (No. 1), no. 11662/85, judgment of 23 May 1991.
19. European Court of Human Rights. Kyprianou v. Cyprus [GC], no. 73797/01, judgment of 15 December 2005.
20. CEPEJ. Guidelines on electronic court filing (e-filing) and digitalisation of courts. CEPEJ(2021)15. – Strasbourg: Council of Europe, 2021.
21. Hart H.L.A. The Concept of Law. – Oxford: Clarendon Press, 1961. – 263 p.
22. Mason S., Seng D. (eds.). Electronic Evidence and Electronic Signatures. 5th ed. – London: University of London Press, 2021. – 760 p.