

Issues of Improving the Role of the Prosecutor's Office in Public Administration and the Legal Basis of its Activities

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Abstract: This article analyzes the role of the prosecutor's office in the system of separation of powers and legislative norms related to the improvement of its organizational and legal aspects. Conclusions and proposals on existing problems in national legislation and their elimination were put forward on the role of the prosecutor's office in the state mechanism and on some aspects of improving the organizational and legal foundations of the activities of this body.

Keywords: state mechanism, principle of separation of powers, social security, service in the prosecutor's office, coordination.

To date, the comprehensive and huge creative reforms implemented in our country in every field are recognized by the world community, international experts and many other countries.

It is no coincidence that a special direction of the Development Strategy for the development of the Republic of Uzbekistan until 2030 is aimed at ensuring the rule of law and further reforming the judicial system.

In recent years, in the framework of large-scale reforms aimed at ensuring the rule of law, reliable protection of citizens' rights and freedoms, several important regulatory legal documents have been adopted on the organizational and legal improvement of the activities of the prosecutor's office within the framework of the fundamental reform of the judicial system.

newly revised Law of the Republic of Uzbekistan "On the Prosecutor's Office" ¹, the main tasks of the prosecutor's office are to ensure the rule of law, strengthen legality, protect the rights and freedoms of citizens, the interests of society and the state protected by law, the constitutional system of the Republic of Uzbekistan, prevention and prevention of violations. ². As a state body, prosecutor's offices are entrusted with important tasks such as ensuring the clear and uniform implementation of laws and protecting laws.

One of the most controversial topics related to the place of the prosecutor's office in the state mechanism is the question of its place in the system of distribution of powers. In this regard, various approaches have been proposed in the scientific literature. Although the opinions on this matter are not always clear and the same, however, they have common features.

In particular, a group of scientists emphasized that the prosecutor's office belongs to the executive power. For example, the Russian jurist N. Fedorov suggests that the prosecutor's office be included in the organizational structure of the executive power ³. In this, he cites as evidence that in most foreign countries, the prosecutor's office is included in the executive bodies of the

¹Legal information national base, 25.11.2020, No. 06/20/6118/1562. 03/17/2021, No. 06/21/6188/0216.

² Uzbekistan Collection of legal documents of the Republic, 2017, No. 22, Article 425, No. 25, Article 531.

³Fedorov N.V. About judicial reform in Russia // Gosudarstvo i pravo. 1992. #6.

authorities. Similarly, another group of scholars and practitioners emphasize that the prosecutor's powers are of an administrative and imperative nature, as an executive power ⁴.

believes that the prosecutor's office is a special "addition" of the legislative branch of government, as it checks the implementation of laws in the country, as well as the compliance of subordinate legal documents with the law ⁵.

Proponents of this idea rely on the following logic: the legislature makes laws, and the prosecutor's office controls their implementation throughout the country. According to them, the prosecutor's office is one of the mechanisms of the legislative power, and the prosecutor's control is a special type of power, which should receive powers directly from the legislature, form them and be accountable only to him.

For example, one of the Russian scientists, V. Lomovsky, believes that the prosecutor's office should be under the legislative power, because, on the one hand, after the adoption of laws, the supreme legislative power cannot be indifferent to their implementation. Therefore, it retains the function of ensuring the unity of legality, it performs it directly, as well as through the prosecutor's office ⁶.

On the other hand, the prosecutor's office, as written by this author, cannot be alone in the state in performing the tasks assigned to it, it must be supported, because it often ⁷has to oppose the most powerful people, therefore, the prosecutor's office must be under the legislative power.

In our opinion, the scholars of both of the above groups expressed their scientific views based on the Russian legal system and practice, and these views are not very compatible with our national legal system. Because the scientists of the first group did not pay much attention to the activity of the prosecutor's office related to the control over the implementation of laws, while the second group of scientists, on the contrary, approached this activity more and did not dwell on the tasks of the prosecutor's office, such as carrying out criminal prosecution and assisting in justice.

At this point, V. N. Eryomina, a supporter of the third point of view, says that "the modern prosecutor's office does not belong to any branch of power, it represents a necessary mechanism in the emerging system of separation of powers and is an important element of the system of checks and balances." The independence of the prosecutor's office is a necessary condition ⁸for its successful work in the field of control over the execution of laws .

Professor A.D. Boykov also believes that the prosecutor's office is the legality control body of the state and carries out its activities equally in relation to the legislative, executive and judicial authorities ⁹.

Likewise, the Uzbek jurists Z. Islamov, M. Radjabova, G. Alimov, I. Jasimov, who conducted research on this matter, noted that the prosecutor's office does not belong to any branch of state power. For example, professor Z. Islamov stated that the prosecutor's office cannot belong to the legislative or executive power according to the content of its functions ¹⁰.

⁴Bessarabov V. G. Mesto prokuratury v gosudarstvennom mekhanizme sovremennoy Rossii. // Legality. - 1999. - No. 10. - S. 40-45.

⁵Korenevsky Yu.V. Stanovlenie pravovogo gosudarstva v Rossiyskoy Federatsii i funktsii prokuratury. Round table / Yu.V. Korenevsky // Gosudarstvo i pravo. - 1994. - No. 5. - S. 3-34.

⁶Lomovsky V. D. Kakoy vlasti prinadlezhit prokuratura. // Rossiyskaya yustitsiya. - 2001. - No. 9. - S. 21-22.

⁷Vinogradov O.A. Prosecutor's Office and system of organs of state government // Zakonnost. - 1997. - No. 4. - S. 47-49.

⁸Yakupov, Z. R. The role of the prosecutor's office in modern Russia. // Pravo: sovremennye tendentsii : materialy IV Mejdunar . Nauch. conf . (Krasnodar, February 2017). — Krasnodar : Novation, 2017. — S. 95-98. — [Electronic source]. URL: <https://moluch.ru/conf/law/archive/225/11641/>.

⁹Boikov A. D. Tretya vlast v Rossii. Essay on judiciary, law and judicial reform 1990-1996. M., 1997.

¹⁰Islamov Z.M. K kakoy vlasti otnesti prokuraturu? - Narodnoe slovo, July 3, 2003.

In the same way, according to M. Radjabova, the prosecutor's office, unlike the above two authorities, is a state authority that controls the clear and uniform application of laws ¹¹.

Or, G. Alimov analyzed the norms of the Constitution of Uzbekistan and came to the conclusion that "the prosecutor's office does not belong to any of the branches of state power established in the Constitution ¹²."

In the same way, practicing jurist I. Jasimov put forward the opinion that the Prosecutor's Office of Uzbekistan is a functionally independent state legal institution that does not belong to any of the legislative, executive and judicial authorities ¹³.

In our opinion, the opinions of these scholars that the prosecutor's office is a unique, independent institution that does not belong to any authority, and provides a reasonable balance between authorities, can be considered correct from the legal point of view and according to the essence of the historical formation of the prosecutor's office.

In today's practice, there are a number of issues that need to be addressed in order to improve the activities of prosecutor's offices from an organizational and legal point of view. We will present our opinions on some of them, analyzing the theoretical views of scientists and the experience of developed foreign countries.

The procedure for serving in the prosecutor's office is defined by the Regulation on serving in the prosecutor's office and institutions of the Republic of Uzbekistan, approved by the decision of the President of the Republic of Uzbekistan dated September 12, 2013 No. PQ-2036.

The service of the employees of the Department of Combating Economic Crimes and the Enforcement Bureau is regulated by the Regulations approved by the Decree of the President of the Republic of Uzbekistan No. PF-5446 of May 23, 2018 and Decision No. PQ-3016 of May 30, 2017.

In our opinion, the procedure for serving in the prosecutor's office should be determined not by one or more legal documents, but by a single regulatory legal document.

In this regard, in accordance with paragraph 17 of the State Program for Combating Corruption in 2019-2020, approved by the Decree of the President of the Republic of Uzbekistan No. PF-5729 dated May 27, 2019, until December 1, 2019, the draft Law on the procedure for serving in prosecutor's offices development is shown.

it was determined to strengthen institutional mechanisms for serving in prosecutor's offices and institutions, to introduce a completely new mechanism for selecting personnel based on transparent elections, to prevent and eliminate conflicts of interest .

However, the aforementioned Law has not yet been adopted. In this regard, it is considered necessary to adopt the Law on serving in the prosecutor's office of the Republic of Uzbekistan. On the other hand, in this Law, issues such as general requirements for recruitment to the prosecutor's office of the Republic of Uzbekistan, procedures for recruitment, rules for serving in this office, and clear determination of responsibility for misconduct committed during service should be expressed.

At present, the specific procedure of the prosecutor's office to control the implementation of legislation, the coordination function, and the issues of organizing control over the activities of certain bodies do not have sufficient normative foundations. In practice, these issues are mainly regulated by the departmental documents of the General Prosecutor's Office.

¹¹Radjabova M.A. Towards legal statehood. - T.: - Uzbekistan, 2000. - pp. 22-24.

¹²Alimov G'. Pravovoy status and deyatelnost' organov gosudarstvennoy vlasti in the Republic of Uzbekistan. - T., 2004 - P.40.

¹³Jasimov I.K. Judicial reforms and the role of the prosecutor's office in the protection of human rights today. - T., 2004.-S. 74

In this regard, legal scholar Z.Ibragimov proposed the adoption of a single "Code of Prosecutorial Supervision" that expresses the procedural aspects of prosecutorial supervision ¹⁴.

In our opinion, it is premature to develop this code in a situation where serious reforms are being carried out in the state administration, the content of the control functions of the state is still being clarified, and at the same time, the role of the prosecutor's office is not properly evaluated.

In addition, the issue of codification of documents related to the activities of the prosecutor's office is hindered by the absence of a single perspective concept in the field of judicial law.

In our opinion, increasing the status of the prosecutor's office, correctly defining its functions and obligations, establishing a clear procedure for serving in this office, introducing modern best practices into the activity, introducing into the law such important issues as increasing the efficiency of the activity, and ensuring its real implementation are now the primary urgent tasks.

In our opinion, it will be appropriate to raise the issue of systematization of the legislation on the activities of the prosecutor's office only after these listed tasks have been solved.

One of the directions of the activities of the prosecutor's office, i.e., prosecutors, which should be improved from an organizational point of view, is that their material support (technique, service buildings, necessary equipment, tools, etc.), their wages, social guarantees, social protection, and pension provision should be strictly regulated by law. and this procedure should not cause their dubious and unjustified subordination to other subjects of authority.

For the independent functioning of the prosecutor's office, financial support from the state is necessary, of course. That is, the independence of the prosecutor, as well as sufficient budget funds and all necessary resources for the prosecutor's office to perform their duties properly.

In this regard, American scientist Angela Davis comments as follows: —The prosecutor's dependence on the budget seriously undermines his independence. Prosecutors should be able to use budget funds without restrictions during the course of criminal proceedings ¹⁵.

In our opinion, the salary of the prosecutor's office should be determined by law and the amount should be proportional to the importance of the function they perform.

important area of activity of the prosecutor's office in the Republic of Uzbekistan is the coordination of activities in the fight against crime, control over the implementation of laws in the conduct of inquiries and preliminary investigations, and the implementation of preliminary investigations.

The powers of the prosecutor's office in this regard are directly reflected in the Constitution of the Republic of Uzbekistan, the Law on the Prosecutor's Office and a number of other normative documents.

Nowadays, the improvement of the organizational and legal bases of the activities of prosecutor's offices, as well as in any sphere of society, based on international standards and modern foreign experiences, is the demand of the time.

In this regard, the foreign experience of a number of advanced countries regarding the powers of prosecutor's offices to coordinate the activities of law enforcement agencies in the fight against crime and to conduct preliminary investigations of crimes was studied and analyzed.

In particular, ¹⁶normative legal documents related to the powers of prosecutor's offices of Turkey, Russian Federation, Germany, Singapore, China, Kazakhstan and a number of other countries .

¹⁴Ibragimov, Z.S. Independence and the Prosecutor's Office of the Republic of Uzbekistan (comparative analysis of the development of its legal status during the years of independence) - T.: —Publisher 2011. - p. 169.

¹⁵Angela J. Davis. The American Prosecutor: Independence, Power, and the Threat of Tyranny. American University Washington College of Law, p/443

¹⁶http://base.spininform.ru/show_doc.fwx?rgn=63025

15 chapters of our constitution are directly dedicated to the prosecution bodies, and Article 143 establishes that the establishment of prosecution bodies, their powers and the procedure for their operation are determined by law.

According to Article 4 of the Law "On the Prosecutor's Office", one of the main areas of activity of the prosecutor's office is the control over the execution of laws by the bodies that carry out rapid search, pre-investigation, investigation, and preliminary investigation, as well as coordination of their activities in the fight against crime. , is to conduct a preliminary investigation of crimes.

Based on the content and essence of these powers defined by the law, the directions of the investigative activities of the prosecutor's office can be calculated as follows:

- coordination of activities in the fight against crime.
- control over the enforcement of laws by bodies that carry out inquiry, preliminary investigation.
- conducting preliminary investigation.

According to the activity of coordination of activities in the fight against crime, according to the Law "On the Prosecutor's Office", the Prosecutor General of the Republic of Uzbekistan and the prosecutors subordinate to him shall coordinate the activities of the relevant bodies that carry out rapid search activities, pre-investigation investigations, inquiries and preliminary investigations in order to ensure the effectiveness of the fight against crime. .

In order to coordinate the activities of these bodies, the prosecutor convenes a coordinating council, establishes working groups, requests necessary information, including statistical data, and exercises other powers in accordance with the law.

At present, the current legislation does not contain relevant norms about the powers of the prosecutor's office to coordinate the activities of the inquiry and preliminary investigation bodies, the measures of influence to be used, and the control documents.

Accordingly, in the Law of the Republic of Uzbekistan "On the Prosecutor's Office", it is appropriate to specify more precisely the tasks and powers of the prosecutor's office in the fight against crime, including coordination of the activities of inquiry and preliminary investigation bodies.

In addition, it is proposed to digitalize this activity by introducing an electronic program in order to bring the activity of the council to a qualitatively new level and increase its effectiveness in coordinating the activities of the inquiry and preliminary investigation bodies.

In this case, the development and agreement of the plan of the coordinating council, sending it to execution, collecting analytical data on the plan, holding the meetings of the coordinating council in the specified terms, sending the draft of the council decision to the law enforcement agencies for agreement, signing the decision, focusing on the execution, and gathering information on the execution of the work on the basis of a single program can be achieved, saving unnecessary time and costs.

Summarizing the above-mentioned opinions, scientific-theoretical views, the following can be concluded:

first of all , according to the nature of the historical formation, the opinion of the prosecutor's office that this body is a unique, independent institution that does not belong to any authority and ensures a reasonable balance between authorities can be considered legally correct;

secondly , it is considered appropriate to adopt the Law "On the procedure of serving in prosecutor's offices" and to establish general rules and norms for serving in prosecutor's offices in this Law;

thirdly , the salary of the employees working in the prosecutor's office is determined by law and the amount should be proportionate to the scope and importance of the tasks and functions they perform;

fourthly , in the Law of the Republic of Uzbekistan " On the Prosecutor's Office", it is appropriate to specify more precisely the duties and powers of the prosecutor's office in the fight against crime, including the coordination of the activities of the inquiry and preliminary investigation bodies.