

## **Topic: Participation of The Prosecutor in Administrative Courts**

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### **Abstract**

*This article analyzes the role and importance of the prosecutor in the administrative courts of the Republic of Uzbekistan. Also, the participation of the prosecutor in administrative court proceedings in order to protect the interests of other persons, society and the state, in order to file an application to the court, give an opinion in the administrative court case, and file a protest against the administrative court documents is substantiated.*

**Keywords:** *administrative bodies, self-government bodies, administrative dispute, legitimate interests*

### **INTRODUCTION**

It was established that cases of appeal against decisions, actions (inaction) of administrative bodies and civil self-government bodies, their officials, are considered by administrative courts as an administrative dispute arising from public-legal relations. This, in turn, serves the introduction of the same judicial practice in relation to this category of cases, the timely fair and high-quality resolution of court cases.

Chapter 23 of the Code of Administrative Proceedings of the Republic of Uzbekistan, adopted on January 25, 2018 and entered into force on April 1, established the procedure for considering cases of appeal against decisions, actions (inaction) of administrative bodies and self-government bodies of citizens, their officials, and administrative bodies are the bodies authorized to administrative management in the field of, also understood are other organizations and specially created commissions that are authorized to carry out this activity .<sup>1</sup>

According to the Code of Administrative Proceedings of the Republic of Uzbekistan, this category of cases is initiated on the basis of applications from citizens or legal entities. Also, according to Article 38 of the law on the prosecutor's Office of the Republic of Uzbekistan, a document contrary

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to the law, the prosecutor has the right to apply to the administrative court with an application for the recognition of this document as illegal. In this case, pocuror will bring the protest against this document to the body (official)who received this document, or to the higher standing body (official). The Protest was rejected by the body (official) or higher standing body (official) that adopted the same document, as well as in the event that it was not considered within the period established by law, the prosecutor has the right to apply to the administrative court with an application for the recognition of this document as illegal. The prosecutor can apply in this case with an application over an illegal document of a state body (official)that does not have a normative legal nature.

Interested person: this decision, action (inaction) with an application (complaint) to recognize the decisions of the official body, the citizen self-government body as invalid, as well as the actions (inaction) of its officials as illegal, violated its rights and interests protected by law; created obstacles to the implementation of its rights, freedoms and the realization of its legitimate interests; imposed; he has the right to go to court only if he believes that other obstacles have arisen for him to carry out activities in one area or another. In the case of the prosecutor, khuddu has the right to apply to the court with a statement only if these actions affect the legal rights and interests of other citizens and legal entities.

Also, according to the Code of Administrative Proceedings of the Republic of Uzbekistan, an application (complaint) over decisions, actions (inaction) of administrative bodies and civil self-government bodies, their officials, can be brought to court within three months from the moment it is known to the interested person that their rights, freedoms and legitimate interests are violated.

The deadlines for applying to the court with an application (complaint)to find the decision of the executor of the state invalid, actions (inaction) unlawful are reduced, and it is established that the interested person can apply to the court within ten days from the moment it is known about the violation of his rights, freedoms and legitimate interests.

In addition, the court checks the legality of the decision or parts of it, actions (inaction) that are being appealed to the court during the consideration of the case of appeal against decisions, actions (inaction) of administrative bodies, citizens ' self-government bodies, their officials, the powers of the body or official who made the decision on which the action (inaction) , it is also necessary to determine whether the decision being appealed or some of its parts or actions (inaction) violate the rights and interests of the applicant protected by law. It should also be considered in the presence of representatives of the body or official who made the decision against which the complaint is being made or committed the action (inaction)against which it is being appealed. Representatives of the administrative body, the citizen self-government body, the official who made the decision against which the appeal is being made or committed the action (inaction) on which it is being appealed, can find the court binding to come to the court session and call them to the court session to give explanations.

Based on the above, administrative courts in the Republic of Uzbekistan consider and resolve administrative cases arising from public legal relations, including the protection of violated or disputed rights, freedoms and legitimate interests of citizens and legal entities. Cases of administrative offenses are also considered in the Administrative Court. However, the case of administrative offenses is not considered an administrative judicial proceeding, and the Code of the Republic of Uzbekistan on administrative judicial proceedings is not applicable to the conduct of these cases.

From the content of Article 2 of the law on the prosecutor's Office of the Republic of Uzbekistan, it is known that the main tasks of the prosecutor's Office of the Republic of Uzbekistan 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

One of the main areas of activity of the prosecutor's office is participation in the consideration of cases in courts, protest against judicial acts that contradict the laws. This is stated in Article 4 of the law of the Republic of Uzbekistan “on Prosecutor's Office”, which establishes support for state prosecution when considering criminal cases in courts, participation in the consideration of civil cases in courts, cases of administrative offenses, as well as economic disputes, and protest against judicial acts contrary to the law. This law does not provide an indication of the conduct of administrative court cases. We explain why this law did not include amendments after the adoption of the code on administrative proceedings of the Republic of Uzbekistan.

However, the participation of the prosecutor in the conduct of administrative court cases is provided for by the Code of Administrative Proceedings of the Republic of Uzbekistan. Article 46 of this code establishes the participation of the prosecutor in the administrative case. In addition, it is listed in Article 33 of the law of the Republic of Uzbekistan “on the prosecutor's Office”. According to him, in order to ensure that the rights and legitimate interests of citizens, enterprises, institutions and organizations are effectively protected through the court, the prosecutor takes part in the procedure established by law when cases are carried out in all courts of instance.

According to the above norms, we have divided the participation of the prosecutor in the trial of administrative cases into three forms, the first is the appeal of citizens and legal entities, as well as society and the state with an application to the court, protecting their rights and interests protected by law; the second is the opinion on the consideration of administrative cases initiated by the application of the prosecutor, the prosecutor does not express an opinion; the third – prokror brings a protest against the documents of the Administrative Court.

The forms of participation of the prosecutor in the Proceedings of the Administrative Court are as follows:

- submits an application to the court in order to protect the interests of other persons, society and the state;
- gives an opinion in the case of the Administrative Court;
- introduces protest against administrative court documents;
- participates as a defendant in the consideration of administrative cases in court.

Below we will analyze why we have defined the form of the participation of the prosecutor in the Proceedings of administrative proceedings as four forms.

**Submits an application to the court in order to protect the interests of other persons, society and the state.** The prosecutor has the right to apply to the court with an application, protecting the rights and interests of citizens and legal entities, as well as society and the state protected by law. The application is submitted to the Administrative Courts of the district (city) by prosecutors of the Republic of Karakalpakstan, regions, Tashkent City, districts (cities) and their equivalent prosecutors or their deputies, and to the Administrative Court of the Republic of Karakalpakstan,

regions, Tashkent City prosecutors or their deputies. The prosecutor general of the Republic of Uzbekistan or his deputy has the right to submit an application to all administrative courts of the Republic of Uzbekistan.

The prosecutor is a procedural applicant when he submits an application to the court in the legitimate interests of other persons, society and the state. The applicant for material law was considered a participant in administrative relations. When the prosecutor appealed to the court with an application in defense of the rights of the applicant, the prosecutor took full advantage of all the procedural rights of the parties, including the applicant. In this case, there is a right to refuse the application when the prosecutor submits an application in the interests of other subjects. The refusal of the prosecutor from his application does not deprive the applicant of the right to demand a content consideration of the case. The refusal of the prosecutor from his application leads not to the termination of the case, but to leave the application without seeing it. This is what the Code of Administrative Proceedings of the Republic of Uzbekistan says. The applicant's refusal from the request submitted by the prosecutor in order to protect the applicant's right leads to the fact that the application is left without seeing it. The legal consequence of leaving the application without seeing it is again with the application to the court in this case in the presence of an opportunity to apply. So, the real applicant can again apply to the Administrative Court on this issue. The prosecutor who submitted an application in the interests of a citizen, legal entity, society and the state uses the rights of the applicant and assumes his obligations.

In the case of the Administrative Court, the prosecutor takes part and gives an opinion. The prosecutor has the right to participate in the court session in the conduct of all administrative court cases. Also, in cases provided for by law or where the court finds it necessary for the prosecutor to participate in this case, or in cases initiated on the basis of the application of the prosecutor, the prosecutor is obliged to participate.

The prosecutor participating in the case expresses his opinion on the content of the case, with the exception of cases initiated on his application for the protection of the rights and interests of other persons protected by law. We also note that taking into account the opinion of Karpova, in the case of the Administrative Court, the prosecutor cannot participate in the consideration of cases involved in the case as a defendant. Because the prosecutor himself is responsible.

In the case of the Administrative Court, the prosecutor took part, giving the following practical example to give an opinion.

The New Lavash Food Limited Liability Company appealed to the court with a complaint about the actions of employees of Tashkent City authorities and asked to find out the decision of the mayor of Tashkent City dated March 4, 2016 No. 205 invalid.

At the court session, the applicant is a representative of New Lavash Food LLC Sh.Abdullaev fully supported the complaint and on March 4, 2016, the mayor of Tashkent issued a statement “on the improvement and demolition of land plots

In connection with the implementation of improvement work in Mirzo Ulugbek and Yashnabad districts of Tashkent City in accordance with the requirements of this decision, at the intersection of Mirzo Ulugbek district, Parkent-Riyadhiy and Altintepa streets, the building of the center Lavash catering facility belonging to New Lavash Food LLC has been demolished, and this decision is contrary to the requirements of the regulations approved by the decree.

**First of all**, according to Paragraph 4 of this charter, with the annex to the notification of copies of the decisions of the mayor of Tashkent on the seizure of the land plot, violation and transplantation of production facilities located on the land plot, it is indicated that upon the beginning of the violation must sign no later than 6 months and notify the owners, but in the decision of the mayor of Tashkent No. 205, contrary to the rule of the regulations, it is not recorded that the owner is notified together with the notification of a copy of the decision, while in practice New Lavash Food LLC is not informed at all about the violation of the building until the day of the building's demolition, , nevertheless, it is noted that the property belonging to the society was demolished within one day by the responsible state bodies, and **thirdly**, according to paragraph 37 of the regulation, houses of equal value to the previous one, production buildings and other buildings and structures belonging to a legal entity on the basis of property rights, were transferred to the new place only after, Tashkent asked the mayor's decision of March 4, 2016 No. 205 to find it invalid. In this controversial case, the Assistant District Prosecutor applicant X.Makhmudov asks for a complaint.

**Introduces a protest against administrative court documents.** The prosecutor may present a protest against administrative court documents in the manner and on the grounds established by law. According to some scientists, there are two forms of prosecutorial participation in the courts that are involved in the interests of other persons, as well as in the case initiated by others. The prosecutor's protest against the court documents was regarded as a continuation of these two forms.

But we do not agree with this opinion, the reason is not provoked by the application of the prosecutor, but also in relation to the judicial document issued on cases in which the prosecutor did not participate, can bring a protest in the manner prescribed by law. It follows from this that we believe that the protest of the prosecutor against judicial acts is a special form of participation of the prosecutor in the conduct of administrative court cases.

The procedure for protesting against the documents of the prosecutor's administrative court articles 200-, 224-, 249 of the Code of administrative proceedings, the procedure for introducing a protest by the prosecutor in the order of Appeal, Cassation, control over the documents of the Administrative Court is established.

According to Article 200 of the code of Administrative Proceedings of the Republic of Uzbekistan, the prosecutor has the right to file a protest of appeal against the resolution of the court of First Instance, which has not entered into legal force. The prosecutor said that if the law does not set a different deadline, the appeal protest can be issued within twenty days from the date of adoption of the resolution. Also, a protest may be introduced over the court rulings of the first instance. This protest is cited in the procedure and deadlines for protesting against the resolution of the settlement.

To bring a protest by the prosecutor in Cassation order. According to Article 224 of the code of Administrative Proceedings of the Republic of Uzbekistan, the prosecutor has the right to issue a cassation protest over the resolution of the court of First Instance, which has entered into legal force, not seen in the order of Appeal.

Also, the prosecutor can bring a protest in the order of control over judicial acts.

Judicial acts on cases seen in the appellate or Cassation procedure may be re-examined in a supervisory order according to the protests of:

The chairman of the Supreme Court of the Republic of Uzbekistan and the Prosecutor General of the Republic of Uzbekistan-on decisions, judgments and decisions of any court of the Republic of Uzbekistan;

Deputy chairmen of the Supreme Court of the Republic of Uzbekistan-on decisions, judgments and decisions of the courts of the Republic of Uzbekistan, except for decisions of the Presidium of the Supreme Court of the Republic of Uzbekistan;

Deputies of the prosecutor general of the Republic of Uzbekistan – on decisions, judgments and decisions of the courts of the Republic of Uzbekistan, except for decisions of the Presidium of the Supreme Court of the Republic of Uzbekistan.

Participates as a defendant in the consideration of administrative cases in court. Some researchers have assessed the participation of the prosecutor in this form in the consideration of administrative court cases as a form of passive participation. Analyzing this form of participation, the prosecutor is responsible in the administrative case initiated under this application when contacting the administrative courts with an application (complaint) to recognize the decisions, actions (inaction) of the prosecutor as illegal, as well as the bodies of the prosecutor who violate the rights and freedoms or legitimate interests of the citizen.

For example, when a prosecutor requests a sanction for the transfer of an illegal seizure from arbitrarily occupied residential areas, if the prosecutor does not consider this appeal in accordance with the procedure and deadlines established by law, it is possible to appeal to the administrative court with a complaint about the prosecutor's inaction.

From the above, it can be concluded that there are four forms of participation of the prosecutor in the Proceedings of administrative proceedings. These are:

- submits an application to the court in order to protect the interests of other persons, society and the state;
- gives an opinion in the case of the Administrative Court;
- introduces a protest against administrative court documents;
- participates as a defendant in the consideration of administrative cases in court.

Also, in the Proceedings of administrative proceedings, the prosecutor submits applications to the court based on his position when applying with an application. In this case, the Prosecutor General of the Republic of Uzbekistan also applies to all administrative courts of the Republic of Uzbekistan with an application for the protection of the interests of other persons, society and the state. District prosecutors may only apply to district or municipal administrative courts. Regional prosecutors, on the other hand, can apply to the courts of the Republic of Karakalpakstan, regions, Tashkent City, as well as district or city courts.

In the conduct of administrative court cases, the prosecutor, as we have already said, consists in strengthening the legality in our country by ensuring the uniform and clear execution of laws in the Republic of Uzbekistan. In order to carry out these main tasks established by the law on the



prosecutor's office, the prosecutor takes part in the conduct of judicial proceedings, including in the proceedings in administrative courts.

While the prosecutor is involved in administrative proceedings, it is primarily about achieving the legal, substantive and fairness of court decisions through the powers established by law, ensuring the rule of law, and protecting the violated or disputed rights of citizens, legal entities, society and the state in administrative relations, or the interests protected by law, as well as strengthening legislation and preventing

In the conduct of administrative court cases, the prosecutor has the following powers:

- to ensure the rule of law in society, to strengthen legality, social justice, peace and national harmony;
- to protect the personal, political, economic, social rights and freedoms of citizens enshrined in the Constitution and laws of the Republic of Uzbekistan, the legitimate interests of society and the state, as well as private property owners;
- to ensure the participation of the prosecutor in all judicial instances, provided by law or in cases where the court deems it necessary to participate in the case;
- to take measures to coordinate the illegal decisions of the courts in cases taken without the participation of the prosecutor into law;
- study of court decisions based on appeals and elimination of identified violations.

According to Article 46 of the Code of Administrative Courts of the Republic of Uzbekistan, the powers of the prosecutor are also different depending on the form of participation in the administrative court case. For example, when applying for the legal interests of other individuals, society and the state, the prosecutor uses all the rights and obligations of the applicant established by the procedural law.

The prosecutor also uses the rights of persons participating in the case provided for by Article 39 of the Code of Administrative Proceedings of the Republic of Uzbekistan as a person participating in the case in the conduct of administrative proceedings, performs obligations. These are as follows: persons participating in the case are able to familiarize themselves with the materials of the case, obtain extracts from them, copy an extract, arrange a refusal, provide evidence, participate in the examination of evidence, ask questions, submit petitions, arrange an appeal, give oral and written explanations to the court, present their arguments, conclusions on all issues arising during the, it has the right to protest against judicial acts and use other procedural rights granted to them in the Code of Administrative Proceedings of the Republic of Uzbekistan. Persons participating in the case have procedural obligations provided for by the Code of Administrative Proceedings of the Republic of Uzbekistan, and they must honestly exercise all procedural rights belonging to them.

The prosecutor can take part in any case in administrative courts in the interests of other persons, society and the state. When the prosecutor participates in the case, the prosecutor expresses his opinion. In this case, legal documents and materials related to the case will be studied by the prosecutor participating in the proceedings in court until the start of the court session. In this process, special attention is paid to situations of significant importance for the legal resolution of the case, such as the fact that the case concerns the court, the legal authority of the person who

filed the application, the presence of evidence necessary to resolve the case, the correct involvement of the persons involved in the case in the case, the

Participation of the prosecutor in the investigation of evidence in the conduct of administrative court cases. The prosecutor participating in the consideration of cases in administrative courts should take an active part in the examination and assessment of evidence and give a reasoned opinion on the relevance of each evidence to the case and the nature of the case. In addition, within the framework of the authority, it consists in ensuring that the work is viewed in all respects, fully and objectively, a legal, justified and fair decision is made. This was calculated from the main duties of the prosecutor in the conduct of administrative court cases.

In addition, one of the duties of the prosecutor when conducting administrative cases in court is to submit a petition to the court for material, disciplinary, other measures against officials or other persons responsible for violations identified in cases related to the protection of legal rights and interests of citizens, recognition of property rights, discussion of issues of notification to the prosecutor in In the prosecutor's Office of the Republic of Uzbekistan, when conducting administrative cases in the courts, a clear account of the court documents sent about the identification of signs of the crime is maintained, and effective cooperation with the courts has been established in this regard.

In the form of an application by the prosecutor to administrative courts, the main attention should be paid to the introduction of an application to the court in order to protect the rights, freedoms and public interests of citizens, as well as the interests of society and the state protected by law, to what extent the main subject of the prosecutor's

It is also necessary to see a measure to eliminate cases that violate the rights and freedoms of citizens. Measures are taken by the prosecutor to eliminate the deficiencies identified in the consideration of this category of cases in the proceedings. In addition to this, the prosecutor, in addition to the proceedings, has the right to eliminate these shortcomings. At such moments, the prosecutor may use the authority to submit a submission in accordance with the law of the Republic of Uzbekistan “on the prosecutor's Office”.

Article 40 of the law of the Republic of Uzbekistan “on the prosecutor's Office” provides the legal basis for the submission, which is one of the documents of the prosecutor's control. In which cases and in what order the prosecutor submits a submission, and the procedure for consideration of the submission by the relevant body or official is established.

That is, the prosecutor introduces a proposal to eliminate violations of the law, the reasons for its origin and the conditions that provide an opportunity for this to a body or official who has the powers to eliminate violations of the law.

The submission must be considered immediately and informed in writing to the prosecutor within a month of the measures taken.

In cases where the submission is considered by the collegial body, it is informed to the prosecutor about the day of the meeting, and he has the right to participate in the meeting.

The presence of the right of the prosecutor to apply to the court with an application for recognition of the participation of the prosecutor in the conduct of administrative proceedings as illegal in relation to a document contrary to the law.



In relation to a document contrary to the law, according to Article 38 of the law of the Republic of Uzbekistan “on the prosecutor's office”, the protest is brought by the prosecutor to the body or higher standing body that received this document. In relation to the illegal decision of the official, a protest is brought in the same order.

The Protest must be considered no later than the ten-day period from the time of its receipt. In exceptional cases where immediate elimination of the violation is required, the prosecutor has the right to establish a reduced term for consideration of the protest. The results of the protest review will be informed in writing to the prosecutor within a three-day period.

In cases where the Protest is considered by the collegial body, it is informed to the prosecutor about the day of the meeting, and he has the right to participate in the meeting.

In the event that the Protest is rejected by the body (official) or the higher standing body (official) that has adopted this document, as well as if the protest is not considered within the period established by law, the prosecutor has the right to apply to the court with an application for the recognition of this document as illegal. An application to the court can be submitted within one month from the moment of receipt of the notice of rejection of the protest or after the expiration of the period established by law for the consideration of the protest.

The filing of an application by the prosecutor in court suspends the validity of the protested document until the application is considered in court.

Until the establishment of administrative courts, the prosecutor submitted his application to the court for civil cases to recognize the legal document as illegal. Since June 1, 2017, the consideration of this type of application has been carried out by administrative courts.

The long experience of the Civil Court of consideration of applications of this type shows that in most cases the prosecutor has already appealed to the court to find them illegal even in relation to regulatory legal acts. There were several disputes about whether a legal document is meant by a normative legal act or not. If the prosecutor appealed to the court with an application to find the normative legal act also illegal, there was no solution to the questions of what order the higher standing bodies are in relation to the documents of the Cabinet of Ministers. We believe that the newly adopted Code of Administrative Proceedings of the Republic of Uzbekistan fully responded to this issue.

According to Article 27 of this code, only cases of dispute over departmental regulatory legal acts can now be considered in court. It follows from this that the prosecutor also has the authority to apply to the Administrative Court only on departmental regulatory legal acts to find them illegal.

We can find out which documents can be understood by the departmental regulatory legal act in the new edition of the Republic of Uzbekistan “on regulatory legal acts”, as well as in the decisions of the Cabinet of Ministers of the Republic of Uzbekistan dated October 9, 1997 No. 469 “on measures to ensure the legality of the normative acts of ministries, state committees and According to him, an departmental normative legal act is an official document adopted by the ministry, the state committee and the office in the manner prescribed by it, aimed at establishing, changing or canceling legal norms as universal state guidelines.

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