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# THE ROLE OF THE PROSECUTOR'S OFFICE IN THE SYSTEM OF STATE POWER

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## Abstract

This article examines the role and position of the prosecutor's office within the system of state power, highlighting its historical, functional, and structural characteristics across various legal systems. It explores diverse models of prosecution in different countries, emphasizing the unique features of the prosecutor's office in ensuring legality, overseeing the enforcement of laws, and maintaining a balance of power. The study classifies prosecutorial systems based on their integration within the executive, legislative, or judicial branches, as well as independent frameworks. Special attention is given to the prosecutorial system in Uzbekistan, analyzing its constitutional independence and its role in safeguarding legal order, democratic reforms, and human rights. The article underscores the importance of a centralized, politically neutral prosecutorial system to strengthen legality and maintain equilibrium among the branches of government.

**KEYWORDS:** Prosecution, state power, balance of power, legal system, state institutions, oversight, check and balances.

## INTRODUCTION

In every state's legal system, the prosecutor's office, or a structure performing its functions, is shaped by the state's and society's traditions of statehood and legal culture, mentality, socio-economic conditions, demography, geography, and other specific features. There is no universal approach globally to defining the status, powers, and functions of the prosecutor's office. The position of the prosecutor's office within the state system is determined by these factors and is subject to continuous improvement. Legal literature and the laws of foreign countries reflect a variety of scientific and theoretical perspectives on the place of prosecutorial bodies in the system of state power and governance. These perspectives demonstrate diversity, which is rooted in the

historical development, socio-economic complexity, and distinctive characteristics of the statehood and legal systems of various countries.

The prosecutorial system is characteristic of nearly all developed countries. Beyond its most general function of participation in criminal justice (representing the state in prosecution, ensuring investigations), the prosecutor's office also serves as a mechanism for ensuring the rule of law and restraining the executive branch. Despite their differences, countries such as Germany, France, the United States, the United Kingdom, Japan, and China maintain prosecutorial bodies that perform functions ranging from administering justice to overseeing the implementation of laws.

The prosecutor's office holds a special place in

nearly all advanced legal systems as an independent body with broad powers aimed at checks, balances, and oversight. Unlike other state bodies, it engages in extensive cooperation with both judicial and executive authorities. It is also worth noting that many scholars argue that the prosecutor's office should be "integrated" into the state system and operate in a manner that ensures the positive development of society and the state within the framework of cultural, economic, and legal evolution. The role of the prosecutor's office in the system of state institutions is primarily determined by the essence of its functions.

Scholars propose two main approaches to determining the models of prosecutorial bodies. One group of scholars classifies prosecutorial models based on their role in modern legal systems, while another group categorizes them according to their place in the system of state power.

Researchers T. Reshetnikova and M. Frolova analyzed the classification of prosecutorial models from the perspective of their role in modern legal systems. According to their findings, in countries with the Anglo-American model of prosecution, prosecutorial bodies historically emerged as legal departments of the government. In England and its former colonies, the development of the legal system and public relations necessitated the creation of a professional apparatus of public prosecutors, typically implemented in the form of the office of the Director of Public Prosecutions. Ensuring prosecution in court, including advising state bodies and protecting the fiscal interests of the treasury in civil disputes, has historically been one of the specific functions of public legal activity.

In the Romano-Germanic legal system, the institution of the prosecutor is often referred to as the "State Ministry," "Fiscal Department," or "Office of the State Advocate."

Unlike the Anglo-American model, in Continental European countries, the prosecutor not only conducts criminal prosecution but also oversees pretrial stages of the criminal process and supervises criminal investigations. For instance, in France, prosecutors oversee police investigations and preliminary inquiries, while in Italy, they

initiate criminal cases, conduct investigations, and supervise judicial police.

Both foreign and domestic scholars have studied the role of the prosecutor's office in the system of state power. Specifically, E. L. Nikitin and N. V. Kulik identify the following types of prosecutorial systems based on their functional essence:

1. Prosecution within the executive branch: The prosecutor's office operates as part of the executive branch and serves to fulfill its tasks (e.g., the United States, Poland, Japan). In these systems, the main function of the prosecutor's office is the implementation of criminal prosecution.

2. Prosecution subordinate to the legislative branch: The prosecutor's office is accountable to the parliament and serves to ensure legality.

3. Prosecution integrated within the judiciary: The prosecutor's office is organized within the judicial system and facilitates the administration of justice (e.g., the Netherlands, Spain, Italy, France).

4. Independent prosecution: The prosecutor's office operates independently of the legislative, executive, and judicial branches, working to strengthen legality (e.g., former Soviet states, China).

5. Nonexistent or delegated prosecution: The functions of the prosecutor's office are performed by other bodies, and a distinct prosecutorial institution is not established (e.g., Australia, Jamaica, the United Kingdom).

A. Mezheritsky, considering the peculiarities, functions, powers, significance, and normative regulation of prosecutorial bodies, classifies them into four groups:

1. Countries where the prosecutor's office is part of the judiciary (e.g., France, Germany, Japan, Belgium, Denmark, the Netherlands, Romania).

2. Countries where the prosecutor's office is integrated into the judicial system and operates under its supervision (e.g., Spain, Bulgaria, Finland, Brazil).

3. Countries where the prosecutor's office is accountable to the parliament and the head of state (e.g., China, Vietnam, North Korea).

4. Countries like England, where there is no separate prosecutor's office or analogous institution.

T. Reshetnikova and M. Frolova propose a similar classification and distinguish the following groups:

1. In the first group of countries (e.g., Denmark, Kyrgyzstan, Mexico, Norway, Slovenia, the Philippines, Sweden, Estonia, as well as the United States and other former British colonies), the prosecutor's office (or prosecutorial bodies) is classified as part of the executive branch.

2. In the second group of countries (e.g., Azerbaijan, Andorra, Bulgaria, Spain, Latvia, Moldova), prosecutorial functions are assigned to the judiciary.

3. In the third group (e.g., France, Germany, Belgium, Italy, the Netherlands, Romania), prosecutors are organizationally subordinate to the Ministry of Justice but are attached to the courts and operate as part of the judiciary. According to V. N. Dodonov, they occupy an intermediate position between the executive and judicial branches.

4. In the fourth group of countries (e.g., most CIS countries, Albania, Hungary, North Macedonia, Serbia, Slovakia, Croatia, several Latin American countries, former Portuguese colonies, Indonesia, Georgia), the prosecutor's office operates independently of any branch of power, occupying an autonomous position in the system of separation of powers.

E. L. Nikitin and N. V. Kulik emphasize the functions of the prosecutor's office when determining its model. Based on its assigned functions, they identify four models: oversight, prosecution, mixed oversight-prosecution, and mixed prosecution-oversight models.

Legal scholars from other CIS countries have expressed differing opinions about the prosecutor's role within the system of state bodies. For example, academician Nersesyants views the prosecutor's office as closer to the executive branch, while G. Chugulazov considers it part of the legislative system. Nevertheless, many legal scholars (e.g., E. Ryabova, O. Kutafin, S. Avakyan, A. Mytsykov, V. Koshlevsky) emphasize that the

prosecutor's office does not belong to any branch of power and underline its independence. Understanding the prosecutor's societal role and its independence from all branches of power is regarded as a significant achievement of modern state-building practices.

Another group of scholars interprets the prosecutor's office as a distinct part of the legislative branch. For instance, Uzbek scholar F. Nazarov advocates this view. According to V. Lomovsky, once laws are enacted, the supreme legislative authority cannot remain indifferent to their enforcement; thus, it retains the function of ensuring the unity of legality, which it carries out not only directly but also through the prosecutor's office. Continuing his argument, the scholar highlights that the prosecutor's office cannot fulfill its tasks in isolation and requires support. Furthermore, Lomovsky suggests that because the prosecutor's office must often oppose "powerful individuals," it should remain under the influence of the legislative branch.

The Uzbek researcher U. Abdualimov critically evaluates the aforementioned views, asserting that they are not entirely compatible with the national legal system. According to him:

1. The first group of scholars does not sufficiently address the activities of the prosecutor's office related to the enforcement of laws.

2. The second group of scholars, conversely, places excessive emphasis on this aspect while neglecting the functions of the prosecutor's office related to criminal prosecution and assisting in the administration of justice.

Expressing his stance on this matter, U. Abdualimov argues that the prosecutor's office should be considered an independent institution, not belonging to any branch of government. He justifies this view based on legal considerations and the historical essence of the prosecutor's office, which serves to ensure the supremacy of law and maintain a balanced relationship between the branches of government.

In the current context, state authorities are tasked with new challenges, such as: ensuring legality and legal order; implementing democratic and socio-

economic reforms; protecting human rights and freedoms reliably. The resources and capabilities of the prosecutor's office have been fully mobilized to achieve these goals by ensuring the unconditional enforcement of legislative acts aimed at these purposes.

Given that the prosecutorial systems of CIS countries have historically developed within a shared environment, the scientific community in this region generally emphasizes the following:

- The prosecutor's office should not belong to any branch of government;
- It must maintain independence and be free from political influence;
- It should serve as a centralized supervisory institution in a strongly centralized state system.

The Constitutional Position of the Prosecutor's Office in Uzbekistan Article 145 of the Constitution of the Republic of Uzbekistan establishes that the prosecutor's office: is independent of other state bodies, organizations, and officials; is an organ vested with broad powers.

However, the provision on independence alone is insufficient to fully prove that the prosecutor's office does not belong to any branch of government. For instance, the Constitution grants organizational independence to other state institutions, such as the bar association and the central bank, as well.

From our perspective, organizational independence and functioning within a specific branch of government are not mutually exclusive criteria. Furthermore, determining whether a state body, official, or organization belongs to a particular branch of government is often contentious. The evolution of governmental branches is based on their specific functions and the principles of separation of powers, checks and balances, and the limitation of absolute authority.

New institutions, such as the central bank or the prosecutor's office, which do not belong to any branch of government, are not required to be part of any branch, provided that they do not disrupt the balance of power. Similarly, T. Ashurbekov argues that regardless of departmental affiliation, the

prosecutor's office occupies an independent and unique position.

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