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# LEGAL STATUS OF THE PROSECUTOR'S OFFICE AS A STATE BODY

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## Abstract

This article explores the constitutional and legal status of the prosecutor's office in Uzbekistan, focusing on its independence and role in ensuring the rule of law. It examines the office's historical development, constitutional foundations, and unique powers, such as overseeing legal compliance and safeguarding constitutional legality. The article also highlights recent reforms that strengthen the prosecutor's role in maintaining a balance between state authority and individual rights, emphasizing its key function in upholding the nation's legal sovereignty.

**KEYWORDS:** Uzbekistan, prosecutor's office, constitutional status, rule of law, legal sovereignty, independence, legal compliance, state authority, legal reforms, constitutional legality.

## INTRODUCTION

On September 7, 1990, the "Guidelines on the Role of Prosecutors" were adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. These guidelines provide a detailed explanation of the legal status and primary functions of prosecutorial authorities in states. They also offer insight into the conceptual framework of how the prosecutorial system should be structured and its place within the state apparatus, making it a highly valuable document in this field.

According to the guidelines and scholarly literature, prosecutorial authorities must remain separate from the judiciary, support the institution of prosecution, investigate criminal cases in accordance with relevant legislation, oversee such investigations, and perform other functions that represent state interests as prescribed by law. These functions necessitate the prosecutorial

authorities' operation as independent entities with corresponding legal status.

Prosecutorial authorities protect public interests—namely, the interests of the state and society. Therefore, the status of prosecutorial authorities should enable them to defend these interests through any lawful means and before any instance. This underscores the requirement for prosecutorial authorities to have a legal status that ensures their independence from the judiciary and executive branches while allowing them to safeguard public interests in administrative and enforcement proceedings. This independent legal status enables the prosecutorial authorities to act as autonomous entities that can effectively protect public interests at all levels of the state system.

Based on the legal status of prosecutorial authorities and their place within the state apparatus, we have divided them into three

conditional groups, guided by theoretical perspectives and legislative practices: (1) judicial authorities, (2) executive authorities, and (3) independent oversight bodies with broader powers.

#### 1. Judicial Authorities.

In many legal systems, prosecutorial authorities are considered part of the judicial branch. More specifically, nearly all legal systems view the participation of prosecutorial authorities in judicial processes as fundamental and place significant emphasis on this role. Historically, in Europe, the formation of prosecutorial authorities has been closely tied to their participation in criminal proceedings as representatives of the state. Similarly, in the legal systems of the United States and England, prosecutorial authorities are regarded as part of the criminal justice system, operating independently from courts and law enforcement agencies.

The concept of prosecutorial authorities as judicial bodies is not necessarily linked to the judiciary itself but rather to the achievement of justice and the maintenance of the rule of law. This role primarily involves investigating criminal cases and defending the interests of the state and society in court, culminating in actions aimed at ensuring justice.

When examining the interaction between prosecutorial systems and judicial authorities abroad, two distinct models emerge:

1. Prosecutorial authorities are an integral part of the judicial system and operate within the structure of courts.

2. Prosecutorial authorities are separate state entities that engage with the judiciary exclusively through procedural interactions.

American scholar David Sklansky has differentiated prosecutorial authorities from both law enforcement agencies and courts. Unlike courts, prosecutorial authorities do not consider their decisions as final and are not required to justify them to the same extent as courts. Unlike police and other law enforcement agencies, prosecutors do not directly combat crime on a day-

to-day basis but focus on broader legal oversight and procedural functions.

Furthermore, the role of prosecutorial authorities in presenting state accusations and investigating crimes does not, in itself, determine their legal status or place within the state apparatus. In our view, this highlights that prosecutorial authorities, regardless of their position, must function as independent entities with sufficient authority to detect, investigate, and oversee other law enforcement activities to ensure justice. When prosecutorial authorities are viewed as independent entities responsible for justice, it is essential to note their extensive powers. In the United States, the prosecutorial system operates as an independent body responsible for ensuring criminal justice, with its authority recognized as exceptionally broad in both legal literature and judicial practice.

#### 2. Prosecutorial Authorities as Executive Bodies

Prosecutorial authorities are also viewed as executive bodies responsible for law enforcement, particularly in investigating legal violations, primarily criminal offenses. It has been noted in the legal practices and literature of many European countries that the activities of prosecutorial authorities as both judicial and executive bodies are not mutually exclusive. For example, in Germany, prosecutorial authorities are considered judicial bodies but operate within the executive branch as part of the Ministry of Justice.

In countries such as Germany (and Austria and Switzerland), France, the United States, and England, prosecutorial authorities have evolved as judicial bodies. Their primary role is to ensure justice through investigating criminal cases and presenting state accusations (public prosecutors). However, in terms of organization and activity, they are not part of the judicial system and operate independently from courts. In these countries, prosecutorial authorities occupy different positions within the state apparatus—being part of the judiciary in some cases and part of the executive branch in others.

#### 3. Prosecutorial Authorities as Independent Bodies

When prosecutorial authorities are granted

broader powers—such as ensuring state accusations in judicial proceedings, investigating crimes (or supervising investigations), and protecting public interests (state and societal interests)—they are often considered independent entities outside the framework of legislative, executive, or judicial power. This concept is evident in the legal status of prosecutorial authorities in countries like Portugal, Spain, and the CIS states. In the United States, prosecutorial authorities are also independent entities. However, their political dependence on state-level governance and their primary focus on criminal justice distinguish them from the prosecutorial systems described above.

Prosecutorial systems of this type are typically constructed and managed as unified and subordinate structures. Examples include the prosecutorial authorities in Uzbekistan, Russia, Japan, and Spain. A key characteristic shared by these systems is their independence, combined with their operation within a unified and hierarchical structure.

Another significant feature is the broad oversight powers of prosecutorial authorities, which fundamentally alter their interactions with executive bodies. Overseeing the legality of executive activities, which encompasses a wide range of functions, requires complex organizational structures and hierarchies, as well as specific powers and legal frameworks.

The historical evolution of prosecutorial authorities, as outlined in the previous paragraph of this study, demonstrates that in Uzbekistan (as in many CIS countries), prosecutorial authorities have historically developed as independent bodies, establishing a distinct legal tradition. Post-independence development of the prosecutorial system in Uzbekistan has followed this same trajectory, resulting in an independent system of prosecutorial authorities that are not part of any branch of government and whose primary function extends beyond judicial proceedings to broader oversight activities.

Many Uzbek legal scholars emphasize that national prosecutorial authorities do not belong to any branch of state power. For instance, Z. Islomov, in his study of prosecutorial functions, argued that by

their very nature, these functions cannot place prosecutorial authorities under either the legislative or executive branches of government. Similarly, M. Radjabova acknowledged the independence of prosecutorial authorities, considering that their oversight functions encompass all branches of government. G. Alimov, I. Jasimov, and U. Abdulolimov, along with other national legal scholars and researchers, have reached similar conclusions, affirming that prosecutorial authorities are independent entities that do not fall under any branch of state power.

The legislators of the Republic of Uzbekistan have also granted prosecutorial authorities constitutional status. Specifically, Chapter XXV of the Constitution of the Republic of Uzbekistan, titled “Prosecutor’s Office,” defines the primary tasks of prosecutorial authorities, as well as norms concerning the tenure, independence, and political neutrality of prosecutors.

The significance of granting constitutional status to the prosecutorial authorities of Uzbekistan lies in the fact that, through their constitutional and legal status, they are directly tasked with ensuring constitutional legality and protecting the rights and freedoms of individuals and citizens as supreme values. This status enables the prosecutorial authorities to participate in implementing the state’s legal policies and maintain a balance of interests among individuals, society, and the state while safeguarding this balance.

Article 1 of the Constitution of the Republic of Uzbekistan unequivocally establishes Uzbekistan as a sovereign, democratic, legal, social, and secular state. The essence of a legal state can be understood through the provisions of Article 15 of the Constitution. Specifically, this article recognizes the unconditional supremacy of the Constitution and laws of the Republic of Uzbekistan. It states that the Constitution of Uzbekistan possesses the highest legal force throughout the country, applies directly, and serves as the foundation of a unified legal framework. In our view, the most significant basis of state sovereignty is expressed in this unified legal framework. Article 16 of the Constitution stipulates that the laws and other normative legal acts of Uzbekistan must be adopted

based on and for the execution of the Constitution of the Republic of Uzbekistan. No law or other normative legal act may contradict the principles and norms of the Constitution. These constitutional norms, in our view, form the doctrinal foundation for the concept of constitutional legality within the country's legal system and serve as the legal basis for ensuring the rule of law in Uzbekistan. Moreover, the principles of the supremacy and direct applicability of constitutional provisions represent a critical criterion of constitutional legality. As stated in Article 15 of the Constitution: "The Constitution of the Republic of Uzbekistan has the highest legal force throughout the country, applies directly, and serves as the foundation of a unified legal framework."

Prosecutorial authorities occupy a special position within the mechanism for ensuring constitutional legality. One of their unique functions is to ensure the direct and effective application of laws across the entire territory of the country in the regulation of social relations. Article 143 of the Constitution of Uzbekistan explicitly assigns the responsibility for supervising the precise and uniform execution of laws throughout the territory of the Republic to the Prosecutor General of Uzbekistan and subordinate prosecutors. The constitutional status granted to prosecutorial oversight emphasizes their central role in ensuring constitutional legality. By their nature and responsibilities, prosecutorial authorities embody the essence of constitutional legality, ensuring that social relations throughout the nation are governed under the principles and norms of the Constitution.

It is important to note that in this context, prosecutorial authorities differ from other law enforcement and oversight institutions. According to F. Ota-khonov, the inclusion of a specific chapter in the Constitution dedicated to the prosecution indicates its unique constitutional and legal status within the state mechanism, as well as its high social standing. This also implies that, in contrast to other law enforcement agencies, the prosecutor's office is a constitutional body.

The primary purpose of granting prosecutorial authorities constitutional status is to ensure the rule of law in the country, strengthen legality,

protect the rights and freedoms of citizens, safeguard the legally protected interests of society and the state, and protect the constitutional order of the Republic of Uzbekistan. This process contributes to strengthening the sovereignty of the state, building a legal state, and achieving a balance of interests between individuals, society, and the state.

I. Jasimov emphasizes that the placement of prosecutorial authorities in a separate chapter of the Constitution signifies its role as a single state organ responsible for overseeing the precise and uniform implementation of laws. The high level of constitutional recognition granted to the prosecution has paved the way for effectively utilizing its powers and legal authority to strengthen state sovereignty and legality.

All of these elements create reliable conditions and foundations for the constitutionalization of the prosecution. They also reflect how deeply constitutional principles (constitutional values, principles, foundations, axioms, presumptions, definitions, etc.) have been embedded in the functional characteristics of prosecutorial activities.

Thus, the constitutional-legal status of the Prosecutor's Office of the Republic of Uzbekistan is characterized by the following key features:

1. The main duties of prosecutorial authorities, the terms of office of prosecutors, their independence, and political neutrality are secured by the Constitution of the Republic of Uzbekistan (Articles 143-145) and their activities are in accordance with constitutional norms and federal legislation. The name of Chapter XXV, titled "Prosecution," reflects the constitutional status of the prosecutor's office.

2. To implement the principles of a legal state and ensure the supremacy of the Constitution and laws, the Republic of Uzbekistan guarantees that laws are implemented accurately and uniformly across the country. The supervision of this process is carried out by the Prosecutor General of the Republic of Uzbekistan and subordinate prosecutors, as stipulated in Article 143 of the Constitution.

3. As a result of constitutional reforms in the country in 2023, the institution of appointing and dismissing the Prosecutor General was reformed. According to the reforms, the Prosecutor General is appointed by the President of the Republic of Uzbekistan after the approval of the Senate of the Supreme Assembly (Articles 95, 109). One individual may not hold the position of Prosecutor General for more than two consecutive terms (Article 144).

4. Article 98 of the Constitution of the Republic of Uzbekistan, which addresses the right to legislative initiative, grants the Prosecutor General the right to initiate legislation on matters within their authority. By exercising this right, the Prosecutor General serves as a constitutional guarantee for the development of the rule of law. The constitutional rule that the Prosecutor General participates in the sessions of the Legislative Chamber and Senate of the Supreme Assembly ensures effective cooperation with the parliamentary chambers.

5. The Prosecutor's Office of the Republic of Uzbekistan exercises its powers independently from other state bodies, organizations, and officials, strictly in accordance with the Constitution and laws of the Republic of Uzbekistan. Prosecutors suspend their membership in political parties and other public associations pursuing political goals during their term of office.

6. The exclusive right of the Senate of the Supreme Assembly of the Republic of Uzbekistan to hear the report of the Prosecutor General establishes a constitutional basis for effective parliamentary oversight over the prosecutor's office, which operates independently from other state authorities.

The unified constitutional status – the essence of the legal status of the prosecutor's office – encompasses, first, constitutional norms regarding prosecutorial activities, and second, it reinforces the powers of the prosecutor's office in performing the functions assigned by the Constitution of the Republic of Uzbekistan. This constitutional status is crucial for ensuring the effective functioning and independence of the prosecutor's office. According to V.Yu. Shobukhin, "The decision of Uzbekistan's

legislature to establish the norms regarding the Prosecutor's Office in a separate chapter of the country's Constitution is considered correct. The experience of regulating the establishment and activities of the Prosecutor's Office in the Republic of Uzbekistan is of particular importance both in terms of the constitutional-legal status of prosecutorial bodies and the study of their normative-legal foundations, as well as for learning from this experience in other countries."

The prosecutor's office, as a state body with a unified system, gains legal capacity from the moment it is established. Its legal capacity means the ability to have rights and obligations as a state organ and to perform activities within its jurisdiction. This legal capacity allows the prosecutor's office to exercise all the powers defined by law, which includes the right to engage in relationships with other state bodies, citizens, and other individuals.

Another important feature is the powers of the prosecutor's office, which define its unique legal status. The Constitution and laws grant the prosecutor's office a special status and specific powers. Based on these powers, the prosecutor's office serves as a unique body that helps ensure compliance with laws across all branches of government. No other body possesses such broad and diverse powers, such as assisting in judicial proceedings and overseeing the enforcement of laws by state bodies. These activities, which span across the judicial, executive, and legislative branches, highlight the prosecutor's office's critical role.

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