The procedural status of the prosecutor in criminal proceedings in the courts of first instance and issues of its improvement

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Recommended Citation
DOI: 10.24412/2181-1148-2020-4-1-9
Available at: https://uzjournals.edu.uz/rev_law/vol4/iss1/36

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THE PROCEDURAL STATUS OF THE PROSECUTOR IN CRIMINAL PROCEEDINGS IN THE COURTS OF FIRST INSTANCE AND ISSUES OF ITS IMPROVEMENT

Abstract: This article is devoted to the importance of improvement of the prosecutor’s powers in court proceedings at the time of ongoing judicial and legal reforms, prosecutor’s participation in court proceedings as a state representative generally supporting public accusation, as well as the impact of his knowledge, behavior, readiness for the trial, involvement in the examination of evidence and perceptions on the decision making stage, regarding the case. In addition, based on the observations on the functions, tasks and powers of the prosecutor attending the court proceedings as a public accuser, pragmatic recommendations and proposals are made for the improvement of the legislation, taking into account the foreign best practices.

Key words: judicial reform, Constitution, prosecutor, public prosecutor, functions, tasks, and powers, court of first instance, court trial, rights, obligations.

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ПРОЦЕССУАЛЬНЫЙ СТАТУС ПРОКУРОРА В УГОЛОВНОМ ПРОЦЕССЕ В СУДАХ ПЕРВОЙ ИНСТАНЦИИ И ВОПРОСЫ ЕГО СОВЕРШЕНСТВОВАНИЯ

Аннотация: в данной статье уделянительно внимание, в рамках проведения судебно-правовых reform, совершенствованию полномочий прокурора в судебных разбирательствах, поддержанию прокурором государственного обвинения в уголовном производстве, где прокурор представляется в качестве представителя государства, его знаниям, поведению, подготовке к процессу, участию в ходе проверки доказательств, от которых в большей степени зависит принятие решения по делу. Кроме того, в статье даны предложения по совершенствованию законодательства, исходя из анализа функций и полномочий прокурора, участвующего в судебном процессе, а также опыта зарубежных развитых стран.
Ключевые слова: судебно-правовые реформы, Конституция, прокурор, государственный обвинитель, функция, задача, полномочие, суд первой инстанции, судебный процесс, обязанность.

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БИРИНЧИ ИНСТАНЦИЯ СУДЛАРИДА ЖИНОЯТ ИШЛАРИНИ ЮРИТИШДА ПРОКУРОРНИНГ ПРОЦЕССУАЛ МАҚОМИ ВА УНИ ТАКОМИЛАШТИРИШ МАСАЛАЛАРИ

Аннотация: ушубу мақолада амалдаги суд-ҳуқуқ ислоҳотлари жараёнида суд муҳокамасида прокурорнинг ваколатларини такомиллаштириш алоҳида аҳамият касб этиши, жиноий суд ишлари ўқитувча давлат айболови айнан прокурорлар томонидан кувватланиб, бунда прокурор давлат вакиллари сифатида намоён бўлиши, унинг билим-савияси, ўзини тутиш, процессда тайёрлиги, далилларни текширишда иштироки, зийраклиги иш бўйича қандай қарор қабул қилинишига кўп жиҳатдан боғлиқли қилинган. Шунингдек, мақолада суд муҳокамасида иштирок этган прокурорнинг функцияси, вазифаси ва ваколатлари муҳокамада қилинган ҳақда ҳаракатий ривожланган давлатларийнинг тажрибаси таҳлил қилиниб, тегишли қонунчиликни такомиллаштириш юзасидан таклифлар берилган.

Калит сўзлар: суд-ҳуқуқ ислоҳотлари, Конституция, прокурор, давлат айболовчиси, функция, вазифика, ваколат, биринчи инстанция суди, суд жараёни, ҳуқуқ, мажбурият.

The wide range of reforms implemented in the country over the years of independence, principally, are based on the principle of ensuring rule of law and further reforming the judicial and legal system, reliable protection of citizens’ rights and freedoms, enhancing the effectiveness of fighting against crime and crime prevention systems, as well as creating conditions for full practice of adversary principle in courts.

In particular, the Decree № PF-4850 of the President of the Republic of Uzbekistan (dated October 21, 2016) “On measures to further reform the judicial system, to strengthen the guarantees of reliable protection of the rights and freedoms of citizens” [1] confirms our view.

Furthermore, the Strategy of Actions on the five priority directions of development of the Republic of Uzbekistan for 2017-2021 also identified the main directions of judicial and legal reforms, as well as improving the level of access to justice, ensuring genuine independence of the judiciary, and reliable protection of human rights and freedoms.

In the aforementioned judicial and legal reforms, the improvement of the prosecutor’s powers in court proceedings is of particular importance. This is because prosecutors generally support public accusation in criminal cases, and the prosecutor acts as a state representative. His knowledge, behavior, readiness for the trial, involvement in the examination of evidence and perceptions have a significant impact on the decision making stage regarding the case.

As the President of Uzbekistan Sh.M.Mirziyoyev noted, “Prosecutors should be exemplary employees of state bodies with high professionalism and high human qualities” [2].

Chapter XXIV of the Constitution of Uzbekistan focuses on the activities of the prosecution
bodies, and in accordance with article 118 [3], the General Prosecutor the Republic of Uzbekistan and the prosecutors subordinate to him supervise the strict and uniform observance of laws on the territory of the Republic of Uzbekistan.


The law contains a special section IV on the subject, which defines the powers of the prosecutor in courts. The powers of the prosecutor include participation in court proceedings, collection and recall of cases from the courts, appeal against court decisions, and modification, addition, recall of complaints and its general procedures. These rules apply to prosecutors participating in courts of all instances.

A comprehensive and complete legal framework for prosecutors’ powers in criminal proceedings is the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as CPC).

The CPC provides detailed description of prosecutor’s involvement and powers in all stages of criminal prosecution, including the courts at all stages. At this stage, the functions, tasks, and powers of the prosecutor are of particular importance.

Article 2 of the Law of the Republic of Uzbekistan “On the Prosecutor’s Office” [5] defines the main functions of the prosecution personnel, which includes ensuring the rule of law, strengthening the lawfulness, protection of the rights and freedoms of citizens, the legitimate interests of society and state, and prevention of crimes.

The law defines the functions of the prosecutor in accordance with the duties entrusted to him, and the functions, in a certain way, define the powers of the prosecutor.

The word function is derived from the Latin word “functio” which means “to carry out”, “to execute” [6].

The function of the prosecutor in the criminal procedure helps to determine his powers, role in the procedural mechanism, the distinctiveness from other participants in the proceedings.

The function of the prosecutor in pre-trial proceedings differs from the function (of the prosecutor) during court proceedings. While the prosecutor conducts supervision in pre-trial stage, in the course of the trial he participates as public accuser. Scholars have different approaches to this.

During the preliminary investigation the prosecutor shall conduct the prosecution (proving) by supervising the procedural activities of the investigation and inquiry agencies, and by supporting the public prosecution during the trial [7].

Yu.A.Avagimova believes that the function of the prosecutor at the pre-trial stage of the criminal procedure consists of supervision over the compliance with the requirements of the prosessual law in criminal prosecution by investigation and inquiry bodies. As in all developed countries, the function of the prosecutor in the examination of criminal cases is to act as public accuser in accordance with the Criminal Procedure Code(s) [8].

V.A.Lazareva noted that the proceedings in the court of first instance represent a completely different form of Criminal Procedure than the pre-trial process. Here the court rules while the prosecutor is one of the equal parties, who continues the persecution of criminal case initiated by the investigative bodies [9].

B.Kh.Pulatov believes that the prosecutor’s accusation (prosecution) function in the court of first instance differs from the accusation (prosecution) function at the stage of investigation, because the purpose of the prosecution function at the pre-trial stage is, under article 82 of the
CPC, to collect the evidence that prove the guilt of the accused. The function of accusation in examination of criminal case in court is, on the basis of the materials of the criminal case, collected during the preliminary investigation, directed to examine the guilt of the accused by submitting the evidence proving the commission of crime (guilt) of the (person participating in the proceedings as the) accused by the public prosecutor [10].

According to N.P.Kirillova, the prosecutor performs two functions during the trial - criminal prosecution and protection of human rights. Provision of public prosecution is a form of criminal prosecution, and the human rights function is manifested in the elimination (prevention) of the violation of substantive and procedural rights of the participants in the proceedings [11].

According to O.Madaliyev, the prosecutor at the same time prosecutes those who committed the crime while acting as a public accuser. An important and complex form of criminal prosecution is supporting of public prosecution in certain criminal cases and ensuring the lawfullness of court rulings [12].

We cannot agree with O.Madaliyev’s opinion – it is inconsistent with the law, as it is the court’s responsibility to ensure the lawfulness of the court decision.

In this regard, B.A.Tuganov believes that the prosecutor supports the public accusation on the trial, supervises over the provision of legality, and at the same time he confirms that conducting prosecution is not the duty of the prosecutor [13]. V.F.Kryukov [14] also supports the opinion that the prosecutor supervises over the legality of the court proceedings.

We cannot agree with B.A.Tuganov and V.F.Kryukov’s view that the prosecutor controls the legality of the trial.

Agreeing with B.Kh.Pulatov, V.A.Lazareva, N.P.Kirillova and Yu.A.Avagimova’s views, it is our opinion that if the prosecutor exercises supervision over pre-trial proceedings, in court he is one of the parties, supporting the accusation. Proceeding from the duties assigned to him, he promotes the legitimacy, validity, and fairness of judicial decisions through the mandate established by law, and strengthens the lawfulness, provides effective protection (facilitation) of the rule of law, the rights and freedoms of citizens, legitimate interests of society and the state.

Hence, the prosecutor does not oversee the court proceedings, but acts as a public accuser in the framework of his authority.

The chapter of the Constitution of the Republic of Uzbekistan dedicated to the Prosecutor’s Office contains a provision on the supervision function of the prosecutor but does not specify the function of the prosecutor in judicial proceedings.

Article 125 (paragraph 2) of the Constitution of the Republic of Belarus specifies that the prosecutor has the power to support the public accusation in courts in cases provided by law [15].

Article 129 of the Constitution of the Republic of Turkmenistan states that the prosecutor participates in consideration of cases in courts on the grounds and in the manner prescribed by law [16].


Scholars such as S.Shcherba, O.Zaitsev, T.Reshetnikova, according to the Constitution of the CIS states, divided functions of the prosecution bodies into three conditional groups.

The first group includes the Constitutions of the countries such as Belarus (article 125), Azerbaijan (article 133), Armenia (article 103), Kazakhstan (article 83), Moldova (article 124), and Kyrgyzstan (article 78), Turkmenistan (articles 110 and 111), and the Republic of Ukraine (article 121), which specify the main tasks and functions of the prosecution bodies.
The second group includes the Constitutions of the Republic of Tajikistan (article 93) and the Republic of Uzbekistan (article 118), where the main functions of the prosecution bodies are consolidated.

The third group includes the Constitution of the Russian Federation (article 129), which does not mention the functions and powers of the prosecutor’s office at all.

It has been noted as a summary that, the constitutions of the CIS countries are the basis and strong organizational factor in the lawmaking process. It is clear that, the Commonwealth countries which set out the goals and functions of the prosecution authorities at the constitutional level have chosen the right course, which has allowed them to develop special laws on prosecution bodies [19].

We believe that article 118 of the Constitution of Uzbekistan should strengthen the functions of the prosecutor in support of public accusation in court proceedings.

According to I.S.Kurishov, the powers of the prosecutor in criminal proceedings apply to all stages of the proceedings, but their nature and scope are different [20].

Indeed, the Criminal Procedure Code specifies particular rules for ensuring prosecutor’s powers in criminal courts of first instance. It is at this stage that the prosecutor appears as a public accuser. However, the legal documents do not define the concepts of the powers of the prosecutor – public accuser at this stage.

Before discussing the powers of the prosecutor – the public accuser, it is desirable to contemplate on the concept of court of first instance and production of criminal proceedings thereby. Nonetheless, the CCP and the Law on Courts of Uzbekistan do not give the legal meaning of these concepts.

However, article 5 (paragraph 52) [22] of the Criminal Procedure Code of the Russian Federation states that “first instance court - the court, examining a criminal case on the merits and legally authorized to pass the sentence and to take decisions in the course of the pre-trial procedure on a criminal case”.

According to article 6 (paragraph 22) of the Criminal Procedure Code of the Republic of Moldova, the court of first instance is a court that decides on the merits of the case as a result of direct consideration of the evidence with the participation of the parties [23].

In our opinion, these definitions do not cover all powers of the court of first instance.

Similar definitions are given in the relevant paragraphs of article 7 [24] of the CPC of the Republic of Kazakhstan and article 6 [25] of the CPC of the Republic of Belarus.

In our opinion, the court of first instance is a court authorized to send a criminal case on jurisdiction based on the requirements established by the CPC, to examine the case on the merits and to conduct a judicial investigation and to issue a judgment, decision, or ruling.

According to A.V.Grinenko and O.V.Khimicheva, the trial of the first instance court is a central stage in criminal proceedings, within which a criminal case is considered and a decision is made [26].

A.V.Grinenko and O.V.Khimicheva commented only on the trial of the first instance court. It should be taken into account that proceedings in the first instance court mean more than that.

Accordingly, in our opinion, production of criminal proceedings in the courts of the first instance includes examining the case on the merits (from the day of receipt of the case by the court), making decisions on the results of the case, directing the decision to execution, filing and forwarding the case to a higher court.
The prosecutor participates in the first instance court proceedings at examination of the case on the merits, in giving opinion on the result of the examination, and giving opinion regarding the issued decision.

The word “prosecutor” is derived from Latin “procurare”, which means “caring” (in English – public prosecutor, public procurator, in French - procureur) and is a responsible official of the prosecutor’s office [27].

Under the term “personnel of the prosecution bodies” in section 7 of the Law of Uzbekistan “On Prosecutor’s Office” [28], can be implied all employees of the prosecution bodies and institutions having rank (military ranks) as well as interns at the prosecutor’s office.

The word “authority” is derived from the Latin word sompetentio competo, which means, “I will achieve”, “I deserve”, “I am the appropriate person”, and carries a set of legal powers, rights and obligations that determine the role of a particular public body (local self-government body) or official in the system of state bodies [29].

In our opinion, the powers of the prosecutor in criminal cases in the courts of first instance are the set of his rights and obligations established by law.

Article 34 of the CPC is a general norm that establishes the powers of the prosecutor in criminal proceedings. Part 2 of this article provides that a prosecutor participates in a court hearing and exercises authority under article 409 of this Code.

Article 409 of the CPC states the requirements for the participation of the prosecutor in criminal proceedings (trial) in the court of first instance. According to it, the prosecutor participating in consideration of criminal cases in courts of first instance shall carry out prosecution; participate in examination of evidence; question the defendants, victims, witnesses, forensic examiners and other persons called to the hearing; express his opinion on the application of Criminal Code provisions, classification of the actions of the defendant, his sentencing, and on other issues to be considered by the court; express his opinion on the reasons and circumstances that favored to committing the crime, and on measures to eliminate them and the authority to file a claim and support a civil lawsuit.

The mentioned norm sets out the powers of the prosecutor to participate in criminal cases. Other powers provided for in Section IV of the Law of the Republic of Uzbekistan “On Prosecutor’s Office” [30] such as calling (demanding) the cases from the court, filing appeals against court decisions, changing, supplementing and calling the appeals are enshrined in other articles of the CPC.

It appears that article 34 of the CPC does not fully define the powers of the prosecutor in the trial.

In particular, article 34 of the CPC of the Republic of Belarus states that the prosecutor within the limits of his authority shall support the prosecution and also states his rights and obligations [31].


In our view, it is necessary to revise the powers of the prosecutor participating in court proceedings under article 34 of the CPC, to fill in the gaps and to determine the rights and obligations.

One of the main powers of the prosecutor in criminal cases in the courts of first instance is to support the public accusation as a public prosecutor.
The prosecutor has broad powers at all stages of criminal proceedings, and in particular, at the stage of trial, acts as an official supporting the accusation on behalf of the state [34].

In some countries, the Criminal Procedure Code defines the concept of public accuser. However, although the term public accuser is used in the national law, it is not clear what the essence of the phrase is, and at what stages of the judicial proceedings it is used. For example, article 409 of the CPC defines the term prosecutor in two ways: he acts as a public accuser in the courts of first instance and as a prosecutor at the stages of high courts.

Therefore, in our view, it is advisable to define the term public accuser in the CPC and in this way concretize the status of public accuser at the stages of court proceedings.

According to V.A. Lazareva, the public prosecutor is the official supporting the public accusation on behalf of the state, as provided in article 5 of the Criminal Procedure Code of the Russian Federation [35].

The Criminal Procedure Code of the Republic of Belarus states that (article 6, paragraph 3) public accuser is a public prosecutor who supports the public accusation and conducts other procedural actions when considering a criminal case by the court of first instance [36]. Similarly article 5 [37] of the CPC of the Kyrgyz Republic defines the term public accuser.

In some countries, the definition of the public accusation is clarified by explaining the concept of public accuser. In particular, article 7 (paragraph 28) of the Criminal Procedure Code of the Republic of Kazakhstan state that public accusation is prosecutor’s procedural activity directed to prove the guilt of the person who committed a crime in order to prosecute in the first instance and appellate courts [38]. Article 3 [39] of the CPC of the Republic of Ukraine also offers similar description.

Article 6 (paragraph 37) of the Criminal Procedure Code of the Republic of Moldova defines public accuser by defining the term prosecutor. That is, the prosecutor is an officer appointed in the manner prescribed by law to prosecute or to lead the prosecution, as well as to support public accusation in court on behalf of the state [40].

In our opinion, the term public accuser should be defined with a more accurate approach. Because, the procedural status of the prosecutor in criminal proceedings is not the same (in all stages). Also, in the legislations of abovementioned countries, the notion of a public accuser has been interpreted as an official supporting the public accusation.

In our opinion, public accuser is a government official who, at some stages of the court, supports public accusation under legal powers prescribed by law, and, in accordance with the functions assigned to him, by securing human rights and interests, promotes (assists) legal, justified, and equitable court decisions.

To conclude, it is necessary to fill the CPC with an article called ‘the terms’ and add the above concepts and definitions. In addition, the article also provides recommendations for improving the legislation, defining the procedural status of the prosecutor in court proceedings, systematizing its powers and enhancing its effectiveness, and filling the gaps in the legislation.
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