



COOPERATION AND ACCOUNTABILITY OF THE PROSECUTOR'S OFFICE OF THE REPUBLIC OF UZBEKISTAN TO PARLIAMENT: PARLIAMENTARY PROCEDURES IN SERVICE OF DEMOCRACY

G.R. Malikova, Doctor of Legal Sciences, Professor at The Academy of the General Prosecutor's Office of the Republic of Uzbekistan

***Annotation.** The article examines the relations between the prosecution authorities and the Chambers of the Parliament of the Republic of Uzbekistan. The author analyzes the current relationship with the perspective of parliamentary procedures.*

Key words: *Oliy Majlis, legislative initiative, Prosecutor General, reporting, checks and balances, Supreme Court, European standards*

E-mail: pmmalikova@gmail.com

The necessity for mutual relations between the Prosecutor's Office and the Parliament

The rule of law is ensured in a democratic society through a fair, impartial and effective administration of justice. This type of administration of justice requires independent and impartial judges and prosecutors who ensure the preservation of individual rights and freedoms as well as the maintenance of public order¹. Regardless of how different prosecutors' systems are in different countries, they all have one element in common. Prosecutors must make decisions independently and carry out their responsibilities free of outside pressure or intervention, while adhering to the principles of separation of powers and accountability². As the President of the Republic of Uzbekistan Sh. Mirziyoyev rightly noted: "Our people can endure any difficulties, but they will not tolerate injustice"³. In this regard, the essence of the mission for prosecutors is to ensure social justice and the rule of law.

In particular, the National Action Strategy on Five Priority Development Areas 2017-2021 was adopted (February 7, 2017) at the initiative of the President, which sets outlines the priority areas for ensuring the rule of law and further reforming the judicial and legal systems. The document entrusted the prosecution bodies with a tremendous deal of responsibility for ensuring that human and civil rights and freedoms be protected. Since this is the only way to combat such serious social

¹ Needs Assessment Report. Strengthening the functional independence of prosecutors in the Eastern European participating States. // OSCE / ODIHR. 2018.p.5.

² Opinion No. 9 of the Consultative Council of European Prosecutors (CEP) for submission to the Committee of Ministers of the Council of Europe "On European norms and principles concerning prosecutors". Strasbourg, 17 December 2014 Roman Charter, paragraphs IV and V.

³ Speech of the President of the Republic of Uzbekistan Sh.M. Mirziyoyev at a solemn meeting dedicated to the Day of the employees of the Prosecutor's Office. 2017, January 7.

threats as corruption, organized crime, terrorism, etc. Only in this way can prosecutors promote the independence of the entire justice system by prosecuting instances of undue interference with the independence of the judiciary. However, it is here where researchers dispute the status of the prosecutor's office outside of the criminal justice system. After all, the defense of public interests and the rule of law are impossible to envision without the prosecution's cooperation with other government agencies. As the nature cannot tolerate emptiness, interaction is an essential component of any physical process.

Extrapolating the preceding to the sphere of legal relations, it is reasonable in this context to address the question of interaction of the Prosecutor's Office with the Oliy Majlis - the Parliament of the Republic of Uzbekistan. The Parliament's mission is to resolve the society's potential for conflict, to make decisions considering the diverse opinions of the political forces represented in parliament to find the solution that will satisfy every member of society⁴. Its cooperation with the Prosecutor's Office has a positive impact on each party, which leads to the ordering of links and unification in each type of integrity to reach the intended result. So, what are the current connections between these structures? Let's take a closer look at them.

Participation of the Prosecutor's Office at the sessions of the Chambers of the Parliament

Pursuant to Article 81 of the Constitution of the Republic of Uzbekistan, the Prosecutor General has the right to attend sittings of the Legislative Chamber and the Senate of the Oliy Majlis, as well as at sittings of their bodies.

Why did the legislator establish this norm?

⁴ A.S. Koshel. Power of the opposition: parliamentary procedures in the service of democracy (in the context of the strengthening of the role of parliament and political parties in connection with the amendments to the Constitution of the Russian Federation). // Constitutional and municipal law. No. 10. 2020.p.55.

At the sittings of the Chambers of the Oliy Majlis, a variety of subjects are frequently discussed, all of which in one way or another is related to the activities of the prosecution bodies, the performance of the responsibilities allocated to it, and assuring compliance with specific laws and decrees. On the one hand, the review of the relevant legislative acts, bills (Fundamentals of Legislation, Codes, etc.), reports, co-reports and speeches contain the necessary analysis of certain aspects of the activities of the prosecution bodies, in addition to some criticisms and wishes expressed in their address. On the other hand, at these meetings, prosecutors - leaders deliver a speech, which is prepared by assessing the relevant acts considering the law enforcement practice and make proposals for improving the legislation. Simultaneously, prosecutors' attendance at meetings aims to gain firsthand information on the procedure and course of evaluation of problems in the preparation of which the prosecution authorities were involved.

It should be noted that the activities of the prosecution bodies in one way or another encounter the committees and commissions of the Chambers of the Oliy Majlis. The Prosecutor's Office generally interact with structures under the Legislative Chamber such as:

- *Committee on Judicial-Legal Issues and Anti-Corruption*
- *Committee on Democratic Institutions, NGOs and Civil*
- *Self-government Institutes*
- *Defense and Security Committee*

Regarding the Senate of the Oliy Majlis, the Prosecutor's Office commonly interacts with the Committee on Judicial-Legal Reforms and Combating Corruption.

The control and analytical activities of the Committees of the Chambers of Parliament tasked with examining the execution of a particular law, in most cases,

assign specific responsibilities to the prosecutor's office on matters of prosecutorial supervision identified in the process of studying the implementation.

In addition, according to Article 49 of the Regulation of the Legislative Chamber of the Oliy Majlis, "expert groups are formed under the committees to assist in the formulation and discussion of bills, preparation and implementation of control and analytical measures". The identical rule can be found in Article 198⁷ of the Regulation of the Senate of the Oliy Majlis. Many qualified specialists of the prosecutor's office serve as acting experts in the aforementioned committees, which are formed for the period of the activities of the chambers of parliament.

It should be noted that the prosecution bodies, due to the specifics of its state and legal status in the system of public authorities, oversees nearly all areas of relations while ensuring conformity with national legislation. This is evidenced by the Presidential Decree "On strengthening the role of prosecutors in the implementation of socio-economic reforms and modernization of the country, ensuring reliable protection of human rights and freedoms", which instructed the prosecution bodies with a mission to rigorously implement programs for the integrated socio-economic development of territories, identify and eliminate factors and systemic shortcomings that hinder the ongoing reforms. What was the point of it all? Perhaps the developers believed that state authorities and administration needed to work together on this. After all, the prosecution bodies are aware of not only the application of laws, but also the state of legal regulation, allowing it to identify specific concerns that require legislative regulation or legal acts that need to be amended. Thus, the Prosecutor's Office submitted as part of its control and analytical efforts to the Oliy Majlis 17 reports for the period of 2020, and 25 reports for the six-month period of 2021⁵.

The right to initiative legislation

⁵ From the official reports of the prosecution bodies.

Pursuant to Article 83 of the Constitution of the Republic of Uzbekistan, the Prosecutor General is vested the right to initiative legislation.

What is the goal pursued by this norm?

- First, ensuring the unity of legal policy implemented by the Prosecutor General's Office of the Republic of Uzbekistan.
- Second, participation in the formation of normative legal acts that provide a decent level of legal regulation of public relations.
- Third, reducing the influence of departmental interests that run counter to the needs of society and the state.
- Fourth, counteraction to the lobbying of the interests of structures associated with criminal circles by participants in law-making activities.
- Fifth, ensuring national security.
- Sixth, protection of human and civil rights and freedoms.
- Seventh, increasing the level of work on the systematization of legislation.

The truth is that the prosecutor's office is now a full-fledged subject in the legislative process. So, for the period 2019-2021, using the right of legislative initiative, the Prosecutor General introduced 25 bills to the Legislative Chamber of the Oliy Majlis, which were adopted by the Legislative Chamber and transmitted to the Senate. During the time period under consideration, every one of the Prosecutor General's *legislation initiatives were accepted*⁶. Here are a few illustrations:

1) The Law of the Republic of Uzbekistan "On amendments and additions to the Criminal Procedure Code of the Republic of Uzbekistan, aimed at strengthening the protection of the rights and freedoms of citizens participating in criminal proceedings".

⁶ Response of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan dated July 23, 2021, No. 03/1 - 3827 to the official request of the Academy of the Prosecutor General's Office of the Republic of Uzbekistan dated July 13, 2021.

2) “On amendments and additions to the Criminal Code of the Republic of Uzbekistan regarding animal abuse”, etc.

The Prosecutor’s Office takes the 4th place in the list of bill nominations by subjects of legislative initiative for the period of 2019-2021:

№	Subjects of legislative initiative	2019	2020	2021 (6 months)
1.	The President of the Republic of Uzbekistan	17	5	4
2.	The Executive body	97	84	46
3.	The Legislative Chamber	19	12	6
4.	<i>The Prosecutor General</i>	<i>11</i>	<i>6</i>	<i>8</i>
5.	The Constitutional Court	1	1	
6.	The Supreme Court	4	10	5
Total:		149	118	69

The Presidential Resolution “On measures to further improve the system for the prevention of offenses and the fight against crime” was adopted, On March 14, 2017, according to which, a Department for the Analysis of Problems of Ensuring Legality and Law Enforcement was created in the structure of the Prosecutor General’s Office. Some of the functions of this Department include developing proposals to further improve legislation and law enforcement practice, preventing and eliminating violations of legislation, as well as the facts of arbitrary, subjective, selective interpretation of legal norms, improving the activities of state bodies and organizations.

Participation of the prosecutor's office in lawmaking is also important for *prevention*, as it often aids in the elimination of potential legal infractions during the preparation and consideration of a regulatory legal act⁷.

The Law of the Republic of Uzbekistan “On the procedure for preparing draft laws and their submission to the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan” establishes certain requirements for bills (draft laws) such as considering the principles and norms of the Constitution and laws of the Republic of Uzbekistan, as well as international agreements of the state. When developing a legislative strategy, the legislator does not find it necessary to study the history and traditions regarding the subject of the bill⁸; on the contrary, it gives great priority to studying the experience of foreign countries in this matter. The legislator fails to consider the differences in the organizational form and functions of the model of the prosecutor's offices. As a result, authorities, and deputies, as well as citizens, have a legal nihilism, and there are ongoing disagreements over the unwillingness to oversee the application of laws. One cannot make a law by plucking one element from one legal family and another from another and putting them together in a legislative strategy, without studying the history of the subject. The President of the Republic of Uzbekistan Sh. Mirziyoyev has emphasized the importance of learning from the history on numerous occasions. So, at a solemn ceremony commemorating Uzbekistan's 30th anniversary of independence, the president of our country stated, “Those who draw strength from their historical achievements and victories, as well as those who draw conclusions and learn from their mistakes and defeats, will be able to correctly determine their path and your future”. Recent changes in the legal system, such as initiatives to reinforce national statehood and the creation of a single legal space, show the soundness of these beliefs. At the

⁷ В.Г.Бессарабов. Участие прокуратуры и прокуроров в правотворческой деятельности (становление, состояние, перспективы). // Актуальные проблемы прокурорской деятельности. Курс лекций. М.2018. С.148.

⁸ On amendments to the Law of the Republic of Uzbekistan “On the Prosecutor's Office” of the Republic of Uzbekistan in connection with improving the participation of the prosecutor in court proceedings. // regulation.gov.uz/ru/document/1675

same time, we must remember that the legal systems of European countries, as well as the rest of the globe, do not have a consistent status. And, without understanding the history of the prosecutor's office, assertions regarding certain of its organizational standards are at the very least erroneous.

Existing international legal agreements, most notably the Convention for the Protection of Human Rights and Fundamental Freedoms, encourage each country (I emphasize, each country) to strive in its own way to achieve what can only be conditionally called a common European standard.

The system of “checks and balances” between the Prosecutor’s Office and the Parliament

One of the interesting factors in the legislation regulating the issues of interactions between the Prosecutor's Office and the Parliament is the standard established by the lawmaker regarding the principle of checks and balances. Even though this principle is one of the constituent aspects of the separation of powers principle (and the prosecutor's office is not part of any of the departments of government), the legislator was still able to draw a red thread between these constitutional bodies.

To understand the essence of checks and balances, one should define the basic understanding of the terms “checks” and “balances”. The direct interpretation of “checks” is a deterrence from any action, that is, it is such a power that thanks to which the authority will not be able to carry out certain actions. As for the “balances”, it means to oppose, and it is such a power (response to an action, decision) that the authority has the right to exercise in cases specified by law. As a result, some powers act as checks, while others act as balances⁹. In reality, a single

⁹ A.A. Zdorovtseva, K.A. Zueva. The system of checks and balances as a direct element of the principle of separation of powers. // Electronic scientific publication. 2013.p.1182.

authority can serve as a check on one branch of government while also acting as a counterweight to another.

Examples:

Checks and balances mechanism

Checks	Balances
<i>Senate Commission for Control over the Activities of the Prosecutor's Office</i>	
For the prosecutor's office	For the Senate
<i>Approval of the Decree of the President of the Republic of Uzbekistan on the appointment and dismissal of the Prosecutor General from office</i>	
For the prosecutor's office	For the Senate
<i>Supervision over the implementation of laws ... by khokims and other officials</i>	
For the Senate	For the prosecutor's office
<i>Prosecutor General's Proposal on Deprivation of Immunity of a Senate Member</i>	
For the Senate	For the prosecutor's office
<i>Report of the Prosecutor General to the Senate</i>	
For the prosecutor's office	For the Senate
<i>Parliamentary inquiry (request) to the Prosecutor General</i>	
For the prosecutor's office	For the Senate
<i>Senator's request to the prosecution authorities</i>	
For the prosecutor's office	For the Senate

Detailed overview:

There is a Commission at the Senate of the Oliy Majlis which monitors the activities of the prosecution bodies. Article 328 of the Law of the Republic of Uzbekistan, titled “On the Regulation of the Senate of the Oliy Majlis of the Republic of Uzbekistan”, governs its activities. On March 3, 2016, this Commission was established. The Commission was entrusted with the tasks of exercising systemic parliamentary control over the activities of the prosecution bodies. The Senate passed a Regulation to regulate its activities. The Commission has the following responsibilities:

- examines the systematic and unconditional implementation by the prosecution bodies of the principles, provisions and tasks approved in the Law “On the Prosecutor’s Office”;
- examines on site the effectiveness of the tasks and functions assigned to the prosecutor’s office, makes analysis of the problems that arise in their activities;
- develops proposals to eliminate the causes and conditions that contribute to systemic deficiencies and violations of the law in the activities of the prosecution bodies¹⁰, etc.

The Commission is not entitled to:

- study the course of consideration and resolution of specific cases and materials of inspections, audits, inquiries, and preliminary investigations, administrative, criminal, civil and economic cases;
- intervene in the conduct of operational-search activities, including requesting information and materials from the operational-search production;
- consider on the merits of the appeal of legal entities and individuals, except for proposals to improve legislation and the activities of the prosecutor's office.

¹⁰ www.senat.uz // Powers of the Commission for monitoring the activities of the Prosecutor’s Office.

What is aimed by establishing these norms in the Regulation?

Prosecutors' ability to make decisions freely and without political interference should enable them to prosecute effectively and objectively in all types of criminal cases, including high-profile and complex ones, providing access to justice and fairness of proceedings.

Several sessions were held by the Senate Commission for control over the activities of the prosecutor's office during its tenure. The Commission's agenda at one of the meetings included the issue of the review of the workload of the prosecution bodies. The situation was investigated further with a visit to the regional prosecutor's offices in the Republic of Karakalpakstan, Namangan, Fergana, Surkhandarya, and Jizzakh¹¹.

What was the point of having this discussion?

Because the prosecutor's office is entrusted with more significant and large-scale activities, the demands on personnel have increased. As a result, the volume of work has increased significantly, prompting a reassessment of staffing roles in order to improve the quality, efficiency, and effectiveness of prosecutorial supervision.

At the meeting, based on an analysis of the workload of the prosecution bodies and the Department for Combating Tax, Currency Crimes, and Money Laundering (under the General Prosecutor's Office of the Republic of Uzbekistan), the members of the Commission proposed reducing 194 staff members from the divisions with a relatively smaller amount of work and transferring relevant workload to divisions with the least amount of work. Following the meeting, an

¹¹ From the materials of the meetings of the Senate Commission of the Oliy Majlis of the Republic of Uzbekistan. An official letter forwarded by the General Prosecutor's Office of the Republic of Uzbekistan dated May 29, 2018 30 / 16-19-1327 to the Senate of the Oliy Majlis of the Republic of Uzbekistan.

appropriate resolution was reached and forwarded to the Prosecutor General's Office¹².

At the Commission's most recent meeting on December 2, 2020, the laws of the Republic of Uzbekistan "On the protection of citizens' health" in the Surkhandarya region and "Guarantees of freedom of entrepreneurial activity"¹³ during a pandemic in the Khorezm region were discussed and relevant resolutions were adopted in light of these conditions. Thus, the dialogue within the framework of the Commission's activities continues.

The Prosecutor General supervises the accurate and uniform implementation of laws on the territory of the Republic of Uzbekistan, pursuant to the Article 1 (part 2) of the Law of the Republic of Uzbekistan "On the Prosecutor's Office". In addition, the prosecutor's office supervises the implementation of laws by ministries, state committees, departments, ... khokims and other officials, according to Article 4 of this Law. Given that the khokims are members of the Senate of the Oliy Majlis, with the authority to approve the Presidential Decree on the appointment and dismissal of the Prosecutor General, the principle of checks and balances in the supervisory work of the prosecutor's office is a direct element of restraining the executive power, and indirectly the legislative power.

Furthermore, the Constitution of the Republic of Uzbekistan specifies a regulation (clause 2 of article 79, clause 11 of article 80) that the Prosecutor General is entitled to submit a proposal to deprive of immunity a deputy of the Legislative Chamber and a member of the Senate. Clause 1 of Article 221 of the Criminal Procedure Code of the Republic of Uzbekistan provides a counterbalance to this rule, stating that deputies and members of the Senate of the Oliy Majlis of the

¹² From the materials of the meetings of the Senate Commission of the Oliy Majlis of the Republic of Uzbekistan. An official letter forwarded by the General Prosecutor's Office of the Republic of Uzbekistan dated May 29, 2018 30 / 16-19-1327 to the Senate of the Oliy Majlis of the Republic of Uzbekistan.

¹³ <https://senat.uz/ru/lists/view/2888>

Republic of Uzbekistan may be detained and do not enjoy immunity if they are caught while committing a crime or immediately after committing it.

Reports of the Prosecutor General

In Article 80 (paragraph 12) of the Constitution of the Republic of Uzbekistan establishes the rule that the Senate has the right to hear the Prosecutor General's report (In principle, this function was historically present in the activities of the prosecutor's office. On October 31, 1922, in the Regulation "On the State Prosecutor's Office" adopted by the TurkCIK (legislative body), paragraph 14 introduced such a norm). Article 5 of the Law of the Republic of Uzbekistan "On Parliamentary Control" establishes the reporting of the Prosecutor General as one of the forms of parliamentary control. The exact reporting period is determined in accordance with the Resolution of the Kengash of the Oliy Majlis of the Republic of Uzbekistan "On approval of the procedure for consideration by the Senate of the Oliy Majlis of the Republic of Uzbekistan the annual report of the Prosecutor General of the Republic of Uzbekistan and information of the Minister of Justice of the Republic of Uzbekistan on the state of implementation of laws by government bodies, law enforcement agencies and regulatory structures". Thus, the report of the General Prosecutor is due submission to the Senate *not later than February 1 annually*. The Senate adopts a resolution based on the report results, which is subject to mandatory review and implementation respectively by the Prosecutor General's office if it concerns their activities.

What is the purpose of reporting?

The reporting of the Prosecutor General to the Senate is a form of interaction between these bodies. Here all we want is a constructive dialogue, not a re-education.

The fact that all Senate plenary meetings are streamed live online is a positive development in the Senate's activities. The Prosecutor General's report, as well as the questions posed, are streamed live.

Senator requests

Pursuant to Article 32⁶ of the Law of the Republic of Uzbekistan "On the Regulation of the Senate of the Oliy Majlis", Senate Committees, as well as senators, can request documents, expert opinions, statistical and other data from state bodies and other organizations, and officials. For instance, Senator Kh.G. Fazylov sent a request to the prosecutor of the Kashkadarya region, E.A. Tajiev¹⁴, on May 4, 2020, regarding the illegal termination of an employment contract in the Kashkadarya region. After studying the case materials, the prosecutor's office of the Kashkadarya region responded to Senator Kh.G. Fazylov within the time frame established by law. Accordingly, there is a practice of sending parliamentary inquiries to the prosecution bodies.

The Prosecutor's Office and Representative Authority

Regarding the control powers at the regional and local levels, Article 5 of the Law "On the Prosecutor's Office" specifies the rule that "Prosecutors of the Republic of Karakalpakstan, regions, the city of Tashkent, districts and cities:

- annually submit, respectively, to the Jokargy Kenes (legislative body) of the Republic of Karakalpakstan, Kengashes of people's deputies a report on their activities".

¹⁴ <https://senat.uz/ru/lists/view/2888>

Prosecutors' reports were heard in the following quantity at meetings of legislative and representative bodies to establish public control mechanisms and ensure the openness of the prosecutor's office's actions for 2020¹⁵:

- Jokargy Kenes of the Republic of Karakalpakstan - 4;
- regional and Tashkent city Kengash - 30;
- regional Kengash of people's deputies - 534.
- For the six-month period of 2021 in the context of the republic:
- Jokargy Kenes of the Republic of Karakalpakstan - 3;
- regional and Tashkent city Kengash - 19;
- regional Kengash of people's deputies - 252.

What do these figures mean?

First and foremost, that the prosecution authorities are diligently carrying out their duty to report to the authorities about the state of lawfulness in society.

Conclusions

According to the British, democracy is first and foremost a procedure. In the interaction between the Parliament and the Prosecutor's Office, national practice reveals a dynamic change in the value system in terms of parliamentary proceedings.

Modern studies reveal that there are no common standards for the establishment and operation of relations between the Parliament and the Prosecutor's Office, as the functions of the prosecution bodies vary based on which legal family they belong to. However, the lawmaker should keep in mind that any attempts to construct a domestic Prosecutor's Office exclusively on the basis of Western countries' experience are bound to fail.

¹⁵ From the official reports of the prosecution bodies

