

## Constitutional Foundations of the Prosecutor's Office in Countries with a Social State Model: Foreign Experience and National Practice

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### ABSTRACT

In the article, the author compares the system of the prosecutor's office established in the rules and norms of the Constitution of the Republic of Uzbekistan in some countries where the Romano-Germanic or continental "legal family" system is in force, i.e. France, Spain, the Republic of Italy, the rules and norms of the Constitution of the Federal Republic of Germany. was analyzed.

In the state law of Uzbekistan, three legal theories were directly reflected: separation of powers, sovereign, democratic state, now the state law of Uzbekistan is separation of powers, sovereign, democratic, legal, social and secular state based on five legal theories.

The special features of the social state in Uzbekistan are established in the main law of the state and legislative documents in the following manner:

- specific aspects of the state system are reflected in the basic law;
- strengthening of state sovereignty;
- its reflection in the law and electoral system;
- the system of state power is based on the principle of separation of powers;
- strengthened by the guarantee of socio-economic rights.

Article 1 of the first chapter of the Constitution of the Republic of Uzbekistan (new edition), which strengthens state sovereignty, states that Uzbekistan is a sovereign, democratic, legal, social and secular state with a republican form of government 1.

The norms and rules regulating the prosecution system in the Constitution of the Republic of Uzbekistan differ sharply from the prosecution system established in the Constitution of some countries where the Romano-Germanic or continental "legal family" system is in effect, that is, the Republic of France, the Kingdom of Spain, the Republic of Italy, and the Federal Republic of Germany.

**In France**, the prosecutor's office is part of the executive branch.

According to the sixth part of Article 65 of the Constitution of the Republic of France, which is a product of holism political and legal ideas, which was approved in a referendum on September 28, 1958 and adopted on October 4, state prosecutors are appointed based on the conclusion of the competent composition of the Supreme Council of Magistracy in relation to prosecutors (1).

The powers of the General Prosecutor's Office in the presence of the Court of Cassation are defined in Article 68-2 of the Constitution in the following order:

Any person who considers himself a victim of a crime or offense committed by a member of the government in the performance of his duties can apply to the investigation commission with a complaint, this commission will make a decision to terminate the procedure or refer the complaint to the Court of Justice of the Republic. Transfers to the Prosecutor General at the Court of Cassation.

The Prosecutor General at the Court of Cassation may also formally appeal to the Court of Justice of the Republic based on the positive conclusion of the Commission on Review of Complaints (2).

The Constitution, ratified by the Spanish people in the referendum of December 6, 1978, adopted by the Cortes Generales in the plenary sessions of the Congress of Deputies and the Senate held on October 31, 1978, was approved by His Majesty the King before the Cortes on December 27, 1978(3). Article 124 of the Constitution establishes the legal status of prosecutor's offices in the following order:

- public prosecutor's offices help the functioning of justice in protecting the rule of law, the rights of citizens and protected public interests, protect the independence of courts in accordance with the law and ensure the satisfaction of social interests through them, without harming the tasks assigned to other bodies;

- carries out the tasks assigned to him through his bodies in accordance with the principles of unity of actions and hierarchical dependence, observing the principles of rule of law and impartiality in all cases.

The third paragraph of this article stipulates that the statute of the prosecutor's office is regulated by law, while the fourth paragraph establishes the appointment of the State Public Prosecutor, i.e. the state prosecutor to his position by the King after consultation with the General Council of Courts at the suggestion of the government [4].

Pursuant to Article 126 of the Constitution, the judicial police shall respond to judges and prosecutors in the performance of their duties to detect and apprehend crimes and criminals within the time limits set by law (5).

The first paragraph of Article 127 prohibits Spanish prosecutors (during their term of office) from holding other public offices, being members of political (officials) parties or trade unions while they are active in their positions. professional associations, system and activities of prosecutors are determined by law (6).

In Italy, the prosecutor's office is included in the judicial system. Article 112 of the

Constitution of the Republic of Italy stipulates the duty of the prosecutor to open a criminal case [7], and the provisions ensuring the independence of the prosecutor do not exist in the Constitution.

The Basic Law - the German Constitution, which is the core of the German legal system, entered into force on May 23, 1949" [8].

The prosecutor's office of the Federal Republic of Germany is part of the Ministry of Justice and has some specific aspects.

A special feature of the organization and legal regulation of the activities of the prosecutor's office **in Germany** is that there is no federal basic law on the prosecutor's office defining the powers of prosecutors in this country.

In Germany, the task of the prosecutor's office is to initiate a criminal case against a person who has committed a crime. The prosecutor leads the investigation, participates in the court as a representative of the state, announces the state accusation. Police agencies are obliged to fulfill the orders of the prosecutor's office. The federal prosecutor has the right to investigate and indict only crimes that threaten state security in accordance with the law. In Article 44 of the Constitution, the powers of investigative committees are strengthened in the following order:

(1) The Bundestag has the right to establish an investigative committee, and upon the proposal of a quarter of its members, it is obliged to establish it. Meetings may be closed.

(2) In collecting evidence, criminal procedural norms are applied depending on the relevant content. The confidentiality of correspondence, mail, telegraph messages and telephone conversations shall not be violated.

(3) Courts and administrative agencies must provide legal and departmental assistance.

(4) Decisions of investigative committees shall not be subject to judicial review. Courts do not depend on them to evaluate and qualify the circumstances underlying the investigation (9).

Based on the current Constitution and laws of Uzbekistan, the prosecutor's office has its own status independent of the legislative, executive and judicial powers based on the principle of separation of powers.

The procedure for appointing and dismissing the Prosecutor General of the Republic of Uzbekistan is enshrined in the Constitution, that is, the President appoints and dismisses the Prosecutor General after the approval of the Senate of the Oliy Majlis of the Republic of Uzbekistan.

Control over the clear and uniform implementation of laws in the territory of the Republic of Uzbekistan is carried out by the Prosecutor General of the Republic of Uzbekistan and prosecutors subordinate to him (Article 118)(10)

The unified centralized system of prosecution bodies is headed by the Prosecutor General of the Republic of Uzbekistan.

The Prosecutor of the Republic of Karakalpakstan is appointed by the supreme representative body of the Republic of Karakalpakstan in agreement with the Prosecutor General of the Republic of Uzbekistan.

Prosecutors of regions, district and city prosecutors are appointed by the Prosecutor General of the Republic of Uzbekistan.

The term of office of the Prosecutor General of the Republic of Uzbekistan, the Prosecutor of the Republic of Karakalpakstan, regional, district and city prosecutors is five years (Article 119) (11)

Prosecutor's offices of the Republic of Uzbekistan exercise their powers independently of

any state bodies, public associations and officials, only in accordance with the law.

Prosecutors suspend membership in political parties and other public associations with political goals during their term of office.

Organization of prosecutor's offices, their powers and procedure of operation are determined by law. (Article 120) (12).

It is prohibited to establish and operate private cooperative organizations, public associations and their divisions, which independently perform rapid search, investigation and other special tasks in the fight against crime in the territory of the Republic of Uzbekistan.

Public organizations and citizens may provide assistance to law enforcement agencies in protecting legality and legal order, rights and freedoms of citizens (Article 121) (13).

New provisions were added to the norms regulating the prosecutor's office, which were strengthened in articles 143-146 of Chapter XXV of the Draft Constitutional Law of New Uzbekistan, announced on March 15, 2023, in the following order, some of them were stated in a new version, including:

The fifth paragraph of Article 144 stipulates that "the same person may not hold the position of the Prosecutor General of the Republic of Uzbekistan for more than two consecutive terms", while the first paragraph of Article 145 states that "prosecution authorities of the Republic of Uzbekistan may transfer their powers from other state authorities, independently of other organizations and officials, only in compliance with the Constitution and laws of the Republic of Uzbekistan.

The word "cooperative" in Article 121 was deleted. (14) (Article 146). Adoption of the constitutional law "On the Constitution of the Republic of Uzbekistan" adopted in the referendum on April 30, 2023. Regulation of the legal status of the Prosecutor's Office in the Republic of Uzbekistan by constitutional norms. is worthy of attention.

Here, the next task is

- Establishing measures to publicize the content of the comparative analysis of the prosecution system of the Republic of Uzbekistan with foreign countries;
- putting into practice the rules that serve for human rights and freedoms regulated by constitutional norms in the prosecution system of foreign countries;
- preparation and publication of educational and methodological manuals on the legal analysis of international constitutional norms related to the prosecution system.

Cooperation with the prosecutor's office of foreign countries has been established in Uzbekistan.

## LIST OF REFERENCES

1. Article 1 of the Constitutional Law of the Republic of Uzbekistan "On the Constitution of the Republic of Uzbekistan". <https://constitution.uz/uz/clause/index> May 1, 2023
2. Article 65 of the Constitution of the French Republic. Tashkent-"Uzbekistan" 2018
3. Article 68-2 of the Constitution of the French Republic. Tashkent-"Uzbekistan" 2018
4. Preamble to the Spanish Constitution ("Boletin Oficial del Estado", No. 311, dated December 29, 1978).
5. Article 124 of the Spanish Constitution ("Boletin Oficial del Estado", No. 311, dated December 29, 1978).
6. Article 124 of the Spanish Constitution ("Boletin Oficial del Estado", No. 311, dated December 29, 1978).

7. Article 126 of the Spanish Constitution ("Boletin Oficial del Estado", No. 311, dated December 29, 1978).
8. Article 112 of the Constitution of the Italian Republic (8. The Basic Law of the Federal Republic of Germany© National Center of the Republic of Uzbekistan on Human Rights, 2005. © Friedrich Ebert Foundation, 2005)
9. Article 44 of the Basic Law of the Federal Republic of Germany © National Center of the Republic of Uzbekistan on Human Rights, 2005. © Friedrich Ebert Foundation, 2005
10. Article 118 of the Constitution of the Republic of Uzbekistan. <https://constitution.uz/uz/clause/index> December 8, 1992, Tashkent-"Uzbekistan" 2021
11. Article 119 of the Constitution of the Republic of Uzbekistan. <https://constitution.uz/uz/clause/index> December 8, 1992, Tashkent-"Uzbekistan" 2021
12. Article 120 of the Constitution of the Republic of Uzbekistan. <https://constitution.uz/uz/clause/index> December 8, 1992, Tashkent-"Uzbekistan" 2021
13. Article 121 of the Constitution of the Republic of Uzbekistan. <https://constitution.uz/uz/clause/index> December 8, 1992, Tashkent-"Uzbekistan" 2021
14. Articles 143-146 of the Constitutional Law of the Republic of Uzbekistan "On the Constitution of the Republic of Uzbekistan". <https://constitution.uz/uz/clause/index> May 1, 2023