



## THE ROLE OF THE PRINCIPLES OF THE PROSECUTOR'S ACTIVITY IN ENSURING HUMAN RIGHTS AND FREEDOMS IN THE JUDICIAL PROCEEDINGS OF THE CRIMINAL PROCEEDINGS

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Article history:	Abstract:
<b>Received:</b> May 20 <sup>th</sup> 2023 <b>Accepted:</b> June 24 <sup>th</sup> 2023 <b>Published:</b> July 24 <sup>th</sup> 2023	In this article considers the concept of the principles of the criminal process, the principles of the prosecutor's activities in the trial the concept, essence, theoretical aspects and the role of these principles in ensuring human rights and freedoms.

**Keywords:** legal basis, prosecutor's office, criminal procedure, principle, human rights and freedoms, prosecutor, judge.

The large-scale reforms carried out in the Republic of Uzbekistan are aimed, first of all, at ensuring the rule of law and further reform of the judicial system, reliable protection of the rights and freedoms of individuals, citizens, increasing the effectiveness of the system for combating crime and preventing offenses, creating conditions for a full-fledged implementation of the principle of

In this regard, many regulatory legal acts have been adopted. In particular, paragraph 52 of the state program on the implementation of the strategy of action on the five priority areas of development of the Republic of Uzbekistan in 2017 — 2021, adopted by the decree of the president of the Republic of Uzbekistan of March 2, 2020, in the "year of development of Science, Education and digital economy", States<sup>1</sup>. According to him, it is envisaged to prepare a draft law on the Coordination of the activities of the state accuser with international standards and advanced foreign experience.

According to the 17th goal, noted in the decree of the president of the Republic of Uzbekistan No. 60 (Annex 1) "on the development strategy of new Uzbekistan for 2022-2026", "to create a solid legal framework for the activities of the public and fair prosecutor's office, which today strictly provides for legitimacy, as well as" Law-priority, punishment — it has been shown that the transformation of the "inevitable" principle into the main criterion, the introduction of influential mechanisms for the effective protection of the dignity and freedom of citizens, is one of the main priorities of today's reforms.

Paragraph 1 of Decree No. 12 of the president of the Republic of Uzbekistan dated January 16, 2023 "on additional measures for the effective organization of the implementation of Justice activities" established the information system "prosecutor's participation in the courts" by September 1, 2023 in the activities of the Corps of prosecutors specializing in promoting the implementation of Justice<sup>2</sup>.

Also, in the decree of the president of the Republic of Uzbekistan dated January 16, 2023 No. 11 "on additional measures to further expand the chances of achieving justice and increase the effectiveness of judicial activities", 2022 — The development strategy of the new Uzbekistan for 2026 sets out a number of tasks, including establishing a "specialized prosecutor's Corps" and providing it with the authority of the prosecutor when conducting cases in courts in accordance with the law of the prosecutor's office and procedural legislation, promoting the effective implementation of Justice activities using equal rights with other participants in the court, the tasks are assigned to achieve effective protection of the rights and legitimate interests of citizens and legal entities through the court, to assist in the practical skills and professional development of employees of inquiry and investigative bodies based on judicial practice.

The employee of the "specialized corps of prosecutors" is independent in stating to the court his opinion on the issues of supporting, amending or waiving the conviction (civil claim) in the cases seen in the courts, including applying the norms of the Criminal Code, setting the type and norm of punishment, and is determined to be based on the requirements of the law and<sup>3</sup>.

From the above regulatory legal acts, it can be seen that in judicial reform, the improvement of the participation

<sup>1</sup> Ўзбекистон Республикаси Президентининг 02.03.2020 йилдаги 5953-сонли Фармони билан қабул қилинган 2017 — 2021 йилларда Ўзбекистон Республикасини ривожлантиришнинг бешта устувор йўналиши бўйича Ҳаракатлар стратегиясини «Илм, маърифат ва рақамли иқтисодиётни ривожлантириш йили»да амалга оширишга оид давлат дастури 52-банди. [электрон кутубхона], қаралган вақти 26.06.2020 й. <https://lex.uz/docs/4751561>

<sup>2</sup> Қонунчилик маълумотлари миллий базаси, 18.01.2023 й., 06/23/12/0034-сон.

<sup>3</sup> Қонунчилик маълумотлари миллий базаси, 18.01.2023 й., 06/23/11/0033-сон.

of the prosecutor in the activities of the courts is of particular importance. Because, when conducting criminal proceedings, prosecutors appear as state representatives. Its level of knowledge, behavior, readiness for process, participation in the examination of evidence, elegance largely depend on how a decision is made on the case.

President Of The Republic Of Uzbekistan Sh.M.As Mirziyoev noted, "employees of the prosecutor's office with high professional qualifications and high human qualities should be an example for employees of state bodies, always under the protection of justice and legitimacy."<sup>4</sup>.

In the legal literature, on the role of the prosecutor's office in the state mechanism, scientists point out and say that it is divided into four: the first, states that are part of the prosecutor's justice system; the second, states that have administrative independence and have a prosecutor's office that is authorized to carry out justice; the third, states that have<sup>5</sup>.

For example, in France, the legal status of the prosecutor's office is determined by the Constitution adopted in 1958, the French Criminal Procedure Code and Code No. 58-1270 "judicial organization and ordinary". Since the French public prosecutor's office is part of the justice system, the public prosecutor's office is considered to have a position that ensures enforcement and judicial review of the case. It is noteworthy that in France, prosecutors and judges have the same procedural status<sup>6</sup>. The main task of the French prosecutor's office is to supervise the investigation in the pre-trial stage and support the state prosecution in court.

Likewise, Spain<sup>7</sup> and Bulgaria<sup>8</sup> in the Constitution of the states, the legal status, system and other issues of the prosecutor's office are expressed.

Chapter XXV of the Constitution of the Republic of Uzbekistan (in the new edition) is devoted to the constitutional status and activities of the prosecutor's office, according to which the control over the clear and uniform implementation of laws in the territory of the Republic of Uzbekistan is exercised by the prosecutor general of the Republic of Uzbekistan and its subordinate prosecutors<sup>9</sup>. This norm is the main guiding rule of the activities of the prosecutor's office.

General and basic norms are enshrined in the law of the Republic of Uzbekistan "on the prosecutor's office"(next referred to as "on the prosecutor's office") regarding the activities of ensuring the authority of the prosecutor in the Proceedings of Criminal Court cases.

In it, the organization of the bodies of the prosecutor's office and the procedure for their activities are noted, as well as their powers. It is in the fourth section of the so-called "powers of the prosecutor in the hearing of cases in the courts" that the powers of the prosecutor participating in the trial are established.

The only and mandatory legal basis for ensuring the authority of the prosecutor in the conduct of criminal proceedings in court is the Criminal Procedure Code of the Republic of Uzbekistan (next is referred to as the current CPC).

The current CPC establishes the powers of the prosecutor and the mechanisms for their implementation at the stages of pre-investigation examination, inquiry, preliminary investigation, execution of judicial, judicial decisions.

Also, the organizational and practical aspects of the activities of the prosecutor's office in criminal court proceedings are regulated by the order of the prosecutor general of the Republic of Uzbekistan No. 126 of November 27, 2015 "on further increasing the effectiveness of the prosecutor's participation in criminal court proceedings"(next referred to as a sectoral order).

The field order covers the powers of the prosecutor in the conduct of cases in criminal courts, the main criteria for assessing the activities of the prosecutor in the field, the requirements for the opinion of the state prosecutor, cases when consideration should be paid to the consideration of separate categories of cases and assessment of court decisions, issues of resolving appeals,

Legal grounds are the main criterion for the implementation of the participation of the prosecutor in the consideration of criminal cases in court proceedings<sup>10</sup>.

Each sphere of law has principles that reflect its essence and content. The principles of this field of law occupy a fundamental place for its existence, for the establishment of a certain order, for its development.

Lawyer-specialist B.N. Rashidov expresses the opinion that principles exist and develop in science as the main concepts, categories of law, legal minds as a separate norm<sup>11</sup>.

Principles are guiding rules that characterize the content, solution and purpose of law in society<sup>12</sup>. Principles are inherent in any area of law, exist in norms and constitute its basic legal provisions.

<sup>4</sup> Ўза. <http://uza.uz/ru/politics/>. 31.01.2018 й.

<sup>5</sup> См.: Додонов В. Н., Крутских И. Б. Прокуратура в России и за рубежом. М., 2001. С. 5.

<sup>6</sup> И. И. Тюнина. Конституционно-правовой статус прокуратуры в России и зарубежных странах. Поступила в редакцию 13 сентября 2021 г. С 20.

<sup>7</sup> <https://www.boe.es/legislacion/documentos/ConstitucionINGLES>

<sup>8</sup> <https://www.parliament.bg/en/const>

<sup>9</sup> Қонунчилик маълумотлари миллий базаси, 01.05.2023 й., 03/23/837/0241-сон.

<sup>10</sup> Д.С.Довудова. Анализ теоретико-правовых основ полномочий прокурора при рассмотрении уголовных дел в судах первой инстанции. <https://doi.org/10.47689/2181-1415-vol2-iss4/S-pp838-850>

<sup>11</sup> Jinoyat-protsessual huquq: Darslik / Yuridik fanlar doktori, professor M. A. Rajabova tahriri ostida (To'ldirilgan va qayta ishlangan uchinchi nashri). – T.: O'zbekiston Respublikasi IV Akademiyasi, 2021. – 51 b.

<sup>12</sup> Теория государства и права: Учеб. / Под ред. В. М. Корельского, В. Д. Перевалова. М.: Норма, 2000. С. 242.

Some sources define a principle as "a central concept, the basis of a system, the generalization and distribution of phenomena, the basis, rule, scientific or moral principle"<sup>13</sup>. In another source-some theory, doctrine, as the main, initial position of the worldview; or belief, to look at something; is cited as the main feature in the construction of something<sup>14</sup>.

Lawyer-specialist G. To'laganova believes that the word "principle" is derived from the Latin word "principium", whose meaning refers to concepts such as "basis", "fundamental factor"<sup>15</sup>.

The word "principle" is derived from the Latin "Principium" meaning "base", "rule" meaning "base" in Uzbek<sup>16</sup>. When talking about the principle, it is usually understood the Basic Rules, worldviews, theories, politics and science<sup>17</sup>.

In law theory, it is common to divide the principles of law into three groups, namely universal, Inter-industrial and sectoral principles. Universal principles are explained by the fact that for all branches of law there is a universal one. Inter-industrial principles are principles established in regulatory legal acts regulating the field of law, which also apply to another field of law. Sectoral principles imply principles that are applied based on the specificity of each area of law<sup>18</sup>.

P.A. Lupinsky argues that the principles of criminal proceedings are defined as objective legal categories that reflect the political, legal and moral ideas prevailing in society<sup>19</sup>.

Principles have an important place in the conduct of criminal proceedings. M.S. Strogovich argues that principles should be considered the most important and determining legal provisions that build a criminal process<sup>20</sup>. According to most scientists, the principles determine the stages, forms, content of the Institute and characterize the Real guarantees of human rights and freedoms, the most important signs of the subject and method of procedural influence. So, the principles determine the essence and content of Criminal-Procedural Law<sup>21</sup>.

V.T. Tomin and A.I. Zinchenko comments on the effect of principles on the purpose and stage of criminal proceedings. In their view, criminal proceedings are the sum of contradictions, and the purpose of the perpetrator of a crime is achieved by reaching a compromise established by criminal law with other social values. Most of these restrictions arise precisely on the basis of principles, in particular, the protection of the rights and legitimate interests of the person established in the criminal process<sup>22</sup>.

B.A. Tugutov believes that the criminal process, in its content, is a set of roles of its participants, formed, coordinated, interconnected and integrated into a single system on the basis of the principles chosen to achieve the goals of the criminal process and the conditions for their implementation<sup>23</sup>.

In our opinion, the principles of criminal proceedings are the main legal provisions that determine the features, character and content of criminal proceedings arising from the provisions of the general principles provided for by the Constitution and legislation of the Republic of Uzbekistan and regulate criminal – procedural relations related to the consideration and resolution of the stages of the proceedings and serve to practically ensure the

In our opinion, in the conduct of criminal cases, Ham criminal-procedural principles can also be divided into legal, Inter-industrial and sectoral principles. For example, lawfulness, respect for the honor and dignity of the individual, protection of the rights and freedoms of citizens universal, it cannot be exaggerated to say that justice is carried out only by the court, criminal cases are seen publicly in court, the language in which the case is carried out is interdisciplinary, the inevitability of criminal proceedings, the imposition of truth, the presumption of innocence,

All principles are inextricably linked with each other<sup>24</sup>, they create a holistic set of legal frameworks that are equally important for achieving the goals of Justice<sup>25</sup>. This year, despite the fact that he not only serves the purpose, but also serves only Sudlov as an acting official, but each kandy principle as a whole functions as a derivative process. As the basis of the work as the basis for the development, the process of democratization and humanism of the

<sup>13</sup> Даль В. Толковый словарь живого великорусского языка. Т. 3. М., 1982. С. 431.

<sup>14</sup> Ожегов С.И., Шведова Н.Ю. Толковый словарь русского языка: 80 000 слов и фразеологических выражений. 4-е изд., доп. М.: Азбуковник, 1997. С. 595-596.

<sup>15</sup> Jinoyat-protsessual huquqi. Umumiy qism. Darslik. // Mualliflar jamoasi. / yu.f.d., dots. G.Z.To'laganova va yu.f.n., dots. S.M.Rahmonovalarning umumiy tahriri ostida –Toshkent: TDYU nashriyoti, 2016. – 44 b.

<sup>16</sup> Русча-ўзбекча луғат. 2-том. Ўзбек совет энциклопедияси бош редакцияси. Тошкент.; 1984. –Б.215.; Гражданский процесс. Кол. Автор. –М.: Спарк.1999. –С.25.

<sup>17</sup> Гражданский процесс. Учебник. Издание третье, переработ и доп. / Под ред. В.А.Мусина, Н.А.Чечиной, Д.М.Чечота. – М: ПБОЮЛ Гриженко Е.М. 2001. –С.22.

<sup>18</sup> Фукарлик процессуал ҳуқуқи. Дарслик. Муаллиф жамоаси // Маъсул муҳаррирлар: ю.ф.д., проф. М.М.Мамасиддиқов, ю.ф.н., проф. Д.Ю.Хабибуллаев. – Тошкент. "Lesson press" нашриёти. 2020. – 36-37 б.

<sup>19</sup> Уголовно-процессуальное право Российской Федерации / Отв. ред. П. А. Лупинская. – М., 2004. – С. 174.

<sup>20</sup> Строгович М.С. Курс советского уголовного процесса: В 3т. Т.1. –М., 1968. С.124.

<sup>21</sup> Белоносов В.О., Колесников Е.В. Принцип законности при производстве по уголовному делу и его интерпретации КС РФ // Журнал российского права. 2004. № 5. С.51

<sup>22</sup> Уголовный процесс. Проблемные лекции / под. Ред. В.Т.Томина., А.И.Зинченко. – М.: Изд-во. Юрайт, 2013. С.57.

<sup>23</sup> . Функции прокурора на судебных стадиях уголовного процесса: дис.канд.наук. М., 2014. –С 22

<sup>24</sup> Жиноят процесси (Умумий қисм): Юридик институт ва факультетлари талабалари учун дарслик (Иноғомжонова З.Ф.нинг умумий таҳрири остида.). –Т.: ТДЮИ нашриёти, 2008. 82-бет.

<sup>25</sup> Jinoyat-protsessual huquqi. Umumiy qism. Darslik. // Mualliflar jamoasi. / yu.f.d., dots. G.Z.To'laganova va yu.f.n., dots. S.M.Rahmonovalarning umumiy tahriri ostida –Toshkent: TDYU nashriyoti, 2016. – 44 b.

Gironavari process.; collection, definition of the operation process, the exact content of a complex process, analyzed on the basis of<sup>26</sup>.

The principle of guiding rules, which determine the main directions and essence of the activities of conducting judicial proceedings in the criminal proceedings, is called .

Lawyer, scientist he.A.Tukhtasheva stressed that the principles in Criminal Procedural Law are considered as an important guarantee of the legality and reasonable resolution of a judicial-investigative case<sup>27</sup>. F.M.Muhitdinov notes that any withdrawal from the basic principles laid down in Criminal Procedural Law is considered a violation against Justice<sup>28</sup>.

Cottager-specialist A.I.Toshpulatov, mountain people of the Principlar national legislative body on topganlign shares<sup>29</sup>.

In our research work, we concluded that it is advisable to include in the current criminal procedural legislation the "principle of fair proceedings", that it applies not only to judicial judgment, but also to proceedings in court, which will again strengthen the demand for fairness of the judicial judgment established in the jpk, serve as an important condition for the activities of participants in the criminal<sup>30</sup> .

In this study, we would like to dwell on the principles that apply to the activities of the prosecutor participating in the court hearing as a whole, supporting the case that the muqaddam studied in the case.

When criminal cases are heard in court proceedings, the activities of the prosecutor are based on principles. Principles are guiding rules that determine the essence and the basis of the directions of criminal proceedings. They are enshrined in a separate form in the Constitution of the Republic of Uzbekistan, Chapter 2 of the Criminal Procedure Code, and are also embodied in the meaning of the relevant provisions of the law, although they are not prescribed in the text or in the norm by the procedural terms.

At the same time, in our opinion, the principles determine the legal norms that will be the basis for the implementation of the prosecutor in this direction and its rule for the implementation of a certain action, describe the content of the activities of the prosecutor's participation, reveal different and specific aspects of the prosecutor's activities from other directions.

The principles established in the jpk are of mandatory importance for the prosecutor and other participants in the proceedings at all stages of the criminal proceedings. For example, legality (11-m of the CPC), respect for the honor and dignity of the individual (17-m of the CPC), protection of the rights and freedoms of citizens (18-m of the CPC), truthfulness (22-m of the CPC), presumption of innocence (23-m of the CPC), dispute in the Proceedings of court (25-m of the CPC) and hok.

One of the most important principles of the activities of the prosecutor's office is legality, which, on the one hand, is a prerequisite for the implementation of all other principles of its activities, and on the other hand, the most important means of strengthening and developing statehood. Similarly, the prosecutor is the subject responsible for ensuring all the principles established in the jpk.

However, the general principles in question Do not fully reveal the features and specific aspects of the processual state of the prosecutor in the court hearing.

E.R.Ergashev divided the activities of the prosecutor participating in the trial of criminal cases into principles that determine the characteristics:

- The principle of the prosecutor's assistance in the implementation of a fair trial – to take measures to quickly hear criminal cases in courts, to fully and objectively verify evidence in court, to competently ensure a state conviction, to promote legal decision-making to the court, if an illegal decision is made by the court, to appeal it is from the obligations of the prosecutor. The peculiarity of this activity is that the powers of this noted prosecutor embody not only the right, but also the obligation as a representative of the state;

- the principle of discretion - according to it, the activities that the prosecutor carries out when conducting criminal proceedings in court do not have a mandatory character for the courts;

- the principle of indirect implementation of prosecutor's actions participating in the trial of criminal cases-all actions of the prosecutor participating in the hearing of the case are carried out with the permission of the court;

- the principle of the mandatory participation of the prosecutor in the consideration of criminal cases-the participation of the prosecutor in the trial of all criminal cases is mandatory. In addition, to illegal and unreasonable court decisions, the prosecutor is obliged to take measures to appeal<sup>31</sup>.

<sup>26</sup> O'zbekiston Respublikasi Milliy gvardiyasi Harbiy-texnik instituti Kengashida ma'qullangan. 2020 yil 8 sentabrdagi 1-sonli bayonnoma. Jinoyat-protsessual huquqi [Matn]: darslik. - Toshkent: Complex Print, 2020. – 33-34 betlar.

<sup>27</sup> Уголовный процесс: Общая часть. Учебное пособие / Автор-составитель к.ю.н. У.А. Тухташева. – Т.: Издательство ТГЮИ, 2007. – 513 с. С. 21.

<sup>28</sup> Мухитдинов Ф.М. Жиноят-процессуал шакл: назарий ва методологик муаммолар юрид. фан. докт. автореферати. –Т., 2005. – 38 Б.

<sup>29</sup> А.Тощпўлатов. Жиноят ҳуқуқий принциплар: назария ва амалиёт. Диссер...юрид..фанлар...док (DSc). Т., ТДЮУ, 2023. Пўлатов А. С. Жиноят процессида гувоҳнинг процессуал мақоми ва уни такомиллаштириш масалалари: Автореф.дисс...юридик. фан. фалсафа. докт (PhD). Т., ТДЮУ, 2022.

<sup>30</sup> Д.С.Довудова. Биринчи инстанция Биринчи инстанция судларида жиноят ишларини юретишда прокурор ваколатини такомиллаштириш масалалари./ юридик фанлар бўйича фалсафа доктори (PhD) илмий даражасини олиш учун тайёрланган дисс. – Тошкент.: 2020.

<sup>31</sup> Ергашев Е.Р. Принципи прокурорского надзорно-охранительного права и его институтов: автореферат. дис. ... д-ра юрид. наук.Екатеринбург, 2008. С. 32-35.

L.A.Kurochkina in court divides several principles that underlie the activities of the prosecutor, showing the principles of legality, transparency, fairness, respect for the honor and dignity of the individual, protection of the rights and freedoms of Man and citizens, presumption of innocence, argumentation and equal rights of the party, procedural independence, objective and impartiality<sup>32</sup>.

N.V.Bulanova was also a member of the E.R.Ergashev, L.A.In support of Kurochkinani's opinions, he shows the principles of the prosecutor's participation in the court hearing as follows: 1) The Binding of prosecutor ishitiroki in the hearing of criminal cases; 2) the principle of transparency; 3) the principle of indirect implementation of prosecutor's actions participating in the hearing of criminal cases in court; 4) the principle of

Meanwhile, N.V.Bulanova put forward the idea that it is advisable to include the principle of transparency among the principles that indicate the participation of the prosecutor in the hearing. According to this principle, the prosecutor provides for legal and justified prosecution on behalf of the state, acts in the public interest - in the interests of society and the state, prescribes criminal harassment and a fair punishment for guilty persons, at the same time, renounces the accusation of innocent persons, exemptions from punishment, rehabilitation of persons found illicit guilty is in the public interest. It records the manifestation of a person as a result of a judicial investigation in the partial or complete refusal of the prosecutor from the prosecution in the event that he did not find his proof with the evidence.

The principle of procedural Independence-stated its point of view on the manifestation of the prosecutor's participation in the examination of evidence, in particular, in his opinion on criminal law and the application of punishment to the defendant to the court<sup>33</sup>.

In our opinion, scientists N.V.Bulanova and E.R.Ergashev put forward ideas about the principles that reveal the direct activities of the prosecutor, L.A.Kurochkina, on the other hand, analyzed in the activities of the prosecutor the principles that are binding on all participants established in the Criminal Procedure Code.

We Power The opinions of prosexualist scientists, it is advisable to include the following principles in the song, which reveal the nature of direct prosecutorial activity, reflect in the content of criminal-procedural norms, do not contradict the rules of general principles, namely, The Binding of prosecutorial participation, assistance in the implementation of justice, transparency, fairness, procedural independence principles.

In place of the conclusion, the legal basis and principles of the prosecutor's activity are important in the provision of the interests of society and the state, the rule of law in court, its clear and uniform application, the protection of the rights and freedoms of the individual. In this regard, the prosecutor must strictly adhere to the general and special prisms in the hearing, promote judicial decisions by their application to be legal, justified and fair, and ensure the exercise of the rights and freedoms of the individual. The principle position of the prosecutor based on the law serves to increase the prestige of the prosecutor's office.

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