



THE PROSECUTOR'S LEGAL INSTRUMENTS IN CONDUCTING INSPECTIONS OVER THE IMPLEMENTATION OF LAWS AND THE APPLICATION OF THE PRESUMPTION OF INNOCENCE THEREIN

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ANNOTATION

In this article, the prosecutor's verifications over the implementation of the laws, their specifics, the purpose, subject of these investigations and the documents of the prosecutor's supervision, their response and their results were discussed. A scientific discussion has been initiated with the opinions of a number of legal scholars, and the author's doctrinal views have also been cited. The role and significance of the documents of the prosecutor's control in the conduct of prosecutor's actions over the implementation of laws is revealed through scientific-theoretical views. The experience of a number of foreign countries has been comparative analyzed with our national legislation.

Keywords: prosecutor's verifications, prosecutor's control documents, subject of verification, subject of verification, object of verification, means of verification, protest, submission.

QONUNLAR IJROSI USTIDAN PROKUROR TEKSHIRUVLARINI O'TKAZISHDA PROKURORNING HUQUQIY VOSITALARI HAMDA UNDA AYBSIZLIK PREZUMPSIYASINING QO'LLANILISHI

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ANNOTATSIYA

Ushbu maqolada qonunlar ijrosi ustidan prokuror tekshruvlari, ularning o'ziga xos jihatlari, ushbu tekshiruvlarning maqsadi, predmeti hamda prokuror nazorati hujjatlari, ularga javob berish va ularning natijalari haqida so'z borgan. Bir qator huquqshunos olimlarning fikrlari bilan ilmiy munozaraga kirishilgan hamda muallifning doktrinal qarashlari ham keltirib o'tilgan. Qonunlar ijrosi ustidan prokuror tekshruvlari o'tkazishda prokuror nazorati hujjatlarining roli va ahamiyati ilmiy-nazariy qarashlar orqali ochib berilgan. Bir qator xorijiy davlatlarning tajribasi milliy qonunchiligimiz bilan qiyosiy tahlil qilingan.

Kalit so'zlar: prokuror tekshiruvi, prokuror nazorati hujjatlari, tekshiruv predmeti, tekshiruv subyekti, tekshiruv obyekti, tekshiruv vositalari, protest, taqdimnoma.

ПРАВОВЫЕ ИНСТРУМЕНТЫ ПРОКУРОРА ПРИ ПРОВЕДЕНИИ ПРОКУРОРСКИХ ПРОВЕРОК ИСПОЛНЕНИЯ ЗАКОНОВ И ПРИМЕНЕНИЕ ПРЕЗУМПЦИИ НЕВИНОВНОСТИ В ИХ РАМКАХ

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АННОТАЦИЯ

В данной статье рассматриваются прокурорские проверки исполнения законов, их специфика, цель, предмет этих проверок, а также документы прокурорского надзора, ответы на них и их результаты. В научную дискуссию были включены мнения ряда ученых-юристов, а также были приведены доктринальные взгляды автора. Роль и значение документов прокурорского надзора при проведении прокурорских проверок исполнения законов раскрывается через научно-теоретические взгляды. Проведен сравнительный анализ опыта ряда зарубежных стран с нашим национальным законодательством.

Ключевые слова: прокурорская проверка, акты прокурорского надзора, предмет проверки, субъект проверки, объект проверки, средства проверки, протест, представление.

During the past period, the prosecution authorities have carried out a number of positive activities aimed at conducting a comprehensive analysis of the state of law enforcement, taking timely measures to eliminate the causes and conditions of legal violations, ensuring the



protection of citizens' rights and freedoms, and providing comprehensive support to business entities.

As the head of our state emphasized, “The importance of prosecution bodies in reliably protecting the rights and freedoms of our people, enshrined in the Constitution, in ensuring legality and preventing crime, is steadily growing. In particular, open dialogue with the public, thorough study and resolution of population problems, and the protection of human rights and freedoms have become the primary and daily duties of field personnel.

The activity of the prosecution in supervising the implementation of laws has been fundamentally reformed. In the past, the focus was mainly on detecting violations of the law and applying penalties, whereas now the main emphasis is on preventing such situations and addressing existing problems”¹.

Also, as noted by the Prosecutor General of the Republic of Uzbekistan, N.T. Yuldoshev: “Programs aimed at the socio-economic development of regions are under special control. Efforts to ensure the targeted use of budget funds and prevent their embezzlement will continue consistently. Especially, in areas vital to our daily lives—such as education, healthcare, and public utilities—strict oversight will be established to identify and resolve outstanding issues through a special approach. Indeed, the presence of corruption in our lives is of serious concern to all of us. Creating an environment of zero tolerance for this evil and fighting it decisively will remain a top priority for the prosecution authorities in the future”².

Achieving these positive goals and ensuring the rule of law in society undoubtedly requires high-quality prosecutorial inspections and the effective use of prosecutorial oversight documents.

Article 21 of the Law of the Republic of Uzbekistan “On the Prosecutor’s Office” is devoted specifically to prosecutorial inspections regarding the implementation of laws. According to it, such inspections are carried out based on applications and other information on violations of the law, as well as in cases where the prosecutor identifies a situation requiring intervention to ensure legality, in accordance with the procedure established by law.

During the inspections, the prosecutor applies oversight documents prescribed in Article 37 of the same law to identify legal violations by the subjects of inspection, eliminate the causes and conditions that allowed the violations, issue warnings regarding these violations, and bring illegal acts into compliance with the law.

¹ From the congratulatory speech of the President of the Republic of Uzbekistan, Shavkat Miromonovich Mirziyoyev, delivered on January 8, 2024, to employees and veterans of the prosecution authorities // URL: <https://president.uz/uz/lists/view/6961>.

² From the address of the Prosecutor General of the Republic of Uzbekistan, Nigmatilla Tulkunovich Yuldoshev, to the people of our country, delivered on January 16, 2024// URL: <https://prokuratura.uz/#/newsviewid=8986>.



As legal scholar B.Kh. Polatov pointed out, “A prosecutorial oversight document refers to a document issued, submitted, or announced by an authorized official—the prosecutor—within the scope of powers granted by law and in the legally prescribed form. These documents must meet the requirements of legality, substantiation, and motivation; the data must be logically and fully presented and aligned with the materials obtained through inspection, study, analysis, and generalization”³.

Additionally, it should be noted that prosecutorial oversight documents can be considered as tools for conducting inspections on the implementation of laws.

As legal expert O.M. Madaliyev noted, prosecutorial oversight documents must focus on urgent, important, and significant legal violations. When such a situation is identified, the prosecutor must intervene procedurally and make the appropriate decision. The conclusions and proposals in the prosecutor's legal documents must be well-founded and lawful. They must be based on concrete facts and written with legal and methodological literacy.

According to legal scholar I.A. Imanov, “Prosecutorial oversight documents are also one of the most important forms of public communication. Through these acts, individuals and legal entities can receive information about the state of legality and the activities of law enforcement bodies”⁴.

In our opinion, the legal violations identified during inspections should be discussed within labor collectives and widely covered by mass media. This is because the coverage of such issues in the media allows individuals and legal entities to obtain information about the quality of inspections and the state of legality.

Legal expert I.P. Khaltayeva emphasized that “When applying a prosecutorial oversight document, the prosecutor must determine the purpose of its application and analyze the duties and activities of the inspection object. Attention should be paid to the specific characteristics of each type of oversight document.”

In addition to this view, we believe that when conducting prosecutorial inspections of the implementation of laws, it is necessary not only to determine the purpose of the inspection, but also its subject, object, and means, and to thoroughly familiarize oneself with the relevant normative legal acts.

³ Polatov B.Kh. Organization of Prosecutorial Oversight of the Implementation of Laws and a Collection of Model Documents of Prosecutorial Supervision // Practical and Methodological Guide. – Tashkent, 2013. – p. 18.

⁴ Иманов И.А. Система и эффективность актов прокурорского надзора в противодействии коррупции в Республике Казахстан // Юридическая наука и правоохранительная практика. 2015. №4 (34). URL: <https://cyberleninka.ru/article/n/sistema-i-effektivnost-aktov-prokurorskogo-nadzora-v-protivodeystvii-korrupsii-v-respublike-kazahstan> (дата обращения: 13.04.2024).

Looking at international experience, in the Russian Federation's Law "On the Prosecutor's Office," Chapter 1 of Section 3 lists the following types of prosecutorial oversight documents: protest, submission, resolution, and warning.

Similarly, Article 29, Chapter 2, Section 3 of the Law "On the Prosecutor's Office" of Turkmenistan identifies six types of prosecutorial oversight documents:

- Protest;
- Submission;
- Demand;
- Warning;
- Resolution;
- Statement of claim to the court.

It is also necessary to address the issue of applying the presumption of guilt or innocence in prosecutorial inspections regarding the implementation of laws. The reason is that neither in normative-legal documents nor in academic literature is it clearly explained which of these presumptions should be applied in the process of prosecutorial inspection.

First, let us explain what a presumption is. The word "presumption" is derived from the Latin term *praesumptio*, which in Uzbek means "an assumption based on conjecture." A presumption is the legal acceptance of a fact as true unless proven otherwise. Examples include the presumption of honesty, the presumption of innocence, and the presumption of guilt (the latter is seen in civil law and, theoretically, in the criminal laws of certain foreign countries). A legal presumption refers to an assumption regarding the existence or non-existence of certain facts that carry legal significance.

The presumption of innocence means that a person is considered innocent until proven guilty in accordance with legal procedures. It is sometimes expressed with the Latin phrase "*Ei incumbit probatio qui dicit, non qui negat*" (the burden of proof lies upon him who affirms, not on him who denies). A suspect, accused, or defendant shall be considered innocent until their guilt in committing a crime is proven in accordance with the procedure established by law and determined by a court verdict that has entered into legal force. The suspect, accused, or defendant is not required to prove their innocence, as Article 86 of the Criminal Procedure Code of the Republic of Uzbekistan stipulates that the responsibility of proving guilt lies with the investigator, inquirer, prosecutor, and court. In short, the essence of the presumption of innocence lies in the international standard: "Unproven guilt equals proven innocence."

This presumption is also reflected in several international legal instruments. For instance, Article 11 of the **Universal Declaration of Human Rights**, adopted on December 10, 1948, which serves as a key guarantee of human rights, also enshrines the principle of the presumption of innocence. According to it: "*Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.*"

In contrast, under the presumption of guilt, the burden of proving that the behavior was not illegal falls on the accused person. The presumption of guilt implies "presumed guilt unless proven otherwise." This principle is more characteristic of authoritarian or totalitarian regimes than democratic states. Unlike in criminal law, the presumption of guilt is used in civil law, especially in civil contracts, where if a person cannot justify their actions, failure to fulfill or improper fulfillment of obligations by one party is assumed to be their fault. For example, if a supplier fails to deliver goods within the agreed timeframe, their fault is presumed.

If we provide a legal basis for this, **Clause 10 of Resolution No. 35 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated December 19, 2020**, "On the Application by Courts of Legal Norms Related to Evidence and the Burden of Proof in Civil Cases," states that, in accordance with procedural law, the obligation to present and prove evidence lies with the parties, i.e., the plaintiff (applicant) and the defendant. For instance, the burden of proof regarding the validity of entering into a fixed-term employment contract, the legality of refusal to hire, the employee's refusal to relocate with the employer, the legality of suspension from work, the legality of the termination of an employment contract, and the impossibility of transferring an employee raising a child under the age of two lies with the employer.

We believe that the presumption of innocence should also be applied in prosecutorial inspections regarding the implementation of laws. Because the purpose of such inspections is to ensure legality, to detect and prevent violations of the law, and to eliminate the causes and conditions that allow them. Furthermore, appropriate measures are applied in response to identified violations of the law, meaning that as a result of the inspection, those responsible may be held disciplinarily, administratively, or criminally liable.

Meanwhile, during the process of reviewing administrative offenses or the investigation and preliminary inquiry of a criminal case, the presumption of innocence is specifically applied. For example, **Article 23 of the Criminal Procedure Code of the Republic of Uzbekistan** defines the presumption of innocence and states: *"A suspect, accused, or defendant shall be considered innocent of committing a crime until his guilt is proven in accordance with the procedure established by law and confirmed by a court verdict that has entered into legal force. The suspect, accused, or defendant is not required to prove his innocence."*

This provision provides the legal basis for applying the presumption of innocence in inquiries and preliminary investigations related to criminal cases. In our opinion, legal grounds for applying the presumption of innocence in the process of prosecutorial inspections regarding the implementation of laws should also be incorporated into national legislation.

In conclusion, timely and appropriate application of prosecutorial oversight documents aimed at identifying and eliminating violations of the law plays an important role. The effectiveness of prosecutorial oversight is directly related not only to the quality of inspections carried out by prosecutors regarding the implementation of laws but also to the legal instruments used by prosecutors. Furthermore, we believe it is appropriate to apply the

principle of the presumption of innocence in the process of conducting prosecutorial inspections regarding the implementation of laws.

List Of Literature Used:

1. Sh.M.Mirziyoyev. From the speech of the prosecutor's office at the meeting with employees // information received internet source – <https://president.uz/oz/lists/view/178> (application time: 24.07.2024);
2. From the appeal of the prosecutor general of the Republic of Uzbekistan Nigmatilla Yuldashev Tulkinovich to the population of our country on 16.01.2024 // URL: <https://prokuratura.uz/#/newsviewid=8986> (application time: 14.06.2024);
3. Pulatov B.X. Organization of prosecutorial control over the implementation of laws and a set of sample documents of prosecutorial supervision//practical-methodological manual. - Tashkent, 2013. - Page 14 // URL: <https://proacademy.uz/postfiles/books/u-tp/index.html> (application time: 14.07.2024);
4. Madaliyev O.M. Prosecutorial supervision. Textbook. Special part. Tashkent - "ILM ZIYO". – 2012.M-Page 19 // URL: <https://elibrary.namdu.uz> (application time: 20.04.2024);
5. Komilov A.B. Current issues of regulation of the prosecutor's investigation into the implementation of laws in the legislation // Central Asian academic journal of scientific research. – 2021. №1. – page 1 // URL: <https://cyberleninka.ru/article/n/onunlar-izhrosi-yuzasidan-prokuror-verification-onun-uzhzhatar-regulation-topical-issues>. (application time: 17.08.2024);
6. Белоусова Д.С. Дальнейшая процессуализация прокурорской проверки: блажь или необходимость? //Научно-практический журнал Университета прокуратуры Российской Федерации. С.49. №5 (85) 2021 https://www.agprf.org/userfiles/ufiles/ob%20akademii/vestnik/2021/Vestnik_5_2021_end.pdf (application time: 15.04.2022);
7. Прокурорский надзор: учеб. для вузов / под общ. ред. О.С. Капинус; науч. ред. А.Ю. Винокуров. М.: Юрайт, 2014. С. 175;
8. Сафонов А.П. Сущност и пределы прокурорского надзора за соблюдением законности в местах лишения свободы // Вопр. прокурорского надзора. С. 56.