



## LEGAL ISSUES: PARTICIPATION OF THE PROSECUTOR AND GOVERNMENT AGENCIES IN ECONOMIC COURT: THEORY AND PRACTICE

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### Abstract

The article reveals the significance and legal problems of participation in the economic process of the prosecutor, government agencies and other persons, and analyzes the participation of the prosecutor, government agencies and other persons in foreign countries. It is concluded that the prosecutor can participate in the consideration of not any economic cases, but only certain categories of cases, the obligatory participation of the prosecutor in which is directly prescribed by law and make additions and changes to the Economic Procedural Code of the Republic of Uzbekistan, indicating economic cases in which the prosecutor is obliged participate.

**Keywords:** economic dispute, prosecutor, government body, other persons, supervision, application, protection of rights, legality.

### Introduction

The prosecutor, government bodies and other persons may be participants in economic proceedings. The Economic Procedural Code of the Republic of Uzbekistan (Article 41) classifies the mentioned entities as persons participating in the case. The legal status of these persons participating in an economic matter is generally determined by procedural legislation. At the same time, it should be noted that sometimes in practice certain disputes and misunderstandings arise regarding the rights and obligations of the above-mentioned subjects of the economic process.

Speaking about the participation of the prosecutor in the economic process, we should initially remember that in accordance with Article 118 of the Constitution of the Republic of Uzbekistan, the Prosecutor General of the Republic of Uzbekistan and the prosecutors subordinate to him supervise the accurate and uniform implementation of laws throughout the territory of the Republic of Uzbekistan. This constitutional norm finds its specific expression in the articles of the Law of the Republic of





Uzbekistan No. 257-II “On the Prosecutor’s Office”. In particular, in relation to economic procedural legislation, the prosecutor, in order to ensure effective judicial protection of the rights and legitimate interests of citizens, enterprises, institutions and organizations, participates in the consideration of cases in all courts in the manner prescribed by law. Moreover, according to Article 26 of the Law of the Republic of Uzbekistan No. 257-II “On the Prosecutor’s Office”, in the event of a violation of the rights and freedoms of a citizen protected in court, when a citizen, for health reasons, age or other reasons, cannot personally defend his rights in court and freedom, the prosecutor brings and supports the claim in court.

According to T.I. Otchestkaya, the participation of the prosecutor in the process has signs of universality, since it can be implemented by the prosecutor regardless of which of the areas of activity the prosecutors received information about violations of the law, be it the need for prompt and real suppression and elimination of violations, arising from civil, administrative, criminal legal relations in the field of business and other economic activities and affecting interests defined by law, or compensation for damage.

Article 49 of the Economic Procedural Code defines the basic rights and responsibilities of the prosecutor as a participant in economic proceedings. Moreover, within the meaning of the procedural law, the participation of the prosecutor in the proceedings on an economic case in court can be in two forms:

- 1) in order to supervise compliance with the rule of law in economic proceedings in general;
- 2) the prosecutor’s appeal to the court in defense of the rights and legally protected interests of citizens, legal entities and the state.

Regarding the first form of participation of the prosecutor in the economic process, it should be noted that according to Article 20 of the Law of the Republic of Uzbekistan No. 257-II “On the Prosecutor’s Office”, the subject of supervision is the implementation of laws by ministries, state committees, departments, self-government bodies of citizens, public associations, enterprises, institutions, organizations, military units, military formations of ministries, state committees and departments, khokims and other officials, as well as the compliance of the acts they adopt with the Constitution and laws of the Republic of Uzbekistan. The above legal norm can be interpreted in such a way that the prosecutor has the right to participate in the consideration of economic cases by the courts in order to supervise, firstly, the implementation of laws by other participants in the economic process, and secondly, the implementation of laws by the court.



In such cases, in accordance with part four of Article 49 of the Economic Procedural Code of the Republic of Uzbekistan, the prosecutor expresses his opinion on the merits of the case under consideration. More specifically, the prosecutor, with this form of participation, must express his position on the application of specific norms of substantive and procedural legislation, as well as give his independent assessment of how this particular case should be resolved on the merits

It should be noted that now certain misunderstandings arise regarding the participation of the prosecutor in an economic case in order to supervise the implementation of laws. The reason for such misunderstandings is the presence of conflicts in legislation. In particular, the norms of the Law of the Republic of Uzbekistan No. 257-II "On the Prosecutor's Office" that we analyzed above theoretically give the prosecutor the right to participate in the proceedings of any economic cases. However, part three of Article 49 of the Economic Procedural Code of the Republic of Uzbekistan states that (in order to supervise the implementation of laws) the prosecutor can participate in the proceedings of an economic case only in cases where this is provided for by law. That is, the economic procedural law for the participation of the prosecutor in the consideration of any economic cases requires a direct indication of the law. This means that the prosecutor can participate in the consideration of not any economic cases, but only certain categories of cases, the mandatory participation of the prosecutor in which is directly prescribed by law. If we interpret the norm of the Economic Procedural Code in this way, it turns out that at the moment the prosecutor actually cannot participate in economic proceedings in order to supervise the implementation of laws, since there are practically no norms in the legislation that directly prescribe such participation of the prosecutor in economic cases of any kind. or categories.

The second form of prosecutor's participation in economic proceedings is the prosecutor's appeal to the economic court in defense of the rights and legally protected interests of citizens, legal entities and the state. In particular, according to Article 33 of the Law of the Republic of Uzbekistan No. 257-II "On the Prosecutor's Office", the prosecutor, in order to ensure effective judicial protection of the rights and legitimate interests of citizens, enterprises, institutions and organizations, participates in the consideration of cases in all courts in the manner prescribed by law. Moreover, according to Article 49 of the EPC, the prosecutor can participate in the proceedings in cases initiated on the basis of his statement of claim (statement). For example, bankruptcy proceedings. According to Article 44 of the Law of the Republic of Uzbekistan No. 474-II "On Bankruptcy", the prosecutor has the right to apply to the economic court to declare the debtor bankrupt in cases where he has discovered signs





of concealing bankruptcy, as well as when it is required to protect the interests of the creditor.

The procedural law determines the legal status of the prosecutor, and the quality of such a participant in the economic process. According to Article 49 of the Economic Procedural Code of the Republic of Uzbekistan, a prosecutor who has filed a statement of claim (statement) in the interests of a citizen, legal entity and the state enjoys the rights and bears the responsibilities of the plaintiff, with the exception of the right to conclude a settlement agreement or mediation agreement.

In particular, the statement of claim (statement) is submitted to inter-district, district (city) economic courts by prosecutors of the Republic of Karakalpakstan, region, Tashkent city, districts (cities) and prosecutors equivalent to them, and to the Court of the Republic of Karakalpakstan, regional and Tashkent city courts - by prosecutors Republic of Karakalpakstan, region, city of Tashkent or their deputies. The Prosecutor General of the Republic of Uzbekistan or his deputy has the right to submit a statement of claim (statement) to all economic courts of the Republic of Uzbekistan. At the same time, it should be noted that the prosecutor's refusal to submit a statement of claim (statement) does not deprive the plaintiff (applicant) of the right to demand consideration of the case on the merits.

In addition to the prosecutor, state bodies and other persons can also apply to the economic court with a claim or application in defense of the rights and legally protected interests of society, the state, individuals and legal entities in cases provided for by law (Article 50 of the Economic Procedural Code of the Republic of Uzbekistan). It is interesting to note that the procedural law does not contain specific instructions about which bodies and persons and in what cases can apply to the court with a claim or application. The Economic Procedural Code on this issue refers to other legal acts. Officials who have the right to appeal to economic courts in defense of the rights and legally protected interests of the state and society are khokims of districts and cities. As stated in Article 25 of the Law of the Republic of Uzbekistan 913XII "On Local Government Power", in cases of gross violation by owners and users of housing of the requirements for payment of utilities and making mandatory contributions, on the proposal of utility providers or homeowners' associations, khokims of districts and cities go to court with claims for collection of debts for utility bills and mandatory contributions.

One of the bodies that have the right to go to court to protect the interests of the state and society is the state tax service. According to the Law of the Republic of Uzbekistan No. 474-I "On the State Tax Service", within the limits of their competence, these







bodies have the right to bring claims to the court against taxpayers for the recovery of funds illegally obtained by taxpayers to the state income.

The entities that can go to court to protect the interests of individuals and legal entities are non-governmental non-profit organizations. In accordance with Article 7 of the Law of the Republic of Uzbekistan No. 763-I “On Non-Governmental Non-Profit Organizations”, every non-profit non-governmental organization has the right to represent and protect the rights and legitimate interests of its members and participants. In practice, most often, non-governmental non-profit organizations such as the Chamber of Commerce and Industry of the Republic of Uzbekistan and the Council of Farmers, Dehkan Farms and Owners of Household Lands of Uzbekistan turn to economic courts to protect the rights of their members.

Guardianship and trusteeship authorities can also act as defenders of the interests of citizens. According to the first part of Article 13 of the Law of the Republic of Uzbekistan No. ZRU-364 “On guardianship and trusteeship”, guardianship and trusteeship authorities apply in the prescribed manner to the court with a statement on the protection of the rights, freedoms and legitimate interests of wards, participate in court hearings when considering cases on the specified questions. Guardianship and trusteeship authorities may participate in the consideration, for example, of a corporate dispute in which a ward who is a shareholder of a commercial legal entity is involved.

The Commissioner under the President of the Republic of Uzbekistan for the protection of the rights and legitimate interests of business entities (business ombudsman) is another entity that is granted by law the right to appeal to the economic court in defense of the rights of individuals and legal entities. Thus, in accordance with Article 8 of the Law of the Republic of Uzbekistan “On the Commissioner under the President of the Republic of Uzbekistan for the protection of the rights and legitimate interests of business entities”, the business ombudsman, in order to fulfill the tasks assigned to him, has the right to apply to the courts with statements, claims and complaints in the interests of the entities business without paying state duty.

Regarding the legal status of government bodies and other persons authorized to apply to the economic court in defense of the rights and legally protected interests of citizens, legal entities, society and e specified bodies and persons filing a claim enjoy all the rights and bear the obligations of the plaintiff, with the exception of the right to conclude a settlement agreement or mediation agreement. Moreover, as in the case of the prosecutor’s claim, the refusal of a state body or another person to submit a statement of claim (statement) does not deprive the plaintiff (applicant) of the right





to demand consideration of the case on the merits. And finally, the majority of government bodies and other persons filing a claim in economic court in defense of the rights and interests protected by law of other persons, the state and society (namely the Chamber of Commerce and Industry of the Republic of Uzbekistan, the Republican Council for Coordinating the Activities of Self-Government Bodies of Citizens, the Ministry Water Resources of the Republic of Uzbekistan, Council of Farmers, Dekhkan Farms and Owners of Household Lands of Uzbekistan, Commissioner under the President of the Republic of Uzbekistan for the Protection of the Rights and Legitimate Interests of Business Entities).

Thus, we examined the features of the participation of the prosecutor, as well as government bodies and other persons in protecting the rights of citizens, legal entities, society and the state in economic proceedings. An analysis of the above legal norms gives us grounds to assert that the participation of the prosecutor in an economic case is not fully regulated by law. Such uncertainty pushes the legislator to improve legislation in this area.

In this regard, it would not be superfluous to take a closer look at the experience of other countries, whose legislation is generally similar to that of Uzbekistan. Let's take, for example, the Arbitration Procedural Code of the Russian Federation. Article 52 of the Arbitration Procedural Code of the Russian Federation provides a list of categories of cases in the proceedings of which the prosecutor has the right to participate. These are mainly cases related to the recognition of the invalidity of transactions in which one of the parties is a government organization (or an organization with government participation). Moreover, the procedural law of Russia clearly establishes the right of the prosecutor to participate in the economic process in order to supervise the implementation of laws. It is noteworthy that in addition to participating in the proceedings of the above categories of cases, the prosecutor also has the right to apply to the arbitration court with an application to challenge legal acts (both normative and non-normative) affecting the rights and legitimate interests of organizations and citizens in the field of business and other economic activities. Uzbek legislation provides for the right to challenge departmental regulations (not only those related to business activities, but any) in an administrative court, and not only the prosecutor, but also any interested person has this right.

According to A.Yu. Rozhkov, the modern Arbitration Procedural Code of the Russian Federation quite specifically indicates the grounds for the prosecutor to file a claim in court, as well as the grounds for the prosecutor to join the case considered by the arbitration court. Article 52 of the Arbitration Procedural Code of the Russian Federation specifies a list of claims with which the prosecutor can apply to the





arbitration court. Their list is exhaustive. However, an analysis of judicial practice in cases involving the prosecutor in arbitration proceedings shows that courts often apply a broad interpretation of the law and, as a result, accept claims that are not specified in the disposition of Article 52 of the Arbitration Procedural Code of the Russian Federation, consider them and, accordingly, make decisions on these cases. Rules that are generally similar to the Russian procedural law are established in the Belarusian economic procedural legislation. At the same time, the Economic Procedural Code of the Republic of Belarus also authorizes the prosecutor to challenge in economic courts legal acts of state bodies, local government bodies and self-government, other bodies or officials, but, unlike the Russian Arbitration Procedural Code, only non-normative acts that affect rights and legitimate interests of legal entities and citizens in the field of entrepreneurial and other economic (economic) activities. As for the speech of the prosecutor in economic proceedings in defense of the rights of other persons, the Belarusian law gives the prosecutor the right to apply to the economic court in defense of the interests of legal entities and individual entrepreneurs, but only with the consent of the latter (Article 66 of the Code of Criminal Procedure).

Based on the above, it would be advisable to make additions and changes to the Economic Procedural Code of the Republic of Uzbekistan regarding the participation of the prosecutor, government bodies and other persons, and in a separate article indicate the list of economic cases in which the prosecutor is obliged to participate.

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