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The Genesis And Historical Evolution Of The Institution Of Prosecution In Criminal Procedure

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Abstract: This article explores the genesis and historical evolution of the institution of prosecution within criminal procedure. It provides a retrospective analysis of its development from ancient customary and religious practices to the Islamic legal system, the judicial traditions of the Bukhara Emirate and Khiva Khanate, and later incorporation into the Russian imperial and Soviet legal frameworks. Special attention is given to the transformation of prosecution from a private initiative to a state-controlled function, particularly during the Soviet era, as well as the establishment of a new normative foundation following the independence of Uzbekistan. The study employs comparative-legal, historical, and analytical methods, highlighting the continuity and change in prosecutorial functions across different historical periods. The findings underscore the theoretical and practical significance of historical experience in shaping modern prosecutorial activity, ensuring legality, fairness, and the protection of human rights in criminal justice.

Keywords: Criminal justice, legal regulation, judicial and legal reforms, prosecution, indictment, criminal procedure, historical development, accusatorial process, adversarial process, inquisitorial process.

Introduction: A comprehensive understanding of the institution of prosecution cannot be achieved without considering the socio-political, cultural, and legal contexts in which it emerged and transformed over time. Each historical stage reflects not only the evolution of legal norms but also the broader dynamics of governance, statehood, and the protection of individual rights within society. In this regard, the study of the prosecution's origins and development is closely intertwined with the analysis of the fundamental principles of criminal justice, such as legality, fairness, and the balance between the powers of the state and the rights of individuals.

Moreover, tracing the historical trajectory of this institution enables scholars to identify patterns of continuity and change, thereby providing valuable insights into the factors that shaped its current structure and functions. This retrospective inquiry is not merely of theoretical interest; it also has practical significance, as the lessons drawn from historical experience contribute to the refinement and modernization of the institution of prosecution in line with contemporary demands of criminal justice and the rule of law.

In national legal scholarship and academic works, various approaches can be observed regarding the definition of the concept of "prosecution". In particular, B.N. Rashidov emphasizes that "prosecution is the activity of authorized bodies and individuals aimed at proving the guilt of a person who has committed a crime or is suspected of criminal involvement, with the objective of ensuring the proper resolution of issues concerning the detection of crimes, the prosecution of offenders, and the imposition of punishment" [1].

Another scholar, F.M. Mukhitdinov, seeks to provide a broader definition of the concept, noting that "prosecution is a procedural activity that arises, unfolds, and concludes in accordance with procedural rules, simultaneously encompassing a set of specific tasks, powers, and obligations" [2].

METHODS

In this study, the historical stages of the development of the institution of prosecution in criminal procedure were analyzed through the examination of legislative

norms of both national and foreign jurisdictions, as well as the scientific-theoretical perspectives of legal scholars. The materials were studied using comparative-legal analysis, synthesis, observation, generalization, induction, and deduction methods.

DISCUSSION AND RESULTS

The history of the institution of prosecution is intrinsically linked to the broader development of human civilization, with its earliest manifestations observed in ancient legal systems, particularly within traditional and communal forms of adjudication. Consequently, it appears appropriate to examine the emergence and historical evolution of the prosecution institution by distinguishing several chronological stages: 1) Ancient period – from pre-Christian times up to the 5th–6th centuries CE; 2) Medieval period – from the 6th–7th centuries to the early 17th century; 3) Modern period – spanning the 17th to 19th centuries; 4) Contemporary period – covering the 20th and 21st centuries.

Such periodization of the emergence and historical development of the prosecution institution can also be found in the works of several prominent procedural law scholars, which further supports the relevance and scientific validity of this approach [3].

The concept of prosecution, as a criminal procedural legal institution, has been interpreted differently across historical periods and has evolved in parallel with the development of legal systems. This evolution has led to the establishment of prosecution as a distinct institution with its own defining characteristics. Throughout its formation and development, the substance and functions of prosecution have gradually improved and become more refined. In contemporary legal systems, the concept of prosecution is consolidated through specific norms and clearly defined features, whereas in earlier times it was predominantly based on religious and customary rules.

Furthermore, procedural law scholars acknowledge that the history of humanity's legal culture reflects four main forms of criminal procedure, which are regarded as the natural outcome of historical-legal evolution [4]: 1) Accusatorial procedure (the earliest form of criminal process); 2) Inquisitorial procedure (often referred to in literature as the "investigative process"); 3) Adversarial procedure (modern criminal adjudication form); 4) Mixed procedure (modern criminal adjudication form).

The accusatorial procedure represents the earliest form of criminal process and may be divided into two distinct stages. The first corresponds to the era of the slave-owning society, during which the emergence of the accusatorial model and the initial formation of its principal procedural aspects can be observed. The second stage coincides with the feudal system, a period in which the development of the accusatorial procedure became more pronounced. In its earliest manifestations, disputing parties sought to resolve conflicts independently. Subsequently, however, judicial involvement gradually emerged, although at the initial stage the role of the court was limited to observing the contest between the parties and declaring the victor.

Over time, with the consolidation of adversarial principles, the role of the judiciary expanded significantly. The court not only adjudicated disputes but also assumed an active role in the evaluation of evidence and in ensuring the legality of accusations brought against individuals. As F.M. Mukhitdinov observes, the adversarial process originated within the accusatorial form and achieved broad development within the Anglo-Saxon legal system, while also serving as an important organizational-procedural foundation in continental and religious, particularly Islamic, legal traditions [5].

In ancient times, accusations were generally initiated by the victim or their relatives, with disputes resolved through punishment or compensation. A.A. Kabulov has remarked that in the earliest stages of global legal systems, criminal proceedings were based on private prosecution, as cases were initiated solely on the claim of the complainant, upon which judicial decisions or rulings were rendered [6]. Indeed, an examination of the criminal procedural systems of major states such as Ancient Babylon, the Roman Empire, and Athens reveals that prosecution during these periods predominantly took the form of private accusation. This feature can be explained by the socio-legal nature of prosecutorial activity and the general principles governing the criminal process at the time. The private character of prosecution also reflects the fact that the struggle against crime in these societies was primarily carried out at the initiative of the victim and their family members, with limited direct intervention from the community or state authorities.

Over time, however, this institution also became an instrument for eliminating political rivals, with prominent statesmen such as Pericles and Alcibiades falling victim to its misuse. In the 4th century BCE, measures were introduced to tighten procedural rules in order to prevent such abuses. Nevertheless, eisangelia remained an essential component of the legal system of Ancient Greece, serving both as a mechanism for safeguarding state security and, paradoxically, as a means for suppressing political opponents.

During the same period—spanning from the pre-

Christian era to the 7th–8th centuries CE—the system of crime and punishment in the ancient states of Central Asia, particularly within the territory of present-day Uzbekistan, was regulated primarily through customary law and the sacred text of Zoroastrianism, the Avesta [7].

Customary law represented a body of unwritten norms and traditions transmitted across generations. These rules governed various aspects of social life, including property relations, family matters, the resolution of criminal cases, and the settlement of disputes. Judicial proceedings conducted under customary law were predominantly oral in nature and relied heavily on the authority and reputation of local elders and community leaders.

The Avesta, the sacred book of Zoroastrianism, contained not only religious teachings but also legal norms regulating the conduct of believers, including provisions on the imposition of punishments for crimes (sins) and the procedures for proving guilt [8]. Of its original volumes, four have survived to the present day, among which the Vendidad (or Videvdat) is particularly significant, as it encompasses a wide range of legal regulations and normative rules. For instance, the Vendidad prescribed the death penalty for those who desecrated a corpse by burning it. Judicial functions were performed by priests and community leaders, who were entrusted with maintaining both spiritual and legal order.

In cases where an individual broke an oath or failed to fulfill sworn obligations, guilt or innocence was often determined through trial by ordeal (ordalia). These methods included tests such as scorching the chest with heated iron or forcing the accused to walk through narrow passages flanked by blazing fire. Zoroaster introduced as many as 33 different forms of ordeal. One such practice involved plunging the accused into water while holding the feet of another person. During this ordeal, an arrow was shot, and a swift runner was tasked with retrieving it. If the runner returned before the accused drowned, the god of oaths, Varuna, was believed to have granted forgiveness. In another form, the accused was required to run between two rows of burning fire; survival was interpreted as divine acquittal by Mithra, the god of contracts.

Thus, the conduct of criminal proceedings and prosecutorial activity in the ancient states located on the territory of present-day Uzbekistan reflected a complex interweaving of local customs and religious prescriptions, demonstrating the deep interconnection between daily life and spiritual belief systems.

Subsequently, following the Arab conquest of these lands in the 8th century, the judicial and legal system began to incorporate, alongside customary law, the principles of Islamic law (Sharia), which provided a new framework for the administration of justice and the regulation of prosecutorial activity [9].

Starting from this period up until the late 19th and early 20th centuries, in Central Asia — including our homeland — the criminal process functioned on the basis of the Islamic legal system. Judges (qadis) resolved cases in accordance with the rules of Sharia. In this procedure, the plaintiff (victim) and the defendant (the accused) were required to substantiate their claims and objections by presenting evidence and calling witnesses. At the same time, they were entitled to engage representatives to defend their interests before the qadi. These circumstances indicate that during this period, adversarial proceedings existed in our country and that prosecution was primarily based on religious norms and customary rules.

One of the distinctive features of the criminal process of that time was that prosecutorial activity was not carried out by state bodies or special officials, but rather directly by the victim himself. In the Bukhara Emirate and the Khiva Khanate, criminal cases were conducted mainly on the basis of Sharia norms and customary law (“adat”). In these states, the supreme judicial authority was entirely subordinate to the khan or emir, who appointed the Qazi Kalon (Chief Judge) — the head of the judicial system — and possessed the power to remove him from office.

According to the researcher G. Abdumajidov, the concept of preliminary investigation did not exist at all in the adjudication of cases by the qazi courts [10]. Therefore, in large states such as the Bukhara Emirate and the Khiva Khanate, prosecutorial activity was carried out not at the pre-trial stage, but only during the trial — in the presence of the qadis.

By the late 19th and early 20th centuries, with the growing influence of the Russian Empire and the establishment of the Turkestan Governor-Generalship, certain changes took place in the criminal process. The Russian Empire, seeking to strengthen legal centralization in Turkestan, gradually restricted the activities of the qadi courts.

Following the October Revolution of 1917, an entirely new legal system was introduced. During the Soviet period, the criminal process came under the complete control of central state authorities, and the institution of prosecution was organized entirely under state supervision.

The historical development of the institution of prosecution has been examined starting from the year 1864. In the “Statute on Judicial Proceedings” of 1864, the term “judicial prosecution” was introduced for the

first time, whereby both state officials and private individuals were authorized to initiate prosecution. However, these provisions were not fully implemented in the Turkestan region, where judicial proceedings were conducted under special "Temporary Regulations." For instance, the Regulation of 1887 explicitly outlined the powers of the prosecutor to initiate criminal cases, draft an indictment, and forward the case to court.

During the Soviet period, prosecutorial activities were primarily transferred to state authorities. The Criminal Procedure Code of the RSFSR of 1922 stipulated that the prosecutor was to support the prosecution in court, and that criminal proceedings were not to be terminated even in cases of reconciliation between the victim and the accused. The Criminal Procedure Code of the Uzbek SSR of 1926 became the first national codified law regulating criminal proceedings in Uzbekistan, wherein the concepts of "criminal prosecution" and "indictment" were also enshrined. The subsequent Codes of 1929 and 1959 largely mirrored the provisions of earlier legislation concerning prosecution; however, beginning in 1959, the term "criminal prosecution" was officially replaced with the concept of "indictment."

Following the independence of Uzbekistan, a new Criminal Procedure Code of the Republic of Uzbekistan was adopted in 1995, which consolidated the legal foundations of the notions of "indictment" and "prosecution." Within judicial proceedings, the prosecutor, by upholding the state accusation, plays a pivotal role in ensuring the delivery of a fair and just verdict. Furthermore, the Law on the Prosecutor's Office also explicitly established the support of state prosecution as one of the principal duties of the prosecution service.

CONCLUSION

The historical trajectory of the institution of prosecution demonstrates its dynamic evolution in response to the socio-political, cultural, and legal transformations of society. From its earliest manifestations in customary and religious traditions, through the Islamic legal system and the judicial practices of the Bukhara Emirate and Khiva Khanate, to its subsequent incorporation into the centralized framework of the Russian Empire and Soviet Union, prosecution has continually adapted to the prevailing legal order and state governance.

The Soviet period, in particular, marked the consolidation of prosecution as a function firmly embedded within state authority, shifting its nature from a predominantly private initiative to an institutionalized mechanism of public prosecution. This transformation laid the groundwork for modern understandings of prosecutorial activity as an essential guarantee of legality, fairness, and the protection of public interests in criminal proceedings.

Following the independence of Uzbekistan, the adoption of the 1995 Criminal Procedure Code of the Republic of Uzbekistan and the Law on the Prosecutor's Office established a new normative foundation for prosecutorial activity. Thus, the historical analysis of the institution of prosecution reveals that its development has been neither linear nor uniform, but rather shaped by diverse legal cultures and political contexts. The lessons derived from this evolution are of both theoretical and practical significance, providing a scientific basis for the further refinement of prosecutorial functions in line with contemporary demands for justice, legality, and the protection of human rights.

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