

Eureka Journal of Humanities and Social Research (EJHSR)

ISSN 2760-4934 (Online) Volume 2, Issue 5, May 2026



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PROSECUTOR'S PROCEDURAL DOCUMENTS: CRITERIA OF LEGALITY AND REASONABILITY (AS PART OF CRIMINAL PROCEEDINGS)

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Abstract

The article examines the importance of prosecutor's procedural documents, their types, characteristics, suggestions for improving the procedural order of this stage based on comparative legal analysis, contradictions, and opinions on filling gaps.

Keywords: Criminal-procedural documents, prosecutor, motion, opinion, appeal, lawsuit, protest (private protest), presentation

Introduction

The activities of state bodies and officials in the conduct of criminal cases, as well as the legal relations of the subjects of the criminal process related to them, are reflected and consolidated in criminal procedural documents. Although the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as the CPC) uses the term “procedural document”, this concept is not defined and its scope is not determined.

A criminal-procedural document is a written document that records the actions of all participants in the process and the decisions of state bodies and officials in the criminal process ¹. In our opinion, this definition is given in general, and the procedural document has a wider meaning. That is, the criminal-procedural

¹<https://be5.biz/pravo/u004/10.html>

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ISSN 2760-4934 (Online) Volume 2, Issue 5, May 2026



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document is not only recorded in decisions, but is an official document that causes legal consequences.

There are several types of procedural documents in the Code of Criminal Procedure, including: protocols of inquiry, investigative actions, decisions, indictment or indictment, court session protocols, petitions, protests, complaints, negotiating speeches, court decisions, and so on.

A.A. Teryokhin The prosecutor participating in the consideration of criminal cases in courts, on the one hand, assists in the implementation of the tasks facing a fair trial, and on the other hand, participates in the protection of the rights and freedoms of the individual protected by the Constitution and legislative acts. In cases where violations of the law are identified, the prosecutor expresses his attitude ²towards them in the form of procedural documents .

In fact, the procedural document is an important element of each stage of the criminal process, and it embodies the results of all actions at these stages.

In our opinion, according to the current procedural legislation, the prosecutor exercises his powers in court proceedings by using the following procedural documents: 1) filing a petition ; 2) expressing an opinion; 3) filing an objection ; 4) filing a claim ; 5) filing a protest (private protest) ; 6) submitting a presentation
Procedural documents represent the actions of the prosecutor, and in our opinion, its distinctive features are: defined in procedural legislation; the existence of procedural requirements of each; to be issued in court stages in the prescribed manner; having procedural deadlines; causing legal consequences, representing procedural actions; it is manifested in the acquisition of official importance.

However, the authority to submit motions, opinions, and objections during a court hearing belongs to the state prosecutor (the assistant district (city) prosecutor participating in the trial), and the authority to file protests, lawsuits, and submissions falls entirely within the authority of the district prosecutor or his deputy.

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According to J. Hilgert, the petition is aimed at implementing positive actions in the future and therefore has a promising nature, and the petition allows for the advance implementation and protection of the rights and freedoms, legitimate interests of persons participating in the criminal process, and puts forward the idea that the role of petitions in this legal institution should increase ³.

In the Criminal Procedure Code of the Republic of Kazakhstan, a petition is a request from a party or applicant to the body conducting the criminal proceedings to perform a procedural action or make a procedural decision, and in the cassation instance - an appeal for the cassation review of a judicial act that has entered into legal force ⁴.

In Article 6 of the Belarusian Criminal Procedure Code, a petition is understood as an appeal or request to the person conducting the criminal proceedings ⁵.

At the same time, the scientists who conducted the research also defined the petition, in particular, according to Yu.I. Stetsovsky, a petition is an official request ⁶to perform any procedural actions, to make a decision. According to A.V. Grinenko, a petition should be understood as "a request to perform an action or decision or to refuse to perform it, announced to a body or official with the relevant powers in order to fully exercise their procedural rights ⁷."

Some authors give the following definitions: A petition is a reasoned request from a participant in a proceeding to an authorized official or body, submitted in oral or written form in accordance with the legislation, to perform or refuse to perform any procedural action ⁸.

It seems that, in our opinion, a petition is a written or oral appeal aimed at implementing a certain procedural process, determining an action.

³ Hilgert JA Building a human rights framework for workers' compensation in the United States: Opening the debate on first principles // American journal of industrial medicine. 2012. Vol. 55, Issue 6. Special Issue: Rethinking Workers' Compensation: The Human Rights Perspective. Pp. 506-518. <https://doi.org/10.1002/ajim.22023>. <https://onlinelibrary.wiley.com/doi/full/10.1002/ajim.22023> - fn1.

⁴ Criminal Procedure Code of the Republic of Kazakhstan dated July 4, 2014 No. 231-V (amended and supplemented on May 20, 2023).

⁵ It is the main procedural code of Kyrgyz Republic (v redaktsii zakona kr ot January 18, 2022 year No. 4, February 15, 2023 year No. 28).

⁶ Stetsovsky Yu. I. Criminal procedural activities of the defense attorney Moscow: Yuridicheskaya literatura, 1982. P. 50.

⁷ Grinenko A. V. Pseudo-motivated refusal to satisfy motions during preliminary investigation // Criminal Law. 2000. No. 4. P. 44.

⁸ Aliev T.T., Gromov N. A., Makarov L. V. Criminal procedural proceedings: Participation of the accused and defense counsel. Collection, verification, and evaluation of evidence. Motions and complaints. Moscow: Kniga-servis, 2002. P. 102.

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The prosecutor may file a motion at any time during the proceedings (Article 27 of the Criminal Procedure Code). On this basis, the norms relating to the rights and obligations of participants in criminal proceedings establish the right to “make and refuse a motion” (for example, Article 43 of the Criminal Procedure Code “Rights and obligations of the public prosecutor”, Article 44 “Rights and obligations of the public defender”, Article 53 “Rights and obligations of the defense attorney”, etc.). However, the prosecutor participating in the trial does not have such authority in the relevant special norm.

oral motions to summon new witnesses, experts or specialists, and to request material evidence and documents during the trial. possible.

The prosecutor is also required to provide a reasoned opinion on the parties' requests to examine evidence and take procedural actions.

The prosecutor must express his firm and reasoned objection to unfounded requests ⁹.

As noted, the general rules stipulate that the prosecutor has the right to file a motion at any stage of the trial, from the moment the trial begins until the court enters the deliberation room.

According to B.Kh. Pulatov, pleading is one of the forms of participation of the state prosecutor in the court session ¹⁰. Indeed, the prosecutor participating in the trial exercises some of the above-mentioned powers by submitting pleadings.

Accordingly, in our opinion, the norm of the Code of Civil Procedure on the participation of the prosecutor in court proceedings should include the authority to "bring motions."

At the same time, in our opinion, the court proceedings A prosecutor's petition is a written or oral appeal aimed at expressing his opinion on the implementation of judicial actions in a criminal proceeding, and at realizing the rights and legitimate interests of the participants in the proceedings regarding a specific process or situation.

⁹ Savitsky V.M. Essay on the theory of prosecutorial supervision. - M.: Nauka, 1975. – 302 P.

¹⁰Polatov B.Kh. In the same place. Study guide. -T. 2004. – 103 B.

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The prosecutor's opinion is a broad concept and is the most important form of participation in the court proceedings. The prosecutor has the authority to express an opinion during the preparation, investigation, and deliberation of a criminal case in court.

The prosecutor's opinion can be divided into several forms, such as expressing an opinion on the request or objection expressed by the court and other participants in the process, or on the outcome of the case or court hearing.

The prosecutor's opinion on the outcome of the criminal case during the trial is distinguished from his/her closing statement. In particular, in criminal cases of a special category, the prosecutor gives an opinion on the application of a compulsory medical measure, reconciliation, an amnesty act, and an agreement on a guilty plea. In general, the prosecutor gives a closing statement on the outcome of the case, as well as in criminal cases of a special category involving minors.

In our opinion, the prosecutor's negotiation speech is divided into the types of accusation, change of accusation and refusal of accusation .

The prosecutor's opinion regarding the application of a coercive medical measure, reconciliation or amnesty, and plea bargaining differs from the prosecutor's negotiating speech in general proceedings in the following respects:

Firstly, since the issue of a person's guilt is not discussed in the mentioned category of cases, the prosecutor's opinion does not dwell on this issue, and in the negotiating speech, proving the person's guilt or innocence is one of the most important elements;

secondly, the prosecutor's opinion shall state the justification and necessity of applying a compulsory medical measure, a reconciliation or amnesty act, or a plea agreement, and the negotiating speech shall state the type and rate of punishment for the person, as well as the requirements set forth in the Criminal Procedure Code and sectoral orders;

Thirdly, the current procedural legislation does not require the prosecutor's

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opinion to be submitted in writing, but there is a strict norm for the written submission of the negotiating speech.

According to B.Kh. Pulatov, the prosecutor's speech has great social and procedural significance. The prosecutor's speech helps to awaken internal confidence in judges and to make a legal, well-founded verdict ¹¹.

It is true that the prosecutor's negotiation speech has procedural significance. It describes the final position of the prosecutor on the case, makes important suggestions on how to achieve the realization of the truth by the court on the case, makes a legal, reasonable and fair decision, helps to build the inner confidence of the judge.

By its content, the prosecutor's speech also has an educational value. In order to achieve the set goals, the prosecutor describes the circumstances in his speech during the negotiations between the parties, aimed at resolving the most pressing issues.

The prosecutor must substantiate the defendant's guilt in the indictment, the defendant's guilt in the acquittal, and the defendant's guilt in the amendment of the indictment, the defendant's guilt is not proven by evidence. In this regard, the Order of the Prosecutor General of the Republic of Uzbekistan No. 126 dated November 27, 2015 "On further increasing the effectiveness of the prosecutor's participation in the consideration of cases in criminal courts" (hereinafter referred to as the sectoral order) establishes the requirements for the prosecutor's indictment.

Considering the importance of the prosecutor's negotiating speech, legal scholars have managed to turn it into a subject of scientific research ¹².

Most scholars pay attention to the prosecutor's speech being well-founded and convincing. According to V. Isaenko, the order of presentation of the speech determines the basis for the speech and the creation of internal confidence. In his opinion, most state prosecutors consider it both tactically and psychologically

¹¹Polatov B.Kh. Procedural activity of the prosecutor in the trial of criminal cases in courts. Study guide. -T. 2004. – P 126.

¹²B.Kh. Polatov Procedural activity of the prosecutor in the trial of criminal cases in the courts. Study guide. -T. 2004. – P 125.

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expedient to list the evidence proving the defendant's guilt in court negotiations in the same order in which they presented it during the judicial investigation. The reason is that when the evidence is presented in such an order in court negotiations, the judges mentally return to the judicial investigation process, and at the same time, the explanation of the content and significance of the evidence, the connections between the evidence, by the state prosecutor in court negotiations, leads to the formation of internal confidence in the validity of the state accusation in the judges ¹³.

According to N. Ivankina, the state prosecutor must clearly imagine the goals and objectives of his speech, and the effectiveness and impact of his speech depends primarily on how well- founded and convincing it is ¹⁴.

I.N. Kozhevnikov, on the other hand, believes that the prosecutor's speech should contain a deep social, legal and psychological analysis of the facts. The necessary quality of the speech is determined by its convincing presentation ¹⁵- put forward the opinion that.

In our opinion, the points of view of V. Isaenko and N. Ivankina are close to each other, and reasonable speech includes persuasive speech. I. Kozhevnikov's opinion is controversial and incompletely explained, and unsubstantiated speech can also be reliably stated.

In the opinions expressed by scientists above, attention was not paid to other aspects of the opinion of the prosecutor.

B.Kh. Pulatov emphasized that the opinion of the prosecutor during the trial of a criminal case must in any case meet the following requirements: 1) objective and proven; 2) comprehensive and complete; 3) legally justified; 4) clearly defined ¹⁶.

V. Lazareva also expressed similar thoughts, thinking about the accusation speech of the state prosecutor, and emphasized that the accusation speech should

¹³ Iszenko V.N. Analysis evidence prosecutor v sudebnyx preniyax// Aktualnye problemy rossiyskogo prava. 2018. No. 9 (94) . -P 221.

¹⁴ Ivankina N.N Rhetoric for lawyers. Studybook. M., 2001, P. 169.

¹⁵ Kozheknikov I.N. Powers of the prosecutor// Justice of Russia, 2012. -#12. - 12 B.

¹⁶ Pulatov B.Kh. Theoretical and practical problems and ways to improve the legislative regulation of the participation of a prosecutor in the consideration of criminal cases in courts: Dissertations. ... walk to the doctor. Nauk. -T., 2002. -S.60.

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be reasonable, objective, meaningful and clear, moral¹⁷. The opinion expressed by V.Lazareva should not only be embodied in the speech of the accusation, but all the speeches of the prosecutor during the court hearing should be reasonable, objective, meaningful and clear, consistent with moral requirements.

Also, the prosecutor's closing argument is a process that takes place at a certain stage of the trial, describing the guilt or innocence of the accused.

The concept of the prosecutor's opinion is poorly studied in national legislation and theoretical literature. There are no specific definitions.

In our opinion, the prosecutor's opinion in a court hearing is a statement based on internal confidence, based on the case and regulatory legal documents, expressing the decision to take or refuse a certain action, and aimed at resolving other issues that arise during the court session.

A prosecutor's pleading is a speech made by a prosecutor at the trial stage, aimed at proving or disproving the defendant's guilt in committing a crime, based on internal conviction, justified by the requirements of the Law and consideration of all the circumstances of the case.

A procedural document drawn up by a prosecutor, that is, a document that, in the prosecutor's opinion, meets the following general requirements: need: – procedural of the document name, shape and content compliance with the legal norms under which this document is drawn up condition; – the name of the procedural document must be reflected in it (for example, an indictment or a change of indictment, a waiver of indictment); – the content of the procedural document must be justified by the requirements of criminal and criminal procedural laws, other legislative acts, and decisions of the Plenum of the Supreme Court necessary; - the procedural document must be drawn up in accordance with the rules of spelling and following the rules of word association, It is not allowed to abbreviate words in an incomprehensible way¹⁸.

¹⁷Lazareva V.A. Participation of a Prosecutor in Criminal Proceedings: A Textbook and Workshop for Bachelor's and Master's Degree Students / A Scientific and Practical Handbook / - M.: Printing house Yurayt, 2017. - P 152-153.

¹⁸L.Kalandarov., D.Dovudova. On ensuring the authority of the prosecutor in criminal proceedings. /Methodological manual/. –T. “ Rustam print” publishing house. 2019, PP 72-73 .

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Also, in the sectoral order, the validity of the prosecutor's opinion is noted as the main criteria for evaluating the activity of ensuring the prosecutor's authority in the conduct of criminal court cases.

The prosecutor protests against illegal, unfounded and unfair decisions of the first, appeal, cassation and investigative instigation courts in criminal cases. B.Kh. Pulatov emphasizes that the prosecutor's protest is an important procedural document of a representative of a state body participating in the consideration of criminal cases in courts ¹⁹. Indeed, the prosecutor's protest is the most important procedural document determining his position in the judicial process.

A procedural document with the same legal effect is used under different names in some countries, including in our current legislation it is called a “protest”, and in Russia (where a prosecutor submits a presentation to court decisions in the Russian Federation) it is called a “presentation”. So, what do Russian procedural scholars think about this?

According to Russian procedural scholars, the word "presentation" included in court decisions should be changed to the word "protest", since the Law "On the Prosecutor's Office" (hereinafter referred to as the PPO) provides for the prosecutor to submit a presentation as a measure of influence - to eliminate identified violations of the law (Article 24), and when canceling court decisions, the law uses the term "protest", and the use of the term "prosecutor's presentation" in the Code of Criminal Procedure instead of the term "protest" established by law leads to ambiguity of the terms.

Also, the definition of the term “presentation” in the Law leads to its use in two directions, namely, to appeal against an illegal court decision (Article 5, 27-b of the Code of Criminal Procedure) and to eliminate the identified violations of the law (Article 24 of the Code of Criminal Procedure). The use of this term in two directions does not comply with the requirements of the legislative technique, it should be applied uniformly. The term “prosecutor’s protest” does not affect the

¹⁹B. Kh. Polatov. Procedural activity of the prosecutor in the trial of criminal cases in courts. Study guide. -T. 2004. – P 191.

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independence of the court, nor does it lead to the prosecutor having superior authority over the participants in the criminal trial. The prosecutor is an official who acts on behalf of the state in the interests of the law and justice ²⁰.

U.A. Tukhtasheva expressed the opinion that the prosecutor's protest is recognized as an ancient measure of influence, unlike other subjects (convict, victim, etc.) who protect their private interests by filing a complaint against the court decision, the prosecutor fulfills not only his rights, but also his obligation by filing a protest ²¹.

In contrast to this opinion, Sh. Abdukodirov proposed to define the right of prosecutors to protest court decisions as a submission in order to ensure equality of parties in the law and the principle of adversarial proceedings. He justified his opinion as follows, since the term "protest" in legal dictionaries is understood as an official objection, an order, a statement of something contrary to one's will, expressing firm disagreement with something, and is a document that must be considered in accordance with the content of the law.

"The term 'submission' is an official document that expresses some information in the form of a request, and it is a document adopted by the law on the violation of the law, the reasons for its occurrence, and the elimination of the conditions that create the opportunity for it," the author of the proposal explains his point of view ²².

Similarly, O.M. Madaliev emphasized that the prosecutor's protest should be replaced with a statement of claim as a document of coercive action ²³.

In our opinion, we cannot agree with Sh. Abdukodirov's opinion, because the "presentation", which is a measure of influence of the prosecutor in the legislation, is a procedural document with a completely different content, and replacing it with a "protest" will not lead to any substantive change in the

²⁰Bulanova N.V. mentioned essay -Moscow: Prospect, 2018. - PP 114-115 .

²¹ Tukhtasheva U.A. Criminal procedural ways to eliminate judicial errors. Dissertation for the degree of Doctor of Law. . 2020. TGUU. P.-190. 26; 71.

²²<https://advokatnews.uz/xabar/1848.html>

²³Madaliev O.M. The participation of the prosecutor in the consideration of criminal cases in courts of first instance. Monograph. T. TDUI. 2005. 123 P.

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situation. The same can be said about the opinion of O.M. Madaliev about changing the statement of claim to a statement of claim.

The dictionary meaning of protest is "protest". It comes from Latin and means "I openly prove" and is considered a prosecutor's protest ²⁴.

The prosecutor's right to protest the verdict is not limited ²⁵.

M.V. Byzova emphasizes that " a procedural submission (protest) is a measure of influence by the prosecutor against a court decision that does not comply with the requirements of the law, a request by an authorized official of the prosecutor's office to the appeal, cassation or supervisory instance to change or cancel an illegally adopted court decision in order to provide a legal assessment of it. The submission (protest) must meet the following criteria: - grounds for changing or canceling the illegal court decision; - substantiated proposals of the submission (protest), depending on the relevant court instance and the type of criminal proceedings; - limited scope of making a procedural submission; - the possibility of withdrawing or changing the submission ²⁶. "

N.V. Chekmachyova offers the following concept of "presentation" (protest). A presentation (protest) is a procedural decision of the public prosecutor, a high-ranking prosecutor, on the basis of which it is considered the right to evaluate the judgment and ruling of the first appellate court, which has not entered into force, and to change court decisions in the cassation procedure, and its purpose is to protect the rights and freedom of the participants in the criminal proceedings, as well as the legal interests of the state and society ²⁷.

M.V. Byzova, in her opinion, links the protest to the prosecutor's request, while N.V. Chekmacheva considers it a decision, and in both cases, the protest is brought after the conclusion that the court's verdict or ruling was illegal, unfounded and unfair. We fully support N.V. Chekmacheva's opinion that the

²⁴National encyclopedia of Uzbekistan. Volume 1. 2000. G. Adumajidov. // Electronic resource: <https://uz.wikipedia.org/wiki>

²⁵ Comments to the Criminal Procedure Code of the Republic of Uzbekistan. Editor-in-chief: Prof. G.A. Adumajidov. Doctor of Law and Philosophy, Assoc. Prof. U. Tokhtasheva (articles 497¹-497¹⁸). -T.: TDYul publishing house, 2009. -788 pages.

²⁶ Byzova M.V. Presentation of the prosecutor: Abstract. Dissertation . Candidate of Legal Sciences. Yekaterinburg, 2009. P.19.

²⁷ Chekmacheva N.V. The prosecutor of cassational production of criminal cases and problems of obespecheniya zakonnosti and justification of objections: Abstract . Dissertation Candidate of Legal Sciences . M., 2009. P. 12

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purpose of the protest is to protect the rights, freedoms of the participants in the criminal process and the legitimate interests of the state and society.

M.Z.Radjabova defined the prosecutor's protest in her research work as follows: the prosecutor's protest is a procedural document based on the request of the higher courts to verify the legality, reasonableness and fairness of the lower court's verdict and decision in accordance with the procedure and grounds established by law ²⁸.

In our opinion, based on the above analysis, the fact that the prosecutor's procedural document against illegal, unfounded and unfair court decisions is called a "protest" in the legislation does not affect the independence of the court or the rules of equality of parties in criminal proceedings. Therefore, we conclude that the prosecutor's "protest" against an illegal, unfounded and unfair court decision or ruling is applied in a manner consistent with the requirements of the Criminal Procedure Code.

At the same time, the current Criminal Procedure Code also provides for a "private protest" by the prosecutor, and in our opinion, the following differences between a private protest and a protest can be highlighted: a prosecutor's protest is filed against a court verdict and a higher court ruling, while a private protest is filed against rulings of the court of first instance (including preliminary hearings, rulings of the court of first instance, preliminary fixation of testimony, application of coercive medical measures, petitions for reconciliation, rulings refusing to approve a plea agreement, rulings on the application of an amnesty act, and other rulings).

At the same time, there are similarities between "protest" and "private protest", and the requirements that must be reflected in the prosecutor's protest in the Code of Criminal Procedure also apply to private protests. In particular, Article 480 of the Code of Criminal Procedure ²⁹ sets out requirements for the content of protests,

²⁸ M.Z.Radjabova Improving the functions and powers of the prosecutor in the consideration of criminal cases in higher court instances: a comparative legal analysis . / Dissertation prepared for the degree of Doctor of Philosophy (PhD) in Legal Sciences . - Tashkent .: 2023. P 145.

²⁹ See Article 480 of the Criminal Code.

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ISSN 2760-4934 (Online) Volume 2, Issue 5, May 2026



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and the requirements reflected must be fulfilled. In addition, private protests, like protests, are filed against illegal, unfounded and unfair court rulings, and the content is the same procedural document.

Based on the above, in our opinion, a prosecutor's protest is a procedural document submitted by the prosecutor to the courts within the scope of the powers and grounds established by law against an illegal, unfounded and unfair court ruling or decision, containing the grounds and proposals to change or cancel the court decision, and aimed at protecting the rights and freedoms of the participants in the criminal process and the legitimate interests of society and the state.

According to the statistical analysis, it is shown that most of the prosecutor's protests were filed according to the requirements of the law. This is a clear example of satisfied protests. 49.8% of appeals in 2020, 67% in 2021, 81.1% of protests in 2022 were satisfied by appeal courts, and 78.9% in 2020, 75.3% in 2021 were satisfied by cassation courts³⁰.

However, the analysis of practice materials shows that there are some problems in the preparation of protests by prosecutors, and they include:

- the court's verdict or ruling indicates that several or all of the requirements for annulment or modification of a court decision established by Article 485 of the Criminal Procedure Code have been violated, but the protest indicates that only one of the requirements specified in the case was violated;
- the prosecutor's protest contained a general statement of the grounds for changing or annulling the court decision, as provided for in the Code of Criminal Procedure, without specifically indicating the relevant article;
- the protest does not indicate how the serious violation of the norms of criminal procedure law by the court affects or does not affect the legality and validity of the court decision (Article 488 of the Criminal Procedure Code);
- failure to fully cover all cases of violations of the law allowed by the court in the protest;

³⁰ Statistical data on the practice of filing protests provided by the Prosecutor General's Office for 2019-2022.

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- filing a protest without providing sufficient legal grounds;
- not making specific suggestions on the court decision, that is, not properly directing the prosecutor's proposal to eliminate the violation of the law committed by the court in court instances;
- the prosecutor's opinion expressed in his plea and the content of his protest in some cases contradicted each other (if in his plea he asked for a more severe sentence, in the protest he indicated that a lighter sentence should be imposed, etc.)³¹.

It is not an exaggeration to conclude that the above-mentioned situations are negative subjective facts resulting from the fact that most of the prosecutors participating in court proceedings are young and lack sufficient experience and knowledge, inability to apply regulatory legal acts, indifferent study of criminal cases in preparation for court proceedings, and superficial familiarization with court verdicts or rulings, and minutes of the session.

In addition, in accordance with Article 36 of the Law "On the Prosecutor's Office", it is established that the protest may be withdrawn by the prosecutor who filed the protest, as well as by a higher prosecutor, before the start of the hearing of the case in court. However, in accordance with Articles 497¹⁰ and 504¹ of the CPC, it is established that the withdrawal of the protest is allowed before the court (appellate or cassation) enters the deliberation room.

It seems that the laws have different approaches to the issue of the time limit for the prosecutor to withdraw the protest. However, each stage has its own importance and time limit, and it would be more appropriate to use the phrase "before the court enters the deliberation room" rather than "before the start of the court session", which creates broader opportunities for the prosecutor.

Therefore, in our opinion, in order to eliminate the ambiguity in the Laws, it is proposed to change the deadline for the prosecutor to withdraw the protest to "

³¹ Protests filed with courts studied in 2020-2022 (practical materials)

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until the court enters the deliberation room " in the Law "On the Prosecutor's Office ".

There is also another contradiction between the Laws: in the Law "On the Prosecutor's Office" the phrase "calling off" a prosecutor's protest is used, while in the Code of Criminal Procedure, "withdrawal" is used. This leads to ambiguity in the terms. The use of this term in two different directions does not meet the requirements of legislative technique, it should be used uniformly. Therefore, in our opinion, it is appropriate to change the phrase "calling off a protest" in the Law "On the Prosecutor's Office" to the phrase "withdrawal of a protest".

Each sentence has its own meaning, its own concept, which reflects its entire movement. In particular, the concept of withdrawing the protest has not been explained by Uzbek scholars.

In our opinion, the withdrawal of a protest is an official request by the prosecutor not to consider the criminal case in court and to return the protest to the prosecutor's office official who filed it.

Law enforcement practice shows that the following factors lead to the conclusion that the protest should be withdrawn: - the grounds in the protest are not substantiated, do not take into account the information from the judicial investigation, and are based only on preliminary investigation documents; - the grounds for the protest do not comply with the requirements of criminal procedure or criminal legislation; - there is no unified judicial practice on this or that issue ³².

In practice, if the prosecutor's appeal for such a withdrawal is received before the start of the court session, the protest is returned to the relevant prosecutor, if the protest is received after the start of the court session in the court of appeal (if there are no complaints from other parties to the case), the further fate of this appeal is

³²Reports on criminal cases in 2020-2023 received by the Prosecutor General's Office.

Eureka Journal of Humanities and Social Research (EJHSR)

ISSN 2760-4934 (Online) Volume 2, Issue 5, May 2026



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not determined by criminal procedural legislation. This issue ³³is regulated by the decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan. The Code of Criminal Procedure of the Russian Federation ³⁴, however, covers this issue in detail, but it is indicated that only the person who issued it has the right to withdraw the protest. There are debates among Russian scholars on this issue, and most scholars support the idea that the authority to withdraw the protest should also be given to a higher prosecutor ³⁵. The above situation demonstrates the positive nature of the existing rule in our national legislation. However, the fact that the mechanism for withdrawing the protest, as established in the Code of Criminal Procedure of the Russian Federation, should be fully specified in the current Code of Criminal Procedure, as established in the Code of Criminal Procedure of the Russian Federation, is considered a negative aspect of our legislation.

In most cases, the prosecutor who filed the protest withdraws it based on the recommendation (instruction) of the superior prosecutor.

According to statistics, the number of protests being withdrawn is decreasing, which is a positive indicator. Before the court entered the consultation room, 6 protests were withdrawn in 2021, 5 in 2022, and 3 in the first 6 months of 2023³⁶. the decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan partially determine the actions that ³⁷the court must take upon receipt of an appeal to withdraw a protest, the need to terminate the proceedings in the appeal procedure, and the issue of leaving the protest, as well as the document on its

³³Paragraph 9 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 13 "On the practice of considering criminal cases by courts in the appellate procedure" dated 20.04.2021, Paragraph 11 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 37 "On the judicial practice of considering criminal cases in the cassation procedure" dated 27.11.2021.

³⁴See: Part 3 of Article 389-8 of the Code of Criminal Procedure of the Russian Federation https://www.consultant.ru/document/cons_doc_LAW_34481/

³⁵Bulanova N.V. Participation of prosecutors in the consideration of criminal cases by the courts: a monograph / Academy of the General Prosecutor's Office of the Russian Federation. -Moscow: Prospekt, 2018. - P 120. Byzova M.V. Presentation of the prosecutor: Abstract. Dissertation. Candidate of Legal Sciences. Yekaterinburg, 2009. P.19.

³⁶ The statistics on the practice of bringing protests presented by the Prosecutor General's Office in the 6 months of 2022-2023.

³⁷ See: Paragraph 9 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 13 dated 20.04.2021 "On the practice of considering criminal cases by courts in the appellate procedure" <https://lex.uz/docs>, Paragraph 11 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 37 dated 27.11.2021 "On the practice of considering criminal cases in the cassation procedure" <https://nrm.uz/>

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withdrawal, in the case or returning it, there is no procedural mechanism in the CPC.

In our opinion, The actions to be taken by the court upon receipt of an application to withdraw a protest, the need to terminate the proceedings in the appeal procedure, and the issues of leaving the protest, as well as the document on its withdrawal, in the case or returning it It should be specified in the JPK. This serves to further improve the mechanism of work.

In addition, according to Article 36 of the Law "On the Prosecutor's Office", the prosecutor or a higher prosecutor may exercise the authority to amend or supplement the protest until the start of the appeal or cassation instance in court. 479⁹ and 10 of the Criminal Code Article 504 states that the person who filed the protest has the right to change it or supplement it with new reasons before the start of the court hearing.

These two laws have two different approaches, while the law on the prosecution states that the senior prosecutor is authorized to make amendments and additions to the protest, the criminal procedure code does not allow it.

Scientists who conducted research on this issue , M.V. Byzova, N.V. Bulanova, and M.Z. Radjapova, emphasize that the authority to make changes and additions to the protest should also be given to the higher prosecutor.

In our opinion, it is not appropriate to grant the higher prosecutor the authority to amend or supplement the protest, and the prosecutor who filed the protest has the right to have this authority. Because it is he who knows the essence of the reasons and grounds stated in the protest. Also, there is no mechanism for this in criminal procedural legislation. Therefore, it is appropriate to remove this authority granted to the higher prosecutor, which is provided for in the norm specified in the Law "On the Prosecutor's Office".

The Law "On the Prosecutor's Office" stipulates that in cases where a prosecutor's authority is exceeded, he or she must appeal to a higher prosecutor with a request

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to file a protest (Article 35) . The same rule is provided in clause 16.2 of the sectoral order of the Prosecutor General .

is a procedural submission in the conduct of court cases - an appeal to a higher prosecutor to file a protest in cases where the prosecutor does not have the authority to file a protest.

The Code of Criminal Procedure and the sectoral order of the Prosecutor General use the word "presentation", but do not specify the scope of entities authorized to submit a presentation on the protest, their powers, terms, and the mechanism of proceedings. In our opinion, since this process is also related to procedural proceedings, it is appropriate to determine it in the Code of Criminal Procedure and the sectoral order.

In particular, the Order of the Prosecutor General of the Republic of Kazakhstan No. 113 dated 06.09.2018 "On Certain Issues of the Organization of Prosecutorial Control" ³⁸establishes the deadlines and procedure for considering a petition for a protest.

At the same time, we would like to express our opinion on the requirements for the prosecutor's presentation on filing a protest, because these requirements serve to shape the presentation. The current Code of Civil Procedure does not contain any requirements for the content of a submission requesting a cassation protest, but practice has formed certain requirements, and approaches vary across the republic.

In our opinion, the following should be included in the submission of protest: - position, title, name of the prosecutor to whom the submission is sent; - the name of the court that issued the judgment, date of issuance, information about the person against whom the judgment was issued; – the grounds for filing a cassation protest, what the applicant believes is the incorrectness of the judgment or other decision, and the essence of the request; - the evidence on which the prosecutor

³⁸ Order No. 113 dated 06.09.2018 of the Prosecutor General of the Republic of Kazakhstan "On organizing the protection of state interests in court and monitoring the legality of court documents entered into force in criminal cases" dated 06.09.2018, Chapter 4, paragraphs 51-55 of the Instruction

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bases his demands and must be examined by the court, including evidence that was not examined in court before; - list of materials attached to the presentation; - the date of submission and the signature of the prosecutor submitting the submission.

the deadlines for sending and considering a protest petition, as well as the mechanism for doing so, should be reflected in the current sectoral order of the Prosecutor General. Because, in this requirements its introduction serves to improve the mechanism of administrative work.

When asked whether the above-mentioned procedural documents are important in the effective performance of the tasks assigned to the prosecutor during the trial, 64.55% of the prosecutor's office employees and 88% of the other employees confirmed that the procedural documents determine the position of the prosecutor, therefore they must be justified in all respects in accordance with the requirements of the law ³⁹.

Today, electronic document circulation, electronic digital criminal proceedings, and digitalization of criminal procedural relations are gaining relevance. In this regard, it is necessary to provide employees participating in court proceedings with electronic devices, which contain regulatory legal acts, decisions of the Plenum of the Supreme Court, sectoral orders of the Prosecutor General, judicial and prosecutorial practice, electronic copies of control cases, and other issues related to the case.

From this perspective, providing sectoral employees with tablets to use during court proceedings and uploading the issues noted on them to enable the prosecutor to submit legitimate, substantiated, and timely requests, objections, or opinions will increase work efficiency, facilitate work, and ensure the participation of qualified prosecutors.

In conclusion, it can be said that each procedural document drawn up by prosecutors must be legal and justified. Because it affects the effectiveness of the

³⁹Results of a survey conducted among prosecutor's office employees through the SEDO document circulation on 06.10.2023 and among law enforcement agencies and court employees. 09.10.2023

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prosecutor's activities and is a manifestation of his participation. The prosecutor is equally responsible for the legality, validity and fairness of court decisions, and the procedural documents used by him must comply with the requirements of the law, be justified and based on the principles of justice. This serves to protect the rights and freedoms of individuals and citizens, the legitimate interests of the state and society.