

## **Constitutional and Legal Status of Prosecution Services in Turkic States: A Comparative Analysis**

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**Abstract:** The article provides a comparative analysis of the constitutional-legal status of prosecution authorities in Turkic states within the context of historical development stages and modern normative regulation mechanisms. The primary objective of the research is to identify the similarities and differences regarding the position of the prosecution institute within the system of state power, its functions, organizational structure, and personnel policy in the constitutional models of Azerbaijan, Turkey, Kazakhstan, Kyrgyzstan, Uzbekistan, and Turkmenistan.

From a methodological standpoint, historical-legal and comparative jurisprudence approaches have been utilized in the article. Historical analysis demonstrates that the formation of the prosecution institute has followed various development trajectories in Turkic states: the foundations of this model, laid with the institute of "müdde-i umumilik" (public prosecution) during the Tanzimat era in the Ottoman Empire, evolved into a centralized oversight body in post-Soviet Turkic states under the influence of the Soviet legal system. The establishment of the national prosecution institute during the period of the Azerbaijan Democratic Republic is regarded as a significant precedent for modern Turkic states.

In the section on constitutional-legal analysis, it is determined that the status of prosecution authorities in the constitutions of Azerbaijan, Uzbekistan, Kazakhstan, and Turkmenistan is regulated more comprehensively and in greater normative detail, based on the principle of a unified and centralized system. In these states, the prosecution acts as an independent legal institute performing key functions such as overseeing the implementation of laws, criminal prosecution, and the protection of state indictments. Conversely, in the Kyrgyz and Turkish models, the constitutional status of the prosecution is more general in nature; in Turkey, the prosecution is considered an integral part of the judicial power and is not distinguished as an independent institute.

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The article also comparatively examines the powers, functional burden, and personnel policy of the prosecution authorities. Consequently, it is determined that the role of the prosecution in the state power mechanism is broader and more centralized in post-Soviet Turkic states, whereas in the Turkish model, the prosecution operates in a state of close integration with the judiciary. The involvement of the president, parliament, and other high state institutions in personnel policy and appointment mechanisms is ensured at various levels, serving to balance the principle of the separation of powers.

Overall, the article scientifically proves the existence of common legal principles and the formation of specific models aligned with national legal systems based on the comparative analysis of the constitutional-legal foundations of the prosecution institute in Turkic states. According to the author's conclusion, the exchange of experience and normative convergence in this field could create an important legal basis for the formation of a unified Common-Turkic legal space in the future.

**Keywords:** *Turkic states, prosecution service, constitutional-legal status, comparative law, judicial independence, personnel policy, historical development, legal integration, Prosecutor General, separation of powers*

## INTRODUCTION

The centuries-old statehood traditions, legal framework, and administrative culture of the Turkic peoples constitute a vital component of the history of global civilization and governance. Historical sources indicate that during the eras of the Great Hun, Göktürk, and other Turkic empires, traditional administrative principles, legal norms, and the *Töre* (customary law)—regarded as one of the fundamental pillars of the state's existence—played a direct role in the establishment of a profound Turkic school of statecraft. It is no coincidence that this historical heritage, having withstood the test of time, continues to serve as the traditional and legal foundation for modern state-building processes in Turkic states as a crucial element of their national identity.

Today, although the independent Turkic states—Azerbaijan, Turkey, Kazakhstan, Kyrgyzstan, Uzbekistan, and Turkmenistan—have followed diverse paths of political and legal evolution since their inception, they possess similar legal institutions rooted in shared historical origins and legal traditions. Consequently, within the framework of the Organization of Turkic States, the consistent and unanimous steps taken toward legal reforms, as in all other spheres, represent a profound commitment to the historical statehood heritage. Furthermore, these initiatives are of great significance as an integral part of a systematic approach toward exchanging expertise in the fields of law and justice, formulating unified approaches, and harmonizing national legislations (Organization of Turkic States, n.d.; *Xalq Qəzeti*, 2024).

In this context, the individual study and analysis of legal institutions within Turkic states is a highly productive endeavor; it allows for the disclosure of the specific characteristics of these institutions while simultaneously identifying the general principles of the common Turkic legal system. From

this perspective, a comparative analysis of the constitutional and legal status of the prosecution services—one of the most pivotal legal institutions—is of particular relevance.

Developing an article on this subject is of great importance not only from a theoretical standpoint but also from a practical one. Theoretically, the article defines and elucidates the position and functional role of prosecution services within the system of state power. Practically, it contributes to the strengthening of multilateral legal cooperation among Turkic states, the sharing of best practices in the functioning of the institution of the prosecution, and the broader processes of integration.

## MAIN BODY

In the contemporary era, the status of the prosecution service—as one of the most significant legal institutions in Turkic states—attracts particular attention due to its specific characteristics regarding organizational structure, functions, and appointment mechanisms. It is pertinent to note that while the formation of this institution within the legal systems of Turkic states occurred during approximately the same period, this process followed a parallel trajectory in post-Soviet Turkic states, whereas it underwent a distinct evolutionary path within the Turkish legal system. However, following the dissolution of the Soviet Union, the development and formation of the institution of the prosecution in newly independent Turkic states assumed a unique character; the activities and operational principles of prosecution services were refined through the establishment of new legal and functional mechanisms. Consequently, examining the constitutional and legal status of prosecution services along two primary dimensions will ensure the quality of a systematic and comparative legal approach:

- a. Historical Foundations
- b. Constitutional Foundations

### 1. Historical Foundations

First and foremost, it should be noted that the history of the establishment of prosecution services in Turkic states dates back to the late 19th and early 20th centuries. From a general perspective, the institution of the prosecution—originally termed *müddə-i umumilik* (where *müddə* translates from Azerbaijani as claimant or accuser, and *umumilik* denotes public or general)—was first established within the Turkic world in July 1879 (1293 Hijri). This was achieved through the *Provisional Law on the Organization of Nizamiyye Courts* (*Məhakim-i nizamiiyyənin təşkilati qanun-i müvəqqəti*), based on Article 91 of the 1876 Basic Law of the Ottoman Empire, the legal predecessor of the Republic of Turkey (Republic of Turkey, 1876; Durhan, 2008). It must be considered that the most objective reason for the absence of this institution prior to the 19th century was that, in states where Islamic law was applied, the investigation process for criminal cases was conducted directly by the judiciary. More specifically, the institution of the prosecution did not exist in Islamic law. Nevertheless, Article 56 of the second chapter of the aforementioned law, titled *Public Prosecutors* (*müddə-i umumilər*), established prosecution offices within all

Nizamiyye courts (Grand National Assembly of Turkey, 1879). Defining the primary duties and powers of the prosecutor, the article stated that public prosecutors were officials appointed by the Sultan to protect public rights in judicial matters and to supervise the correct execution of legal decrees for the purpose of maintaining public order and safeguarding public interests. It is evident that the duties and powers of a prosecutor in the Ottoman Empire during the Tanzimat era did not significantly differ from the modern understanding of the institution of the prosecution.

Following the proclamation of the Republic, the preservation of the prosecution as a legitimate institution was formalized by the Council of State Law No. 669 in 1925, and prosecution services were reorganized under the title of public prosecutors (*müdde-i umumilər*) (Wikipedia contributors, n.d.).

In addition to the aforementioned, the emergence of the prosecution institution within the context of modern Turkic states is closely linked to the Azerbaijan Democratic Republic (ADR). For the first time in the history of modern Turkic states, prosecution services began operations within the Baku District Court by a decree of the Council of Ministers of the ADR dated October 1, 1918 (Süleyanova, 2024). During its brief period of activity, the first national prosecution offices—led successively by Prosecutors General F. Khoyski, K. Khasmammadov, A. Safikurdski, and T. Makinski—achieved significant milestones, such as initiating criminal cases and documenting material evidence regarding the massacres committed against Azerbaijanis by Armenian forces. However, the Soviet occupation of 1920 prevented the continuity of these activities (Əliyev, 2020).

In the Central Asian Turkic states, the formation and establishment of prosecution services occurred relatively later, during the Soviet era. Specifically, the *Regulations on Prosecutorial Supervision* were adopted by a decree of the All-Russian Central Executive Committee on May 28, 1922, and a state prosecution body was established within the People's Commissariat of Justice to supervise compliance with laws and combat crime (Office of the Prosecutor General of the Russian Federation, n.d.). During this period, similar to all union republics within the Soviet Union, prosecution services were established under the People's Commissariat of Justice in the Central Asian Turkic states. Pursuant to the adopted regulations, the People's Commissar of Justice simultaneously performed the duties of the prosecutor. Consequently, from 1922 onwards, the first prosecution services began operating in Kazakhstan, Uzbekistan, and Turkmenistan (Office of the Prosecutor General of the Russian Federation, n.d.; Stud.kz, n.d.).

In contrast, prosecution services in Kyrgyzstan were established in November 1924. This delay was due to the relatively later formation of the Kara-Kirghiz Autonomous Oblast within the Russian Soviet Federative Socialist Republic on October 14, 1924 (Wikipedia contributors, n.d.). Following the establishment of this autonomous entity, the first national prosecution offices—comprising 15 members—were created by Decree No. 6 of the Presidium of the Revolutionary Committee of the Kara-Kirghiz Autonomous Oblast on November 22, 1924 (Office of the Prosecutor General of the Kyrgyz Republic, n.d.). At that time, as in other Soviet republics, prosecution services were integrated into the system of the People's Commissariat of Justice, and the office of the regional prosecutor was incorporated into the structure of the regional committee (Wikipedia contributors, n.d.). When the Kyrgyz Soviet Socialist Republic was established in

1936, the prosecution service was separated from the People's Commissariat of Justice and organized as an independent institution. The Prosecution of the Kyrgyz SSR was subsequently formed on the basis of the Prosecution of the Kyrgyz Autonomous Soviet Socialist Republic.

## **2. CONSTITUTIONAL FOUNDATIONS**

### **2.1. In Terms of Constitutional Status**

The constitutional and legal status of prosecution services is regulated by Article 133 of the Constitution of the Republic of Azerbaijan, Article 140 of the Constitution of the Republic of Turkey, Articles 143–146 (Chapter XXV) of the Constitution of the Republic of Uzbekistan, Article 83 of the Constitution of the Republic of Kazakhstan, Article 78 of the Constitution of the Republic of Kyrgyzstan, and Articles 129–133 of the Constitution of the Republic of Turkmenistan. An examination of these provisions demonstrates that the constitutional-legal status of prosecution services is regulated with varying degrees of comprehensiveness and scope across the constitutions of contemporary Turkic states.

For instance, Article 133 of the Constitution of the Republic of Azerbaijan stipulates that the Prosecution Office of the Republic of Azerbaijan, in the cases and manner prescribed by law, supervises the implementation and application of laws; initiates criminal cases and conducts investigations in cases provided by law; supports public prosecution in court; files lawsuits in court; and lodges protests against court decisions (Republic of Azerbaijan, 1995). This provision explicitly defines the function of supervising legality, which constitutes the constitutional-legal foundation of the prosecution, and presents the institution as an integral component of the state's judicial system. Accordingly, although the status of prosecution services in Azerbaijan is regulated by a single constitutional article, it remains highly comprehensive and sophisticated in terms of its content and legal essence.

In the Republic of Uzbekistan, the constitutional foundations are broader and established across several articles. Articles 143–146 of the Constitution of the Republic of Uzbekistan state that supervision over the strict and uniform observance of laws is exercised by the Prosecutor General of the Republic of Uzbekistan and the prosecutors subordinate to him (Article 143) and that prosecution services exercise their powers independently of state bodies, public associations, and officials and are subject only to the Constitution and the laws of the Republic of Uzbekistan (Article 145) (Republic of Uzbekistan, 1992). These provisions constitutionally enshrine both the independence of the prosecution and the prevention of political dependence on other state institutions.

Article 83 of the Constitution of the Republic of Kazakhstan establishes the constitutional status, centralized organizational structure, and powers of the prosecution (Republic of Kazakhstan, 1995). According to this article, the Prosecution Office, on behalf of the state and within the limits and forms established by law, exercises supervision over the observance of legality throughout the territory of the Republic of Kazakhstan, represents the interests of the state in court, and carries out criminal prosecution on behalf of the state. In this respect, the constitutional role of the

prosecution within the national legal system is explicitly defined and largely corresponds to the powers vested in prosecution services in other Turkic states.

In contrast, Article 78 of the Constitution of the Republic of Kyrgyzstan provides that supervision over the precise and uniform execution of legislative acts is carried out by the Prosecution Office of the Republic of Kyrgyzstan within its competence (Kyrgyz Republic, 2021). The Kyrgyz Constitution thus defines the status of the prosecution in more general terms, limiting itself to identifying its place within the legal system. This approach indicates that the detailed regulation of prosecution services in Kyrgyzstan is primarily delegated to statutory legislation rather than constitutional norms.

The Constitution of the Republic of Turkmenistan (Articles 129–133) extensively regulates the constitutional foundations of the prosecution. In particular, Article 132 emphasizes that the Prosecutor General and the prosecutors subordinate to him are guided solely by the law in the exercise of their powers (Turkmenistan, 2016). This provision elevates the independence of the prosecution to a constitutional principle and ensures that prosecutorial activities are conducted strictly in accordance with constitutional and legal requirements.

The constitutional status of prosecution services in the Republic of Turkey is comparatively distinct. Article 140 of the Constitution of the Republic of Turkey indicates that the prosecution does not possess the status of a fully independent body and instead occupies a more limited position within the framework of judicial power. The constitutional wording—stating that judges and prosecutors serve as judges and prosecutors of civil and administrative courts and that these duties are performed by professional judges and prosecutors—clearly differentiates the Turkish model from those of post-Soviet Turkic states (Republic of Turkey, 1982).

## **2.2. Organizational Structure**

The organizational structure of prosecution services constitutes a fundamental issue addressed within the constitutions of Turkic states. However, it should be noted that while the constitutions of Azerbaijan, Turkey, Uzbekistan, Kazakhstan, and Turkmenistan contain specific provisions concerning this structure, the Constitution of the Republic of Kyrgyzstan does not include an explicit constitutional norm regulating prosecutorial organization.

Article 133 of the Constitution of the Republic of Azerbaijan provides that the Prosecution Office of the Republic of Azerbaijan is a unified centralized body based on the subordination of territorial and specialized prosecutors to the Prosecutor General of the Republic of Azerbaijan (Republic of Azerbaijan, 1995). The inclusion of this provision at the constitutional level reflects the establishment of a supreme organizational model grounded in the principle of centralized governance. Similar centralized prosecution systems are constitutionally *закреплены* in the Republics of Uzbekistan, Kazakhstan, and Turkmenistan.

Article 144 (Part I) of the Constitution of the Republic of Uzbekistan states that the Prosecutor General of the Republic of Uzbekistan heads the centralized system of bodies of the Procuracy

(Republic of Uzbekistan, 1992). Likewise, Article 83 (Part II) of the Constitution of the Republic of Kazakhstan establishes that the Prosecution Office constitutes a unified centralized system with the subordination of lower prosecutors to higher ones and to the Prosecutor General (Republic of Kazakhstan, 1995). Correspondingly, Article 131 (Part I) of the Constitution of the Republic of Turkmenistan stipulates that the Prosecutor General of Turkmenistan heads the unified centralized system of public prosecution bodies (Turkmenistan, 2016).

Although the constitutional status of the prosecution service in the Republic of Kyrgyzstan is regulated by Article 78 of the Constitution, this provision does not address issues relating to organizational structure. Instead, the organizational framework of the prosecution in Kyrgyzstan is defined by Article 10 (Parts I and II) of the Constitutional Law of the Republic of Kyrgyzstan “On the Prosecution of the Republic of Kyrgyzstan” (Jogorku Kenesh of the Kyrgyz Republic, 2021). This law establishes that the prosecution system consists of the General Prosecutor’s Office, military prosecution bodies, prosecution offices of districts and major cities, as well as specialized prosecution offices, and allows for the creation of additional entities within the unified prosecution system.

In the Republic of Turkey, Article 140 of the Constitution establishes the prosecution as an integral component of judicial power. Nearly all provisions of this article define identical legal statuses for judges and prosecutors (Republic of Turkey, 1982). Although the constitution does not explicitly refer to a “unified centralized prosecution system,” the Turkish prosecution service is nonetheless organized in a unified and hierarchical manner. The Chief Public Prosecutor of the Court of Appeals (*Yargıtay Cumhuriyet Başsavcısı*) occupies the highest position within the prosecution system and represents the state prosecution at the cassation level. Additionally, the system comprises Chief Public Prosecutors (*Cumhuriyet Başsavcılıarı*) and Public Prosecutors (*Cumhuriyet Savcılıarı*) operating within each judicial district.

### **2.3. Powers and Functions**

Comparative analysis demonstrates that the powers and functions of prosecution services in the constitutions of modern Turkic states are defined within the framework of general principles and specific execution mechanisms. In particular, the constitutions of Azerbaijan (Article 133), Uzbekistan (Articles 143–146), Kazakhstan (Article 83), Kyrgyzstan (Article 78), and Turkmenistan (Articles 130–132) emphasize supervision over the implementation of laws and the conduct of criminal investigations as the primary powers of the prosecution. This confirms that within the post-Soviet legal space, the prosecution is recognized as an institution exercising unified legal supervision over the execution of laws within the state legal system. At the same time, the constitutional models of Azerbaijan, Uzbekistan, and Kazakhstan explicitly formalize the functions of protecting state interests in court and supporting public prosecution, thereby ensuring a centralized and integrated status for the prosecution within the national legal framework.

Alongside these common features, the constitutions of modern Turkic states also define several specific powers and functions.

In Azerbaijan, the functions of the prosecution are broad and detailed, encompassing supervision over the execution of laws, initiation and investigation of criminal cases, filing lawsuits in court, and lodging protests against judicial decisions (Republic of Azerbaijan, 1995). This constitutional breadth positions the prosecution as an active and functionally comprehensive institution within the state's legal system.

In Uzbekistan, while the prosecution performs comparable functions, particular emphasis is placed on the constitutional principle of political neutrality and independence, as articulated in Article 145 of the Constitution (Republic of Uzbekistan, 1992). This provision serves as a crucial safeguard against external interference in prosecutorial activities.

In Kazakhstan, the constitutional powers of the prosecution are primarily focused on protecting state interests and supervising legality (Article 83, Clause 1). At the same time, the Constitution stipulates that the Prosecutor General is accountable exclusively to the President (Article 83, Clause 2), which may entail certain risks with regard to the independent execution of prosecutorial functions (Republic of Kazakhstan, 1995).

In Kyrgyzstan, prosecutorial functions are defined in more general terms under Article 78 of the Constitution (Kyrgyz Republic, 2021). While this approach provides legal flexibility by identifying supervision over legality and criminal prosecution as core functions, the absence of a unified and detailed constitutional scope of authority may create challenges in coordination and administrative clarity.

In Turkmenistan, the constitutional powers of the prosecution are concentrated on supervising the legality of operational and criminal investigations (Article 130) and participation in judicial proceedings (Article 129, Clause 2) (Turkmenistan, 2016). A notable feature of this model is the emphasis on the legality of prosecutorial powers rather than their extensive enumeration. Moreover, Article 133 explicitly provides that additional powers of the prosecution are to be regulated by law, which represents an important structural element of the constitutional framework.

In Turkey, prosecution services are regarded as an integral part of the judiciary, and their powers and functions are regulated primarily through statutory law rather than detailed constitutional provisions. This reflects a more limited and circumscribed constitutional role for the prosecution compared to the post-Soviet Turkic states (Republic of Turkey, 1982).

## **2.4. Personnel Policy and Appointment Mechanisms**

One of the key factors ensuring the effectiveness of prosecution authorities is the constitutional regulation of personnel policy and appointment mechanisms. Comparative analysis shows that the constitutions of Azerbaijan, Uzbekistan, Kazakhstan, and Turkmenistan devote particular attention to this issue, whereas the constitutions of Kyrgyzstan and Turkey adopt a more general regulatory approach. Accordingly, in the constitutions of Azerbaijan (Article 133), Uzbekistan (Article 144), Kazakhstan (Article 83), and Turkmenistan (Article 131), the special status and appointment

procedures of the Prosecutor General are explicitly defined. In these states, the appointment of the Prosecutor General falls within the competence of the highest organs of state power—the president, parliament, or their joint participation—thereby ensuring a high degree of political legitimacy and supporting the balance inherent in the principle of separation of powers.

In Azerbaijan, Article 133 of the Constitution establishes that the Prosecutor General is appointed and dismissed by the President of the Republic of Azerbaijan with the consent of the Milli Majlis. The deputies of the Prosecutor General, heads of specialized prosecution offices, and the Prosecutor of the Nakhchivan Autonomous Republic are appointed and dismissed by the President upon the recommendation of the Prosecutor General, while territorial and specialized prosecutors are appointed and dismissed by the Prosecutor General with the consent of the President (Republic of Azerbaijan, 1995). This dual involvement of executive and legislative authorities reflects a balanced implementation of the separation of powers.

In Uzbekistan, Articles 143 and 144 of the Constitution provide that the Prosecutor General heads the prosecution system. The Prosecutor of the Republic of Karakalpakstan is appointed by the supreme representative body of the republic in coordination with the Prosecutor General, while prosecutors of districts, cities, and towns are appointed by the Prosecutor General. The term of office for all prosecutors is five years, and the same individual may not serve as Prosecutor General for more than two consecutive terms (Republic of Uzbekistan, 1992). These provisions introduce a rotation mechanism and maintain a center–regional balance, constituting a distinctive feature of the Uzbek constitutional model.

In Kazakhstan, Article 83 of the Constitution stipulates that the Prosecutor General is accountable solely to the President and enjoys extensive legal immunity during the term of office, including protection from arrest or criminal liability without the consent of the Senate, except in cases of flagrante delicto or serious crimes. The term of office is five years, and the organization and activities of the prosecution are regulated by constitutional law, underscoring the institution’s elevated status within the state system (Republic of Kazakhstan, 1995).

In Turkmenistan, the Constitution provides fewer details concerning personnel policy. Article 131 states that the procedures for appointing and dismissing the Prosecutor General and other prosecutors are determined by law. Unlike other Turkic states, the constitution does not specify the roles of particular political institutions, instead establishing general principles and delegating detailed regulation to normative legal acts (Turkmenistan, 2016).

In Kyrgyzstan and Turkey, constitutional regulation of prosecutorial personnel policy differs significantly. The Constitution of the Kyrgyz Republic contains no detailed provisions regarding appointment mechanisms for prosecutors, whereas the Constitution of the Republic of Turkey provides a comprehensive framework under Article 140. According to this article, the qualifications, appointments, rights and duties, salaries, career advancement, disciplinary proceedings, and reassignment of prosecutors are regulated by law and conducted in accordance with the principles of judicial independence and security of tenure. Additionally, the constitution establishes a mandatory retirement age of 65 for prosecutors and prohibits them from undertaking

any official or private duties beyond those prescribed by law. These provisions are designed to safeguard political neutrality, institutional stability, and professional independence within the Turkish judicial system (Republic of Turkey, 1982).

## CONCLUSION

The comparative analysis of the constitutional and legal status of prosecution services in Turkic states demonstrates that, although these institutions are grounded in shared historical roots and common legal traditions, they also display distinctive characteristics shaped by the national legal systems of each state. While unified and centralized prosecution systems are characteristic of the models adopted in Azerbaijan, Uzbekistan, Kazakhstan, and Turkmenistan, the cases of Turkey and Kyrgyzstan reflect alternative approaches to constitutional and legal regulation. Accordingly, identifying common features within this diversity and promoting the exchange of best practices will not only contribute to the improvement of national legal systems but also support the further development of the institution of the prosecution in Turkic states on the basis of shared legal principles. Such an evolution will provide a solid foundation for the prospective formation of a unified common Turkic legal space.

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