
A PUBLIC INTEREST RATIONALE FOR PROSECUTORIAL ACTION BEYOND CRIMINAL JUSTICE IN AZERBAIJAN

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Keywords

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Xülasə

Azərbaycan Respublikasının Baş Prokurorluğu əsasən, cinayət təqibində olan fəaliyyətinə görə ictimai maraqların keşiyində duran qurum kimi qəbul edilir. Lakin qanunvericiliyə görə, prokurorun cinayət təqibindən kənar səlahiyyətləri kifayət qədər genişdir. Dövlət və ictimai mənafehlərin qorunması bu fəaliyyətin əsasını təşkil edir. Hazırkı vəziyyətinə görə dövlət mənafehinin qorunması məqsədilə mülki iddiaların qaldırılması müvafiq dövlət qurumlarının müraciətlərindən asılıdır. İctimai maraqların müdafiə olunması məsələsi isə qanunvericiliklə tənzimlənmişdir. Belə bir vəziyyətin səbəbləri, ilk növbədə, ölkənin tarixi inkışafının gedişatı, dövlət və ictimai maraqları anlayışının hələ də dəqiq qanunvericilikdə tam əksini tapmamasıdır. Buna görə də, hər iki anlayışa fərqli yanaşma mövcuddur. Bu boşluğun aradan qaldırılması yollarından biri prokurorluğun geniş ictimaiyyətin mənafehinin müdafiəçisi rolunun qanunvericilikdə təsbit olunmasıdır. Məhkəmə nəzarətində olan və fəaliyyəti barədə Qanunvericilik orqanına və Dövlət Başçısına hesabat verən bir qurum olaraq Prokurorluq mülki yurisdiksiyada ictimai və dövlət maraqlarının müdafiəçisi roluna tam uyğun görünür.

Аннотация

В настоящее время прокуратура Азербайджана рассматривается как страж общественных интересов благодаря своей активной роли в уголовном процессе. Вовлечение прокуроров в сферы, выходящие за рамки уголовного правосудия, хотя и предусмотрено законодательством, оно довольно ограничено. Вопрос подачи гражданского иска для защиты государственных и общественных интересов остается на усмотрение государственных учреждений. Решения государственных учреждений об отказе в возбуждении дела лишь при серьезных обстоятельствах может рассматриваться как преступное деяние злоупотребление властью. При менее серьезных обстоятельствах подобные решения не подлежат оценке, либо оспариванию. Эти решения также не подлежат судебному пересмотру, и основания для апелляции по таким решениям законодательством не предусмотрены. Причины такого положения кроются, во-первых, в ходе исторического развития страны, а точнее ее историческом наследии, что отражается в самом восприятии понятия «общественного интереса». Интересы государства и общественности зачастую рассматриваются как разные и взаимоисключающие категории. Законодательством определены некоторые ограничения для прокурора по

защите интересов, как государства, так и общественности. Предоставление статутного определения роли прокуратуры как органа, действующего в защиту интересов общественности, может быть одним из вариантов в сложившейся ситуации. Учреждение находится под полным судебным контролем и подотчетно как законодательному органу, так и главе государства, а потому должным образом подходит для роли защитника общественных и государственных интересов в гражданской юрисдикции.

Introduction

The rationale that the prosecutor joining as a party to legal proceedings in criminal justice and beyond is in the public interest, could be considered a generally accepted position. However, the question is whether the concept of the public interest, apparently self-explanatory, is, in fact, so explicit and clear. Clarification of this question requires an examination of the concept *public* from various angles. An overview of the legislative provisions regulating the prosecutor's participation in different proceedings may facilitate this clarification. The effectiveness of prosecutorial participation in advancing the public interest in matters of societal concern needs careful consideration. It may be assisted by comparison with foreign and international experience, which will be reflected to a certain extent in this paper.

When the European Court of Human Rights deals with the issue of prosecutorial intervention in areas beyond criminal proceedings, it distinguishes between the different substantive rights which may come into play with such intervention, all derived from Article 6 of the Convention: the right to an independent and impartial tribunal; the right to adversarial proceedings; the right to equality of arms; and the right of access to a court. (ECHR, 2011). The issue of representation of the public interest may not fall under any of these headings, as the primary concern of the Convention is the protection of the rights and freedoms of an individual in respect of the state. However, the interests of the public reflect the interests of the mass of individuals and therefore the protection of the public interest may require similar safeguards.

Public Interest

As the research puts it, the public interest is generally regarded as the common good for many, except for those who are 'sensitive to the subtler nuances of political language', extracting the incompatibility of these concepts from the perspective of historical development. (Douglas, 1980, p.103) The public interest is a living concept, which has developed historically and it continues to develop, while bearing features of the environment in which it evolves. Its development is primarily based on a premise of the preponderance of general interest above that of a narrow group of members of the society. On a societal scale of relations, the weight of the interest of a few against the interest of the public could be balanced only by the power of law. The paramount position of law above the wishes of the government and other state mechanisms has been emphasized in great works of both past and present.

Plato's description of the law casts light on relations between it and government. The law shall have an authority of its own and not be dependent on other authorities, lest the citizens enjoy all the benefits of the state. (Plato, 1980, p. 172) Aristotle had similar views on the

crucial role of regulation to prevent abuse on the part of state bodies that are unable to secure proper guardianship of the common interests (Aristotle, 1958, p. 173) Later, in the Middle Ages, this position was supported in the context of the rights and liberties of members of society. Montesquieu underlined the significance of laws as instrumental in maintaining political liberty, which, among other factors, excludes abuse and misuse of political power. (Montesquieu, 1949, p.183) The evolution of academic discussion of this theme took in many issues, mainly concerning the balance between natural and man-made laws and the degree of discretion allowed to public officials. Natural law theorists thought that rulers should retain considerable discretion provided it did not restrict the directive scope of legitimate laws. Their main concern was to establish the principle that the exercise of political power must further the common good, not merely the particular good of certain officials (Morrow, 1998, p. 294) The public interest depends on the law, i.e. if the law is applied independently of the interests of corporations, persons or state institutions, the public interest stands. As further review will show, this appears to be one of the significant factors in protecting the public interest and the role played by prosecutors in that defence in Azerbaijan. But before going further in this direction, there should be clarity about the meaning of the word 'public', per se.

Public vs Publique

Both criminal and civil procedural legislation in Azerbaijan stipulates the role of the prosecutor as a party to the process acting on behalf of the state for the protection of the public interest. The legislation emphasizes the attachment of the prosecutor rather more to the state than to the public.

According to Collins Dictionary (6th ed.), 'public' means relating to the government or state, or things that are done for the people by the state. It also denotes 'relating to all the people in a country or community' (Collins, 1994). The second meaning is more in tune with the common understanding of the term "*publique, qui est commun, à l'usage de tous, accessible à tous*", according to the Larousse Dictionary. (Larousse, 2011). Therefore, this paper will further refer to both terms in order to distinguish between these two meanings.

While the semantics of the word implies both meanings in English and French, the concept of 'public interest' translates into two different concepts in Azerbaijani. That which relates to the government or state, or things that are done for the people by the state and that which relates to all the people in a country or community are different, and sometimes exclusive in Azerbaijan, not only semantically, but also functionally. The concept of '*publique*' has been re-defined recently, with the adoption of the Public Legal Entity Act 2015. According to that Act, a public legal entity is an organization established on behalf of the state and municipality or by a public legal entity engaged in activities of national and public importance which is not a state or municipal body. The legislature placed an emphasis on national and public importance. So, the public interest, as a universal concept, accommodates the dichotomous situation in Azerbaijan. And there are quite valid reasons for this. Before untangling this knot, we need to look at the position of the Prosecutor's Office within the judicial and legal system of Azerbaijan. The findings may be useful in extracting an argument for the entitlement of the Prosecutor's Office to bring the matter of public interest before a court, as there is no other appropriate forum for issues of this kind.

Guardian of public interest

For the past twenty years, Azerbaijani prosecutors have been seen as the agents of public interest exclusively within the bounds of criminal justice. However, the prosecutor is entitled to play an active role beyond the criminal justice system, too. Despite the existence of statutory provisions empowering prosecutors, they are passive here. Thus, the statutory provisions empowering prosecutors are yet to be fully applied and, most importantly, pass the test of a hearing in court. There is a prospect of change towards a more active role in this area due to the new strategic goals set for the Prosecutor's Office within the national process of rebooting the judicial and legal systems. Earlier, the judicial system was decentralized, with the establishment of regional serious crime and appeal courts. The review of criminal law paved the way for considerable easing of punishment. The Bar Association of Azerbaijan has been rebuilt, with the numbers of licensed court advocates rocketing.

As regards the Prosecutor's Office, President of Azerbaijan Ilham Aliyev spoke of the concept of reforms in the law enforcement system and the place of the Prosecutor's Office on 01/05/2020. The new legal landscape foresees a leading role for the Prosecutor's Office, and not only in the fight against crime. That shall be complemented by a proactive role for the institution in other areas. In particular, the Prosecutor's Office shall be more active in the retrieval of properties that are ill-gotten gains. As the head of state put it, the Prosecutor's Office must be at the forefront in securing the interests of the state and the rule of law, especially in the domains of healthcare, education and culture, so that people and the public are satisfied with the work performed therein. (Azertag,2020)

For an understanding of the present position and for the planning of measures to reach those strategic goals, it is necessary to work through the statutory provisions that regulate the activity of the Prosecutor's Office. Unlike any other of the country's law enforcement agencies, the Prosecutor's Office of the Republic of Azerbaijan is an institution that belongs to the Judicial Branch of power and is one of the few state institutions directly mentioned in the Constitution of the Republic of Azerbaijan, 1995. It is thus considered a 'constitutional body' within the legislative tradition of Azerbaijan. In addition to other statutory powers, it is entitled to prosecute on behalf of the state in courts, according to the Constitution of 1995 and Criminal Procedure Code of 2000. In line with its function to represent the state and public interest in criminal justice, the Prosecutor's Office has been entitled to manage pre-trial proceedings and defend state interests in different types of court hearing. Naturally, that power does not go unchecked. The Prosecutor General, the Office's leading official, reports on its activity to both the legislature and the head of state. An exception to this rule concerns information about an active criminal investigation, according to ss. 43 and 44 of the Prosecutor's Office Act 1999. The Prosecutor's Office is, moreover, subject to full scrutiny by the court while exercising powers that restrict human rights and freedoms, according to Section 45 of the same Act.

Furthermore, the prosecutor is the main public officer who either reviews information and collects preliminary evidence to establish reasonable grounds for instituting formal criminal proceedings or weighs up the evidence and examines the legal grounds for instituting formal criminal proceedings by other officials, such as criminal inquirers and investigators of the law enforcement agencies. At the next stage, when criminal proceedings are formally insti-

tuted, the prosecutor plays the primary role in procedural management of criminal investigations conducted by all investigative authorities in the country, according to Section 84 of the Criminal Procedure Code 2000.

As mentioned above, the authority of the prosecutor is not confined to criminal justice. The prosecutor plays a similarly important role in civil justice, in representing the state and public interest in cases of utmost significance. This principle permeates the provisions of civil, administrative and family law. The prosecutor is entitled to institute a civil action against the defendant or party responsible for his or her action, on behalf of persons with limited physical or mental capacity, according to Section 181.7.2 of the Criminal Procedure Code 2000. Civil claims could be brought and considered within a criminal case, according to Section 179 of the Criminal Procedure Code 2000. Furthermore, the Civil Procedure Code establishes the prosecutor's role as defender of the public interest in Section 306 of the Criminal Procedure Code 2000. Thus, the prosecutor initiates civil actions seeking proprietary rights, including ownership, usage and control of property. It is also the prosecutor who brings *bona vacantia* claims to obtain title over unclaimed property for the state.

In addition, the prosecutor plays a pivotal role in proceedings concerning administrative infractions, which is a kind of liability for civil wrongs (torts) carrying sanctions in the form of fines, warnings, civil confiscations etc. The prosecutor takes pre-emptive action to suppress infractions and oversees proceedings to secure compliance of the administrative infraction proceedings with the Constitution 1995 and legislation, according to Section 54.1 of Administrative Infractions Code 2015. It is also the prosecutor who oversees the lawfulness of provisional measures in administrative infractions proceedings, according to Section 6 of the Administrative Infractions Code 2015. The prosecutor looks into the lawfulness of a preliminary administrative arrest made in the course of administrative infractions proceedings in order to secure the defendant's appearance in a court hearing pending, or to isolate a person posing a danger to the public by his illegal behaviour.

Within criminal justice, but beyond the realm of pre-trial proceedings and state defence in court, the prosecutor is empowered to represent the public interest in the execution of punishment. Under Section 520 of the Criminal Procedure Code 2000, the prosecutor is a party to court proceedings reviewing the grounds and reasons for the postponement of execution of punishment, relief of a convict from undergoing punishment on the grounds of health or statutory limitation, release on parole, commuting punishment, alteration of a correctional and treatment facility, application of the amnesty law, accounting time under medical treatment in the term of punishment to be served, elimination of a criminal record and other issues. The prosecutor provides an opinion on issues of pardoning too. Furthermore, the prosecutor reviews the probation service case file in deciding whether to file for incarceration before the court, in cases when the convict allegedly breaches parole conditions.

The prosecutor also acts on behalf of the state to protect the public interest in family matters. According to Section 72.2 of the Family Code 2000, the executive authority that removes a child from a family in unsuitable conditions shall immediately report it to the prosecutor. A civil action shall be brought before the court to limit or terminate parental rights within seven consecutive days.

However, the power of the prosecutor is subject to the general rule established by the Constitution for all state institutions. According to Article 71.X of the Constitution 1995 on

guarantees of the rights and freedoms of man and citizen, state bodies may function only on the basis of the present Constitution, in the manner and within the boundaries prescribed by law. In one of the most recent cases taken up on the 23/02/2021, the Constitutional Court of the Republic of Azerbaijan ruled for a strict interpretation of the powers of a prosecutor in administrative infractions proceedings. Effectively, the Constitutional Court left to the legislature the decision as to whether the prosecutor should be more active in pursuing public interest cases. This brings us back to the main question. Armed with the statutory provisions on the power of the prosecutor and insight into the prosecutor's role in the modern judicial and legal system, one may arrive at a critical view of the entitlement to represent public interest, as conceptually defined above.

Past reasons leading present dysfunctional character of the system

The interest of the state has been different from the interest of the public for quite a long period in Azerbaijan, from all the time it was part of the Soviet Union. For over seventy years, private property was some kind of exception to the common rule that everything belonged predominantly to the state. Such a situation could hardly have passed without any bearing as to which interest is now considered public. In the Soviet Union, the concept of state and public could hardly be distinguished. The Soviet law enforcement and justice systems prioritized the protection of the state's interest over that of the people, i.e. the public (publique).

After regaining its independence, Azerbaijan took the path of democratization, which also encompassed the Prosecutor's Office. Shaped in the early 1990s, the Criminal Law of modern Azerbaijan adopted as one of its founding principles the guilty person's liability for an action that posed a danger to the public, according to Section 6 of the Criminal Code 2000. Although a similar provision existed in Soviet Criminal Law, it was more symbolic in meaning. The Criminal Law of Azerbaijan makes it clear that society's interest might not be the same as that of the state, but it shall be of no less importance, and sometimes even of greater importance. Thus, the crime of Abuse of Office in Section 308 of the Criminal Code 2000 foresees the official's intentional use of his official powers to gain illegal advantage for himself or third parties in connection with the performance of official duties, or his failure to use his official interests in the interests of service, when such behaviour results in significant harm to the legitimate interests or legally protected interests of society or state.

While an overview of the Criminal Code 2000 does not reveal serious flaws in representing the interest of the general public, the situation is different in civil justice. Both Civil Procedure Code 2000 and Family Code 2000 contain a cap on the role of the prosecutor as a guardian of the public interest, in contrast with his representation of the state's interest. According to ss. 65 and 72 of the Family Code, the competent social service authority informs the prosecutor when triggering a process to deprive of parental rights. Furthermore, according to Section 50.2 of the Civil Procedure Code 2000, in cases of an appropriate request from a state department or organization, or legal persons founded by the state or state department, the prosecutor bringing a civil claim to protect the interest of the state could be considered a party to a civil case. The meaning of the word 'appropriate' needs to be specified and tested in court to settle the civil jurisprudence. Otherwise, what might merely seem to be synonymous with 'complying with the requirements of the law', could become another cap on the powers of the prosecutor. This issue could be the subject of further legal research and is omitted from the present research.

The provision of civil law cited above sets boundaries for the power of the prosecutor as 'the guardian of the public interest'. Specifically, it draws a line between representation of the interest of the general public (publique) and that of the state. Such an arrangement does not only exclude the possibility of the prosecutor representing the interests of the public. It also puts a cap on the prosecutor's role as the defender of state interests. The Prosecutor's Office is an institution of the judicial branch of power under triple control (see above), fit for the role of representing the interests of the state in civil cases. Currently, the initiation of such representation is left to the discretion of the executive bodies, which is basically the substance of Section 50.2.

The modern concept of a division of powers and a system of checks and balances might not accommodate well such an arrangement. And the problem does not lie in the fact that an executive body is currently entitled to decide how to apply the law. In *Marbury v. Madison*, the US Supreme Court put it that the power to "say what the law is" is not a specifically enumerated power or delegated power of any branch of the [federal] government. The power to interpret law is incidental to each branch's function. (Paulsen, 1994, p.103) The problem is rather in the fact that the competent executive body is exclusively entitled to say what the law is, specifically to decide how to apply the law. One could draw an analogy with the Plenary Power of the executive in the US. Legomsky described this situation as a "constitutional oddity", when the political branches of government are given near carte blanche to enact any control measure they see fit without judicial review of its constitutionality. (Legomsky, 1984, p.49) According to Fields, the executive could be empowered at such a high level only in deciding within a narrow range of matters decided by national security interests and taken primarily for national security reasons, however, even the governmental statement that a national security interest exists in a matter is not accepted at face value. The courts independently examine the case to determine both whether a genuine and bona fide national security interest actually exists to justify the action, and whether this national security interest was the primary motivation for the action. (Fields, 2017, p.11)

A decision by a state department or organization, or legal persons founded by the state or state department, not to bring a civil action or not to request the prosecutor to bring a civil action set forth in Section 50.2 of the Civil Procedure Code 2000 may be currently regarded as an executive prerogative. It is not subject to judicial review. And the matter of fact is that these cases may not necessarily be issues of national security. Issues of national security are legitimate reasons for executive prerogative; this is a typical practice in many of the world's democracies. A typical example might be a situation in which a local executive, abusing his office, submits a plot of state-owned land to private persons for cultivation without any of its profits being paid to the state, i.e. an unaccountable use of state property. Another example might concern the local executive authority remaining inactive or negligently oblivious to the fact that state property, i.e. a plot of land in a central part of the city, is privatized according to a unauthorized land scheme.

When it comes to the representation of the interests of the general public, the law is clear. Section 50.2 of the Civil Procedure Code 2000 read according to the Constitutional provision in Article 71.X clearly excludes the possibility of a prosecutor bringing an action on behalf of the public (publique).

The solution to this conundrum certainly lies at legislative level. The legislature shall thoroughly review the existing provisions on the representation of the public interest. It may consider a more active role for the Prosecutor's Office in representing state and public interests. In order to do that, it would be indispensable not only to brush up the provisions of procedural codes. The legislature may see it pertinent to provide for a statutory definition of the Prosecutor's Office as the guardian protector of state and public interests. A comparison of statutory provisions on the Prosecutor's Office in Azerbaijan and abroad might reveal a trend to be followed to reach the desired goal.

Statutory Definition of the Prosecutor's Office in the Republic of Azerbaijan.

The statutes in the Republic of Azerbaijan do not provide a statutory definition of the Prosecutor's Office and its destination in the maze of the state's administrative system. Instead, the Constitution 1995 and relevant Acts set forth the activities in which this institution is involved. According to Article 133 of the Constitution 1995, the Prosecutor's Office of the Republic of Azerbaijan, in cases and within the procedure as prescribed by law, exercises control over the execution and application of law, institutes criminal proceedings and conducts criminal investigations, prosecutes on behalf of the state in courts, and initiates court suits and deals with ensuing appeals.

The Prosecutor's Office Act 1999 has a similar approach to the Constitution 1995, differing only in levels of detail. According to the Act, the Prosecutor's Office initiates criminal proceedings and conducts pre-trial criminal investigations, as well as conducting special means of investigation leading to the initiation of criminal proceedings into corruption-related crimes. It directs procedural aspects of a criminal investigation and ensures compliance with the law, oversees the implementation and application of law in a criminal investigation and special means of investigation by all law enforcement agencies. It files civil lawsuits, participates as a plaintiff in civil and commercial disputes, participates in court as a party to criminal cases and defends public prosecutions. It protests against court rulings or decisions of a competent authority in cases of administrative infractions, initiates proceedings on an infraction in accordance with the Code of Administrative Violations and participates in the achievement of the purpose of punishment imposed by the courts.

An international perspective on a statutory definition of the Prosecutor's Office

In the Republic of Turkey, the legislator adopts a conceptual approach to a definition of the Prosecutor's Office as a core institution charged with the protection of human rights, the rule of law, universal principles of law, and judicial disputes in the Republic of Turkey in the light of national legislation according to the fundamental principles of the Constitution. The Turkish Prosecutor's Office contributes to a final resolution for society with an impartial, independent, reliable, humanely dignified approach, employing effective and efficient methods within a reasonable time frame, and the realization of uniformity of implementation throughout the country.

The Prosecutor's Office examines a case, files an appeal and prepares a judicial opinion. Furthermore, it conducts investigations into high-level public officers, prepares indictments, decides whether or not to prosecute, represents the prosecution at hearings, and resorts to legal remedies. It also advocates at the Court of Jurisdictional Disputes to resolve conflicts related to a court's jurisdiction over judicial and administrative jurisdiction authorities. As an independent and impartial institution, the General Prosecution Office monitors the statutes

and programmes of the political parties and their activities to ensure their compliance with the provisions of the Constitution and the Law. (Yargitay, 2021)

Independently of the police and government, the Crown Prosecution Service (CPS) of England and Wales prosecutes criminal cases that have been investigated by the police and other investigative organizations in England and Wales, by deciding which cases should be prosecuted, determining the appropriate charges in more serious or complex cases, advising the police during the early stages of investigations, preparing cases and presenting them at court, providing information, assistance and support to victims and prosecution witnesses and conducting civil recovery proceedings in court. (CPS, 2021)

In the United States, where there is a clear line between state and federal jurisdictions, each United States Attorney is the chief federal law enforcement officer of the United States within his or her particular jurisdiction. United States Attorneys conduct most of the trial work in which the United States is a party. The United States Attorneys have three statutory responsibilities under Title 28, Section 547 of the United States Code: the prosecution of criminal cases brought by the Federal Government; the prosecution and defence of civil cases in which the United States is a party; and the collection of debts owed to the Federal Government that are administratively uncollectible. (DOJ, 2021)

The Russian Prosecutor's Office is entrusted with ensuring the rule of law, unity and strengthening the rule of law, the protection of human and civil rights and freedoms, as well as the securing the interests of society and the state protected by law. According to the Prosecutor's Office (Federal) Act 1992 of the Russian Federation, the Prosecutor's Office of the Russian Federation oversees compliance with the Constitution of the Russian Federation and the implementation of law, protects human and civil rights and freedoms, and exercises criminal prosecution within its powers. It is entrusted with supervision of the implementation of laws by federal executive bodies; the Investigative Committee of the Russian Federation; representative (legislative) and executive bodies of the constituent entities of the Russian Federation; local self-government bodies; military administration bodies; control bodies and their officials; subjects of public control; ensuring human rights in places of compulsory detention and assistance to persons in places of detention; governing bodies and heads of commercial and non-commercial organizations; as well as for compliance with the laws of legal actions issued by them. It also carries out supervision of the observance of human and civil rights and freedoms by federal executive bodies; the Investigative Committee of the Russian Federation; representative (legislative) and executive bodies of the constituent entities of the Russian Federation; local self-government bodies; military administration bodies; control bodies and their officials; subjects of public control; ensuring human rights in places of detention and assistance to persons in places of detention; as well as by governing bodies and heads of commercial and non-profit organizations. Furthermore, it supervises the implementation of laws by bodies carrying out operational-search activities, inquiry and preliminary investigation. Its functions further comprise supervision of the execution of laws by administrations of bodies and institutions executing punishment and applying measures of a coercive nature imposed by a court, also supervision of the execution of laws by bailiffs; supervision of the administrations of places of detention, of detainees and persons in custody. Most importantly, the Prosecutor's Office of the Russian Federation pursues criminal prosecutions with powers established by criminal procedure legislation and it

coordinates the activities of law enforcement agencies in the fight against crime. Beyond the criminal justice system, it also initiates cases of administrative violations and the conduct of administrative investigations under powers established by the Code of Administrative Offences. (Federal Act, 1992)

Conclusion

Currently, the Prosecutor's Office of Azerbaijan is seen as a guardian of the public interest due to its active role in criminal proceedings. The involvement of prosecutors in areas beyond criminal justice, although provided for by legislation, is limited. Initiation of civil action for the protection of state and public interests is left to the discretion of state institutions. Decisions by state institutions not to bring an action, which in grave circumstances could be considered misuse of power, in less serious circumstances are subject to scrutiny. These decisions are not subject to court review and triggers for such appeals are not provided for in legislation. The reasons for such a situation lie, firstly, in the course of the country's historical development, to be more precise, its historical heritage is reflected in the very perception of the 'public'. The interests of the state and those of the general public are seen to be different. The law allows some limited opportunity for the prosecutor to defend the former, and there is no room for action in defence of the latter. Providing a statutory definition for the role of the Prosecutor's Office acting in defence of the interest of the general public may be an option to resolve the issue. While this institution is subject to the full scrutiny of the courts and it reports to both legislature and head of state, it appears to be better placed to act as an agent of public and state interests in civil jurisdiction.

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